

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
 Suit No.169 of 2009

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Order with signature of Judge

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1. For orders on CMA No.2233/2014.
2. For arguments.

27.02.2014.

Mr. S. Shahenshah Hussain, advocate for the Plaintiff.  
 Mr. S. Shoa-un-Nabi, advocate for Intervener.  
 Mr. Munir Hussain, advocate for the Defendant No.1.  
 Attorney of the Defendant No.3 is present in person.

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1. Notice to the other side.

This case is being fixed for final arguments since 10.04.2013 and the evidence has already been concluded before the learned Commissioner for recording of the evidence. He has already completed evidence and there is no dispute about recording of the evidence from the respective Parties before this Court.

Yesterday, when this case was taken up, Mr. S. Shoa-un-Nabi, learned counsel for Intervener informed that his CMA No.272/2010 is pending since 23.12.2010 to be impleaded as Defendant No.4 in these proceedings, therefore, his application may be heard and decided before final disposal of the case. This matter was partly heard yesterday and today learned counsel for the Intervener has claimed that he had entered into an agreement of sale with the Defendants No.1 and 3 on 10.10.2005 in respect of the property in question and, therefore, the same cannot be made the subject matter of inheritance among the legal heirs of the Deceased Mrs. Jehan Ara Abbas. He has further contended that he has purchased half of the portion/property and even his client was put in

possession. He has also filed a Suit bearing No.300/2011 for Specific Performance of Contract after almost six years of the agreement of sale on 10.10.2005. That Suit is still pending and stay is operating. He contends that in her Counter Affidavit, the Defendant has conceded that the property was sold by her to the Intervener and, therefore, he is necessary and proper party. On one hand, he has asserted that the Defendant No.3 has conceded that there was an agreement of sale made with the Intervener and on the other hand, he has filed Suit No.300/2011 for Specific Performance of Sale Contract. If the Defendant No.3 has agreed to sale the Property as claimed by the Intervener then what has prevented the parties to execute the relevant documents and instead they are contesting the Suit for Specific Performance. Learned counsel for the Defendant No.1 has contended that the agreement of sale is forged and fabricated and in this regard FIR has also been lodged against the Intervener. Be that as it may, the Intervener is only having an agreement of sale, which is obviously disputed by at least one of the Executant of the said agreement i.e. the Defendant No.1. This Court to avoid possible prejudice to the claim of the Parties in Suit No.300/2011 cannot comment on the stance taken by them regarding sale agreement. The legal position is that the agreement of sale under Section 54 of the Transfer of property Act, 1882 does not confer any right title and interest in the property. The possession has been with the Intervener or taken away by someone is immaterial at this point of time and since the Intervener has already filed Suit for Specific Performance and he has not claimed repossession in terms of Section 9 of the Specific Relief Act 1882. The present Suit for Administration is filed on 04.02.2009 and the evidence has already been concluded on the Issues, which were framed

on 03.06.2010. Out of several Issues two relevant Issues for the purposes of this application are:-

- I. Whether the Deceased Mrs. Jehan Ara Abbas gifted her Property bearing No.SC-3, Block-A, North Nazimabad, Karachi to the Defendants No.1 and 3?
- II. Whether the Gift is forged and fabricated?

Since the Intervener claimed that he has agreed to purchase the Property in question through agreement of sale from the Defendants No.1 and 3, who have acquired the title of the said property through gift and the very gift is under challenge in this Suit by none other but brothers of the Deceased, therefore, these Issues should firstly be decided amongst the legal heirs as the Intervener has allegedly entered into the agreement with the legal heirs of the actual owner. The issue of inheritance can be effectively decided without impleading as stranger, therefore, there is no justification to implead the Intervener, as he has an agreement of sale in this case. In this regard, learned counsel for the Plaintiff has relied upon the case of Dr. Saleem Javed vs. Mst. Fauzia Nasim (2003 SCMR 965), wherein it has specifically been held that:-

*“The legal heirs of the deceased in a civil suit to recover the amount of debt due are necessary party but a stranger in such a suit is neither a necessary nor property party. In nutshell we may point out that if a dispute in a suit can effectively be adjudicated in absence of a person, such person is not a necessary party to be impleaded in the suit. The Respondent No.1 in the present case being a stranger in the proceedings for grant of succession certificate to the legal heirs of Dr. Rahim would have no locus standi to be impleaded as party and allowed to join the proceedings, therefore, there could be no exception to the order passed by the learned Senior Civil Judge, Peshawar.”*

The present Suit can be decided amongst the legal heirs without impleading the Intervener in these proceedings. Intervener is admittedly stranger to the Deceased.

In view of the case law cited by the learned counsel for the Plaintiff and even in the light of Section 54 of the Transfer of Property Act, 1882, the Intervener is not a necessary party to be impleaded in these proceedings. His application is dismissed with no order as to cost.

This matter should be fixed in the second week of March 2014 for final arguments.

JUDGE

MUBASHIR