

**IN THE HIGH COURT OF SINDH AT
KARACHI**

SMA No.58 of 2013

In Re: Mohammad Shafie (Deceased)

Mrs. Atteeya Mahmood (Petitioner)

Nighat Muzaffar and Dr. Arif Shafie (Objectors)

Date of hearing : **22.05.2017**

Date of Decision : **12.07.2017**

Petitioner : **Through Mr. R.F. Virjee, Advocate.**

Objectors : **Through Mr. Aftab Ahmed Butt,
Advocate.**

Case law cited by the Petitioner's counsel.

PLD 2014 Sindh Page-10

(Syed Moshin Ali Versus Mst. Hajra and others)

Case law relied upon by Objector's counsel.

1. PLD 1986 Quetta Page-107

(Hidayatullah and 21 others Versus Noor Muhammad and 49 others)

2. PLD1986 Quetta Page-121

(Rehmatullah and 2 others Versus Lal Muhammad)

3. PLD 1990 Supreme Court Page-1

Ghulam Ali and 2 others Versus Mst. Ghulam Sarwar Naqvi)

4. PLD 2007 SC Page-634

(Mst. Suban Versus Alla Ditta etc.)

5. PLJ 2010 Lahore Page-346 (DB)

(Mst. Zainab (deceased) through L.Rs Versus Mst. Kundan Khatoon and 5 others)

6. PLJ 2010 Lahore Page-355

(Dr. Shamshad Hussain Syed, Chief Physician, Lahore Versus District Consumer Court, Lahore and another).

7. **PLD 1968 Dacca Page-172**
(*Kutijan Bibi Versus Zulmat Khan and others*).
8. **PLD 1960 Dacca Page-359**
(*Abdul Ghani Talukdar Versus Rushan and others*)
9. **1979 CLC Page-230 [Lahore]**
(*Muhammad Shafi and 2 others Versus Munshi and 3 others*).
10. **PLD 1993 Lahore Page-469**
(*Muhammad Faryad Versus Muhammad Asif*).

Other Precedent: (1). **PLD 2003 Karachi Page-691**
[*Jehan Khan Versus Province of Sindh and others*]

Law under discussion: (1). Scope of Review under Code of Civil Procedure, 1908 (CPC).
(2). Succession Act, 1925.

ORDER

Muhammad Faisal Kamal Alam, J: The present Civil Miscellaneous Application (CMA No.253 of 2017) is preferred by Mst. Nighat Muzaffar, being one of the Objectors, through her counsel Mr. Aftab Ahmed But, with the prayer that the earlier order dated 30.01.2017, be reviewed / recalled, on the grounds mentioned in the above CMA.

2. The afore mentioned Mst. Nighat Muzaffar is a real sister of present Petitioner.

3. Learned counsel representing the said Objector has cited the above mentioned precedents in support of his arguments, gist of which is_

i). The subject property (the Bungalow No.382, in Pedro D`Souza Road, Garden East, Karachi) does not need an administration and therefore, present proceeding is not maintainable and if at all the

Petitioner wants to inherit her share, then she should file a suit for partition.

- ii). Since notice was not properly served about the present proceeding upon his client (*Mst. Nighat Muzaffar*), therefore, the order sought to be recalled or reviewed may be recalled and the original application being CMA No.1080 of 2013 filed under Section 151 of CPC should be restored to its original position.
 - iii). In terms of Order XVII Rules 2 and 3 of CPC, it is necessary that party should be present but fails to either proceed with the case or produce the evidence; only then the order of the nature can be passed and not otherwise. He has further argued that before passing the impugned order, the last date of hearing is to be taken into the account, which if in the present case is considered, then it is a matter of record that on 28.11.2016 the counsel for Petitioner was also not present, besides the present Advocate representing the Objector.
4. On the other hand, learned counsel Mr. R. F. Virjee in rebuttal has invited the Court's attention to the Affidavit filed by erstwhile counsel for the Objectors *{the said Affidavit}*, namely, Nighat Muzaffar and Dr. Arif Shafie in response to the show cause notice issued to him. Petitioner has contested instant Review Application by filing a counter affidavit.
5. With the able assistance of learned counsel representing the parties, record of the case has been examined and their submissions considered.

6. The reported decisions relied upon by Objector (Mst. Nighat Muzaffar) has been taken into the account. The decisions cited in support of arguments of the Objector about non-maintainability of present proceeding are distinguishable. The Judgments from Indian jurisdiction primarily relate to the issues where entitlement to a certain property was itself in dispute. Secondly, those Judgments (of Indian jurisdiction) are in respect of dispute of inheritance involving intricate factual disputes and legal issues, for which, it was held, a different nature of proceeding was to be filed. The other distinguishing factor is that the cited case law pertains to the undivided Hindu Family, the latter itself has a distinct status under the law. Thirdly, advertent to the cited decisions of our Courts, the same too are not applicable to the simple and undisputed facts of the present case, *inter alia*, as, there is no dispute that Petitioner is not a legal heir nor her entitlement to her share in the inheritance is in question. In addition to this, it is also an admitted fact that the subject matter of present proceeding, that is, the above house property was owned and belonged to the deceased father and after his death, the same has devolved upon all the legal heirs including Petitioner and her brother and sister (the Objectors). Learned counsel for the Objector though has argued that under some family agreement or arrangement, the present Petitioner has relinquished her share, but the Objector counsel has failed to point out any such documentary evidence at this stage in support of his claim. Additionally, in her counter affidavit, the Petitioner has refuted the existence of any such family arrangement, which assertion has not been rebutted, as the Objector did not prefer any Affidavit-in-Rejoinder. In this regard, a reported judgment of learned Division Bench of this Court is relevant; **PLD 2003 Karachi page 691**. Similarly, the pleadings of Petitioner in clear terms show that instant proceeding is not merely seeking a declaration for her heirship, as argued by Objector's

counsel, but, *inter alia*, for issuance of Letter of Administration, thus, on this ground also, the submissions of the Objector's counsel is meritless.

7. The reported decision of this Court handed down in *Yousuf Abbas Case* (supra), on the contrary supports the case of Petitioner. Learned single Judge (in the above case) while expounding the concept of nature of proceeding for distribution of an estate of a deceased amongst his legal heirs, has observed that a proceeding may take various forms according to circumstances of the case, including an Administration Suit, or a Suit for Partition or Contribution and / or an Application for the Appointment of Administrator under Section 218 of the Succession Act, 1925 [*underlying to add emphasis*]. In this **Yousuf Abbas case**, the rights and interests of the deceased's grandchildren were recognized and it was further held, that a legal heir is entitled to inherit his / her share in the inheritance, irrespective of the fact whether he / she is a Pakistani national or a foreigner. The principle that can be deduced from various judicial precedents is that in a case for distribution of inheritance, particularly, under the Islamic Law, the Court is to take concrete steps, *inter alia*, by adopting a pragmatic and beneficial approach, so that respective share(s) in the estate of a deceased can be distributed amongst those (legatees) who are entitled to inherit in accordance with law. This follows, that this Court if it deems appropriate, in instant proceeding, may pass Orders/directions for disposition of the subject property and distribution of sale proceeds amongst all the legal heirs; Petitioner and Objectors both.

8. The record of the case shows that considerable time was consumed merely to effect service upon the other two legal heirs, namely, Dr. Arif Shafie and Mst. Nighat Muzaffar-latter has preferred

the title CMA. The difficulty to effect service upon the above named legal heirs was due to their deceptive conduct.

The order dated 21.12.2012 further reflects the uncalled-for behaviour of the above named two legal heirs and this Court to implement its order about depositing of original title documents of the subject property, had to issue direction to the Director FIA (Immigration) for not allowing Dr. Arif Shafie to leave Pakistan.

9. That the contents of the afore referred said Affidavit, *inter alia*, categorically states that both the objectors were / are in complete knowledge of present proceeding. If the contents of the said Affidavit of erstwhile counsel of above named Objectors is read together with the record of the case, it is not difficult to observe that conduct of the Objectors is not *bona fide* and their main object is to delay the present proceeding; in fact to delay the distribution of the estate amongst the legal heirs. This is not acceptable that by adopting various deceptive tactics, objectors are creating obstacles in distribution of inheritance, which is otherwise mandatory under the Islamic Law governing the subject and the present parties.

10. In addition to the above, the objectors' counsel has failed to point out any error; factual or legal in the order dated 30.01.2017, sought to be reviewed / recalled by present application.

11. The order sought to be reviewed (of 30.01.2017) has been passed after taking into consideration the factual and legal aspect of the case, *inter alia*, that even the earlier Review Application (CMA No.1080 of 2013) was also a time barred one. The earlier Application to Review an order of 10.09.2013, was not dismissed merely because of non-appearance of the Objector or her Advocate (Mr. Aftab Ahmed Butt), but

the said Review Application was dismissed on merits. Thus, the Bar as provided in Rule 9 of Order 47 of Civil Procedure Code, shall be attracted to the present CMA No.253 of 2017, which is a second Review Application, being not maintainable in law.

12. In view of the above discussion, the present CMA No.253 of 2017 is nothing but an attempt to delay the distribution of inheritance which is an abuse of process of Court and the same is accordingly dismissed with costs of Rs.10,000/- (Rupees Ten Thousand Only), payable by Objector Nighat Muzaffar to the Petitioner, within fortnight from the date of announcement of this order.

Dated: _____

JUDGE

M.Javid.P.A.