

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1468 of 2006

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

1. For hearing of CMA No.11926/2013
2. For hearing of Nazir report dated 12.3.2012
3. For hearing of Nazir report dated 14.1.2013

24.02.2015

Mr. S. K. Hasnain, advocate for the Plaintiff.
None present for the Defendant.

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1-3. Through this application Plaintiff has informed that Defendant No.4 has rented out first floor of the suit premises and the plaintiffs should be allowed to take over possession of 2nd floor pending the suit for administration of the estate of deceased Muhammad Ishaque. Learned counsel for the Plaintiff has further requested that property should be sold at the earliest, since is pending 2006. None is present for the Defendant and I have examined file with the assistance of the learned counsel for the Plaintiff. This suit was filed on 02.11.2006 and a preliminary decree was issued in terms of the order dated 01.12.2008 and Nazir was appointed for accounts and inquiry in respect of the property left by the deceased. Nazir report dated **6.5.2009**, which taken on record on **22.2.2010** shows that the only contesting Defendant No.4 has conceded that he is ready to disburse / pay share of the Plaintiff on proper valuation of the suit premises. Nazir has submitted the value of suit property in his report dated 6.5.2009. The Plaintiff has produced one of the buyer before the Nazir who has agreed to purchase the subject property in the sum of Rs.2,50,00,000/- which is also on record. Plaintiff thereafter filed CMA No.4243/2010 on 29.4.2010 which was listed for hearing on 16.8.2010 but unfortunately on the said date none was

present for the Plaintiff and the counsel for the Defendants No.3, 5, 7 and 10 stated before the Court that Nazir was required to record evidence and therefore, the case was adjourned. The record shows that ever since CMA No.4243/2010 filed by the Plaintiff under order XXI Rule 61 CPC has never been listed even for orders. Be that as it may, these reports of the Nazir subsequent to the order dated 16.8.2010 are also listed for orders i.e. Nazir report dated 12.3.2012 and 14.1.2013. Both reports suggest that Defendants have not cooperated with the Nazir and evidence has been concluded during the last more than 04 years. These formal reports of the Nazir are taken on record.

In view of the Nazir report dated **6.5.2009** and failure of the Defendant to complete the evidence which even otherwise was not required after the statement of the Defendant No.4 before the Nazir as reported in his report dated 6.5.2009. It is hereby ordered as follow:-

- i. Nazir should immediately inspect the premises in question and start realizing rent from the tenants of first floor in the suit premises and also recover the entire rent from the Defendant No.4 from the date of beginning of the tenancy till February 2015 and future rent from March 2015 shall be deposit in Court by the said tenant. The Defendant No.4 was present in Court on 2.5.2014 when above application was listed for orders but he has never turned up nor he is being represented by any counsel, therefore, notice of this application may also be given to him pending the arrangements for the sale of subject premises in terms of the Nazir report dated 6.5.2009 or payment of the share of the Plaintiff by the Defendant No.4 who is alone in occupation of the entire premises since 2006. Nazir should issue auction proclamation of suit property after notice to the Defendant No.4 but not later than 15 days from today.

Adjourned to a date in office.

JUDGE