

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 408 of 2009

Date

Order with signature of Judge

1. For orders on Nazir report dated 18.7.2013

FOR HEARING OF CMA NOS:

2. 6184 OF 2013
3. 2971 OF 2009
4. For final disposal against Defendants No.1 and 4.
(Case file and copy of Court's order dated 17.6.2013 sent to Nair Branch for compliance within two weeks)
5. For orders on legal objection against Nazir report dated 18.07.2013 "A")

09/10/2013:

Mr. Zahid Hussain, Advocate for the plaintiffs.

Chaudhry Muneer Ahmed Advocate alongwith Defendant No.1.

None present for Defendants No.2 to 4.

1&5. This is a suit for partition of property amongst the co-owners. Since it is a joint property there is just no possibility of coming to amicable solution of distribution of share of the parties. In the circumstances the only option left to the Court is to auction the property and divide the share amongst the co-owners of the property. Learned counsel for Defendant No.1, the only objector to the sale, is of the view that Defendant No.1 is not willing to allow sale of the property because of her emotional attachment to the property. On the last date of hearing Nazir of this Court was appointed Commissioner to inspect the premises in question and report whether the property can be partitioned conveniently or not. Nazir report dated 18.7.2013 clearly indicates that the property is not partitionable. Even otherwise, Annexure 'A' to the plaint carrying the schedule of the property which indicates that this is only a 300 Sq. Yds. plot. Such a small plot cannot be bifurcated into five owners. Learned counsel for Defendant No.1 insist that this property may not be auctioned. However, he has not been able

to place any legal proposition to support his contention that a 300 Sq. Yds. plot can be partitioned amongst the five different shareholders. A plot of just 300 Sq. Yds. divided into five would make each share of the property equally to only 60 Sq. Yds. which will be so minute that it would become meaningless. In the circumstances, Nazir of this Court is directed to sale the property in question in accordance with law. Parties to the proceedings are at liberty to make an offer of this property and once an offer is being made reasonably each party will be entitled to purchase the share of other parties. The valuation has also been disputed by the Defendant No.1, therefore, Defendant No.1 is also directed to furnish a statement of valuation of the property before the Nazir. This may be clarified that if the valuation furnished by Defendant No.1 is exaggerated or above the market value, then the Defendant No.1 shall be liable to purchase share of other co-owners on the value claimed by her subject to objection of other side. Otherwise, the value coming to the Nazir in response to the auction process through publications will be deemed to be the final value of the property. Nazir to complete the exercise of auction within one months and each shareholder of the property is directed to deposit Rs.10,000/- each towards initial cost of auction of this property and the parties are also at liberty to bring their private buyers which will be given preference subject to the correct valuation and objection of others.

2to4. Deferred.

Adjourned to a date in office.

JUDGE

S.Akhtar