

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

High Court Appeal No.67 of 2007

Date	Order with signature(s) of Judge(s)
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Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Dr. Syed Fiaz ul Hassan Shah

1. For hearing of CMA No.2060/2021
2. For hearing of main case

29.10.2025

Mr. Saulat Rizvi, Advocate for the Appellant a/w M/s. Abdul Qadir Laghari and Mehdi Shah, Advocates
Mr. Mureed Ali Shah, Advocate for Respondents

J U D G M E N T

Muhammad Iqbal Kalhoro, J: The suit was filed for declaration, cancellation, partition and administration of the estate left by Abdul Rehman Muhammad Qureshi (A.M. Qureshi), who had died on 22.06.1989. The suit was contested by the children of second wife. The following issues were framed:

1. *Whether the suit is time barred?*
2. *Whether the plaintiffs have no cause of action for this suit?*
3. *Whether the property in dispute was gifted to defendant No.1 to 6 by their father?*
4. *Whether the plaintiffs are entitled to their shares in the suit property by inheritance?*
5. *Whether the document of declaration of gift in favour of defendants is a forged document and hence liable to cancellation?*
6. *Whether the property can be partitioned by meets and bounds?*
7. *Reliefs?*

2. Learned Single Judge while replying to Issue No.4 has held that the parentage of appellant, who was plaintiff No.4, was suspicious. This finding has been made on the basis of some documents presented in evidence that during the lifetime late A. M. Qureshi had disowned the appellant through a

declaration. Therefore, the learned Judge did not find him entitled to his share in the estate left by the deceased A. M. Qureshi. However, the discussion under Issue No.4 also shows that an application for DNA was also filed by appellant to prove his parentage and the matter was referred to Agha Khan University Hospital for the said purpose, but Agha Khan University Hospital responded in negative stating that such facility was not available. Hence, the said test could not be conducted and the matter was decided on the basis of documents as stated above. The judgment and decree have been impugned by appellant/plaintiff No.4 to that extent only on the ground that the issue of his parentage was not even framed and no evidence was led in this regard and he was not even put to notice to rebut such fact and present his case.

3. Learned counsel for appellant has argued that this matter may be remanded to the trial Court so that the specific issue be framed on this point and evidence be led by respective parties and, if possible, the DNA test of the children of appellant (since he has died) also be conducted to determine pedigree of appellant.

4. His arguments have been rebutted by learned counsel for respondents stating that sufficient evidence was produced in the suit establishing that plaintiff No.4/appellant was not the son of A. M. Qureshi. He submits that this person was actually brought from Burma by A. M. Qureshi where he had gone for business and adopted him as a son. Though the application for DNA test was filed by appellant, but it was subsequently withdrawn and once the application is withdrawn unconditionally, the second application on the same cause of action would not be maintainable. He further submits that same application was filed before this Court in appeal, but it was again withdrawn. However, such argument has been contested by learned counsel for appellant stating that the application is still pending.

5. Be that as it may, we have gone through the impugned judgment, decree and the record with the able assistance of learned counsel for the parties. We have found that in the impugned judgment, plaintiff No.4/appellant has been impliedly declared as stranger and not the legal heir of deceased A. M. Qureshi and, therefore, not entitled to the estate left by him. However, the issue in this regard was not framed by the trial Court nor he was given a sufficient notice to rebut the same. This plea was purportedly taken by the respondents in the written statement and therefore burden was upon them to discharge it. There is nothing to show that they succeeded in discharging their burden. Appellant was one of the plaintiffs who had filed the suit among others for declaration as one of the legal heirs and entitled to the estate left by late A. M. Qureshi. So in fact the appellant had come in the Court claiming his right as one of the legal heirs but was thrown out of the Court on the ground that his parentage was suspicious. Apparently, before that no one had filed the suit against him challenging his pedigree or the fact that he was the adopted son of late A. M. Qureshi.

6. In absence of specific issue, sufficient notice to the affectee, and evidence by the party to discharge its burden of claiming so, not only denying the sought for relief to the appellant but also impliedly declaring him as adopted son of A.M. Qureshi has definitely resulted in miscarriage of justice. We, therefore, do not agree with the findings of learned Single Judge on Issue No.4 to the extent of appellant/plaintiff No.4 that he is not entitled to his share in the estate on the ground that he is not the son of late A. M. Qureshi. Because unless relevant issue is framed and evidence is adduced by the parties in proof of the same, such opinion cannot be formed.

7. Importance of justice through science in the present era cannot be overstated. The impugned judgment shows that when the application was filed by appellant for DNA, such facility was not available with Agha Khan

University Hospital, however, as much water has flown from under the bridges and now in Karachi at various places including Karachi University, such facility is available. Let the same be resorted to. Settled principle of law that once a *lis* is withdrawn unconditionally the same would not be allowed to be filed again cannot be enforced in *stricto sensu* in interlocutory applications such as the one filed for DNA test. The DNA test for determining the parentage of plaintiff is an additional source of resolving the controversy between the parties apart from the evidence which both parties are required to lead to resolve the issue.

8. We therefore, for a limited purpose i.e. to decide issue of parentage/pedigree of plaintiff No.4/appellant, remand the matter to the trial Court/Senior Civil Judge with direction to frame the specific issue, allow both parties to lead evidence and decide the same. However, if application is filed for DNA for determining the pedigree of appellant, the same may be considered in accordance with law. However, the report of DNA would be subject to all exceptions including any objection by the other side to be decided in accordance with law. For this limited purpose, the trial shall be completed within a period of six (06) months and compliance report be submitted to this Court through MIT-II.

9. Accordingly, appeal stands disposed of.

JUDGE

JUDGE