

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

JM No.33 of 2011

JM No.34 of 2011

Order with signature of Judge

For hearing of Main Application (U/s. 12(2) CPC

06.03.2014.

Mr. S. Ali Bin Adam Jafri, Advocate for the Applicant.
Mr. Shabbir Ahmed Shaikh, Advocate for
Defendants No.1 & 2 in Suit No.654/2009.
Syed Wajahat Abbasi, Advocate for Respondent No.1.

By this common order I intend to dispose of two J.Ms as in both applications parties are same and issues are also common. The applicants have challenged the decrees in Suit No.654/2009 and Suit No.1354/2009 whereby two suits for administration were disposed of by a compromise. The following properties were subject matter of the suits.

- (i) House No.A-116, Block-D, North Nazimabad, Karachi,
- (ii) House No.47-L Block-2 PECHS Karachi.

Both the suits were consolidated before the compromise decree. However, the decrees were challenged by the legal heirs of late Ejaz Hussain husband of the deceased Nasra Ejaz, as they were not party to the suits and they were under the impression that the Plaintiff and the Defendant in both the suits have misappropriated share of Ejaz Hussain by inheritance in the assets of deceased Nasra Ejaz who had died in the lifetime of Ejaz Hussain. Today after the scrutiny of the files both the parties have conceded that Nasra Ejaz had a share in property at Sr. No.1 by way of inheritance and on her death her husband was amongst the legal heir and the other property was in her name at the time of her death and therefore, Plaintiff and Defendants were co-sharer with her

husband Ejaz Hussain. However, before distribution of inheritance to which Nasra Ejaz was entitled in the aforesaid properties, even her husband died on 29.2.2008. Therefore, in both the suits Ejaz Hussain OR his legal heir should have been impleaded, however he was not made a party though it was mentioned in both suits that he had died after the death of his wife Nasra Ejaz. Both the suits were compromises and at the time of compromise it was realized by the Plaintiff and the Defendant that husband of their sister Nasra Ejaz was entitled to inheritance from the share of Nasra Ejaz to the extent of share of husband in both the properties. Therefore, when the suits were compromises and consolidated decree was passed the entitlement of late Ejaz Hussain husband of Nasra Ejaz was acknowledged mentioned in para 2 & 4 of the consolidated decree as hereinbelow:-

2. That the share of deceased Ejaz Hussain husband of the Mst. Nasra Ejaz be retained with the Nazir of this Hon'ble Court and be handed over to the legal heirs of the deceased Ejaz Hussain as and when they demand from the Court.

4. That parties have settled the market value of the property bearing No.47-L, Block-2, PECHS, Karachi at Rupees One Crore only deceased Mst. Nasra Ejaz has inherited 1/6th share in Rupees One Crore Plaintiff and other legal heirs of the Mst. Nasra Ejaz mentioned herein above have jointly inherited according to Muslim Law of inheritance said 1/6th share left by deceased Mst. Nasra Ejaz.

It may be pointed out that the decree has been passed after order of consolidation two suit dated 3.5.2010 however the title of the decree is showing only one suit though in the body of decree title of both the suits should have been mentioned and order of consolidation should also have

mentioned in the decree. Irrespective of this technical lacuna, the decree is clear and covering rights of the parties including the rights of the applicant in J.M Nos.33 & 34 of 2011.

The J.M Nos.33 & 34 of 2011 have been filed by the legal heirs of Ejaz Hussain, who has been survived by one sister and two brothers and admittedly he was issueless from the two wives namely Mst. Abbass Fatima and Nasra Ejaz and both had died in the lifetime of Ejaz Hussain. It is pertinent to mention here that the legal heirs of Syed Ejaz Hussain has preferred Succession Petition No.117/2008 wherein they have sought inheritance of property mentioned at Sr.No.2 above. During the course of arguments it has been conceded by the counsel for the applicants Mr. S. Ali Bin Adam Jafri, Advocate that the said property at the time of death Nasra Ejaz was in her name and therefore, mutation of said property in the name of only Ejaz Hussain after her death to the exclusion of other legal heirs namely the Plaintiff and Defendant in suit No.654/2009 and 1345/2009 was not correct as they were also legal heirs of Nasra Ejaz.

It is pertinent to mention here that in SMA No.117/2008 legal heirs of Ejaz Hussain have not mentioned entitlement of late Ejaz Hussain, in the property at Sr. No.1 through his wife since the said property belong to her father. It is transpired from the compromise decree that Nasra Ejaz was entitled to 1/5 share in the property at Sr.No.1. In view of above position it emerges that late Ejaz Hussain was entitled to inheritance as husband in the share of deceased Nasra Ejaz in the property mentioned at Sr.No.1 above alongwith Plaintiff and the Defendants in the two suits. And the Plaintiff and Defendants were entitled to inheritance in the property left by deceased Nasra Ejaz

mentioned at Sr. No.2 above alongwith late Ejaz Ahmed. This position is also clear from the compromise decree that late Ejaz Hussain was entitled to inheritance as husband of Nasra Ejaz and of course on his death his legal heirs, subject to Shariah Laws, from the assets devolved or might have been devolved on Ejaz Hussain at the time of his death. The decrees are clear to the effect that the legal heirs of Ejaz Hussain will be entitled to claim inheritance. The Nazir of this Court in terms of decrees in both the suits has already initiated sale of property at Sr. No.2 above. However, the value of property at Sr. No.1. was settled by the Plaintiff and Defendant without consulting the legal heirs of late Ejaz Hussain, as they were not impleaded in the suit. In the circumstances decree is modified to the extent of value determined in the decree and the said property (PECHS property) should also be sold through public auction. Therefore both the properties should be sold by the Nazir and share of Ejaz Hussain in both properties be retained by the Nazir and it should be handed over to the legal heirs of Ejaz Hussain namely Mst. Noor Jehan Begum, Syed Mujiz Hussain and Syed Wasi Hussain. Nazir should complete the exercise within one month from today.

In above terms, both J.M Nos.33 & 34 of 2011 stand disposed of.

JUDGE

SM