

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 Suit No.851 of 2012

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

1. For orders on Official Assignee Ref: No.01/2013
2. For orders on Official Assignee Ref: No.02/2014

07.02.2014.

Mr. Abdul Qadir Khan, advocate alongwith Plaintiffs.
 Mr. Khalid Riaz, advocate for the defendants.
 Mr. Qadir Bux Omerani, Official Assignee.

In this suit for administration, the plaintiffs have claimed that their father Muhammad Hussain son of Late Haji Hashim expired on 17.6.2005 leaving behind three sons and eight daughters. One of the daughters Mst. Husna has died on 15.6.2011. The entire properties left by the deceased were always in the custody and use of the defendants No.1, 2 & 3, who are realizing rent from the different tenants and using the property without extending any benefit as their share to the plaintiffs. In the written statement Defendants No.1, 2 & 3 have innocently stated that they do not know about income of any of the property since properties were controlled by elder sister namely Mst. Hussna, who died in June, 2011. Therefore, they have chosen not to deposit rental income of the properties in Court on the pretext that it was realized by Mst. Husna. Mst. Husna was unmarried and depended on these defendants and in fact she was living with them till she died.

It is indeed noticeable that despite order of this Court and service, the defendants have delayed the proceeding to the maximum as they have filed written statement on 21.3.2013 after 01 year and 06 months. In their written statement they have neither disclosed the complete

statement of accounts of the income from the properties including the business inherited from the father, nor they have disclosed account of rent realized by them even after the death of Mst. Husna on 15.6.2011.

Learned Official Assignee has filed three references one after the other on 12.12.2013, 22.01.2014 and 6.2.2014. In the first Reference dated 12.12.2013 the Official Assignee has annexed several documents including an statement duly signed by the Defendants No.1, 2 & 3 that they have received a sum of Rs.7,88,000/- + Rs.1,50,000/- as rent which makes a total sum of Rs.9,38,000/= from August 2011 onwards as per their own statement. In the 2nd & 3rd References the report is that some of the tenants have deposited rent from 1st January 2014. However, defendants No.1, 2 & 3 have not deposited the rent realized by them despite order dated 16.12.2013 that Official Assignee shall collect the rent from each and every tenant and also collect the entire rent from the legal heirs, who have been receiving rent from the date of death of their father within one month otherwise coercive action would be taken for the recovery of the amount. Therefore, the Defendants No.1, 2 & 3 are directed to deposit amount of Rs.9,38,000/= within 15 days with Official Assignee who shall invested the said amount and the amount so far received from the tenant in some profit bearing government scheme of deposits.

The tenants are so much influenced by the defendants No.1, 2 & 3 that in their affidavits they have not disclosed to whom they have given the rent until December 2013. It is pertinent to note that even the affidavits sworn by the tenants have been prepared by the counsel of Defendants No.1, 2 & 3 and the deponent are identified by him. Therefore, the rate of rent and the amount of rent deposited by the

tenants is rightly objected to by the plaintiffs. In these circumstance, pending the determination of rate of rent and actual rent to be paid by the tenants, the Defendant Nos.1, 2 & 3 are further directed to deposit entire rent from July 2005 till July 2011 at the rate so far accepted by the tenants in addition to the rent admittedly received by them because it is their own showing that all rent had been realized by them through their elder sister who was residing with and dependent on them.

The Defendants admits that after the death of Mst. Husna they have not filed any succession to inherit/account for the income and savings, if any, of Mst. Hussna from rental income of the inherited properties. It is not alleged anywhere in the pleading by the defendants No.1, 2 & 3 that Mst. Husan had even paid a single penny to other legal heirs of deceased Muhammad Hussain. The Official Assignee has informed that original documents of only three properties were handed over by the Defendants No.1, 2 & 3 to him. The Defendants No.1, 2 & 3 deny about the whereabouts of the original documents of other properties without realizing that in para J of their written statement they have admitted that according to them "all the documents" were in the custody of Mst.Husna, who was residing with them till she died. The counsel for the Defendants No.1, 2 & 3 under the instruction of attorney of the Defendants No.1, 2 & 3 states that the documents handed over by them to the Official Assignees came to their possession after the death of Mst.Hussna. However, they have failed to give any explanation that under what circumstances, original documents of the other properties could not be discovered by them from their own house, since deceased Mst. Hussna was living with them. They are not willing to disclose, and therefore, they are given 15 days' time to make sure that the documents

are being traced and handed over to the Official Assignee since Mst. Hussan was residing with them and in the event of their failure to locate original documents without any plausible explanation on oath they will have to face the consequence of any loss occasioned to other legal heirs on account of their failure to produce original documents. In these circumstances, to stop further misappropriation of the properties/ estate left by deceased Muhammad Hussain and its income, it is hereby ordered that Official Assignee should issue notice to each of the defendants and occupants of the premises mentioned in para 2 of the plaint to vacate the respective premises in their possession within 30 days from today. The Official Assignee should appoint chowkidar/watchman on these properties and also initiate the process of sale of the said properties.

The attorney of defendants No.1, 2 & 3 admits that the business run by deceased Muhammad Hussain in the Godown premises situated in Swami Narayan Temple Estate Trust (Hindu Religious and Charitable Trust) was taken over by the defendant No.2 Muhammad Ashraf and since then he is running the said business. Defendant No.2 Muhammad Ashraf despite orders of court has not tendered any account of the business ever since the death of Muhammad Hussain. The Official Assignee is directed to forthwith take over possession of business premises, make an inventory, appoint someone to supervise the said business and maintain proper accounts under the supervision of Official Assignee from today. He is also directed to hold local inquiry to ascertain possible income so generated from the business from other persons in the market doing similar business. Therefore, the defendant No 2 is directed to furnish statement of accounts of business right from June 2005 till date within two week. In case of failure of Defendant No.2 to

submit fair account of business, the other properties of the defendants will be attached.

In para-2(a) the defendants have claimed that the property Plot No.E-485 measuring 645 square Yards, Khudabad Colony, Karachi was conveyed jointly in the name of the defendants No.1, 2 & 3 in the lifetime of the deceased Muhammad Hussain. They admit that it was in possession of the deceased father of the parties before it was being conveyed in favour of the defendants No.1, 2 & 3. The Plaintiff claimed that this property may be treated as part and parcel of estate of the deceased. The Court has to examine the question that whether the said property was benami property purchased by the deceased in the name of defendants No.1, 2 & 3 or it was exclusively purchased by the defendants No.1, 2 & 3 themselves. Therefore the Official Assignee is also directed to make inventory of the building and obtain statements of the occupants to the effect that since when they are in occupation of the said premises, and also collect information regarding rental value of the premises and the tenants, if any, in any portion or part of the property. Pending this suit the defendants are directed not to create any third party interest in the said property and do no change tenancy, if any.

Learned counsel for the plaintiff informs that the deceased was holding business and private accounts in UBL Society Office Branch and other banks. The defendants who were with the deceased at the time of his death and took over his business and all the moveable and immoveable properties are not cooperating to disclose bank accounts maintained by the deceased. The Official Assignee is directed to obtain information of the bank accounts being operated by the deceased individually or jointly with anybody from the State Bank of Pakistan by

sending them a request accompanying with photocopy of NIC of the deceased and all necessary particulars for such disclosure so that if any account was operated by deceased may be included in the estate of deceased for the benefit of all the legal heirs. If it is found that the defendants or anybody else has operated or misappropriated funds from the said account, he will be dealt with in accordance with law.

The learned Official Assignee, keeping in view the conduct of the defendants, has requested that in case of resistance he may be allowed to obtain police assistance in getting each and every premises of the deceased vacated from the occupants, his request is accepted. Police of the relevant area is directed to ensure that the Official Assignee be provided full assistance in case of any resistance is faced by Official Assignee in execution this order. The Official Assignee is also allowed to break open the locks if parties in possession of the premises try to defeat by delay the orders by putting premises under lock.

Both the reference of Official Assignee are disposed of in above terms.

JUDGE

SM