

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI.
Suit No. 845 of 2016

Date	Order with signature of Judge
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1. For hearing of CMA No.7886/2019.
2. For hearing of CMA No.3617 /2018.

30.09.2019.

Mr. Muhammad Hanif Bandhani, Advocate for Plaintiff.

Mr. Muhammad Saleem Ibrahim, Advocate for Defendants.

This matter has been partly heard.

The undisputed record of the case is as follows_

- i. On 13.02.2014, all plaintiffs and defendants No.01 to 05 appeared before this Court and the SMA in respect of the subject property, viz. a built up double Storey building on Plot C-7, Block – 17, Federal ‘B’ Area, Sharah-e-Pakistan, Karachi, admeasuring 600 Square Yards, was granted. The Defendants 1 to 5 (**contesting Defendants**) as a matter of record have earlier given their Affidavits of No Objection for grant of the petition, however, later have filed objections to the petition and particularly to a CMA No.585 of 2014 for sale of property and distribution of sale proceeds amongst the legal heirs that is to say the present plaintiffs and contesting defendants.
- ii. In view of the above, the SMA was converted into a regular administration suit being Suit No.845 of 2016 vide an order dated 18.03.2016, which is still holding the field and has not been challenged. In this order there were certain observations about exposure to a criminal proceeding.
- iii. On 31.08.2018, Preliminary Decree was passed and Nazir was directed to undertake the further proceeding in pursuance thereof. Nazir has subsequently submitted his report dated 22.01.2019, on which the counsel

for contesting defendants sought time to file objections, which is mentioned in order dated 21.02.2019. Thereafter, there is no significant progress in the case. Today, learned counsel for contesting defendants has filed his Affidavit of Objections to the Nazir's report as well as Counter Affidavit to the C.M.A. No.7886 of 2019, which are taken on record.

- iv. Nazir Report states that despite notices only Plaintiff and is Advocate Appeared. Report was also sought from the concerned authorities, according to which, the subject property stands in the name of deceased Abdul Rab Khan (main deceased), who is undisputedly father of the plaintiff and grandfather of the contesting defendants, being children of (late) Anwar-ul-Haq Khan, who was son of above (late) Abdul Rab Khan.

It is also necessary to mention that defendants No. 6,7 and 8 are also legal heirs of one of the deceased sons of main deceased Abdul Rab Khan, but these defendants No.6,7 and 8, who are legal heirs of Muzaffar-ul-Haq Khan, never contested the matter.

Mr. Muhammad Saleem Ibrahim, Advocate for contesting Defendants argues that main stance of contesting defendants is that the property in question was jointly owned by their father, namely, Anwar-ul-Haq Khan, but, in their Objection to the main SMA which has been preferred in the shape of CMA No.157 of 2015 presented on 16.02.2015, a contrary defence has been set up in paragraph-8; that deceased father of contesting defendants (Anwar-ul-Haq) and grandfather – the main deceased Abdul Rab Khan, jointly purchased the subject property and the construction was done by the deceased father of contesting defendants from his own funds whereas the main deceased (grandfather) in his lifetime announced that property in question after his death would be transferred to the father of contesting defendants. This oral declaration was witnessed by one Mirza Amanullah, who has also passed away on 25.11.2014. However, contesting Defendants are unable to explain that when they filed their respective Supporting Affidavits in SMA in the year 2013, then at the relevant time why this fact of oral

declaration was not mentioned and why the Affidavit of above named uncle (Mirza Amanullah) who was alive, was not filed.

The Affidavits of No Objection of contesting Defendants (as referred above) earlier filed in S.M.A. have been perused. All of them are identical and contesting Defendants have stated on oath that the subject property belonged to their grandfather, that is, main deceased Abdul Rab Khan, while giving their no objections for grant of Letter of Administration in favour of the then Petitioner, *inter alia*, Ashraf Hussain Khan, who is now Plaintiff No.1. In paragraph-4 of this Affidavit of No Objection, it is further stated that **even after due diligent search, no Will has been found and that is why an intestate proceeding** was filed collectively by all the legal heirs. The above stance of the contesting Defendants in the present proceeding is self-contradictory, as already mentioned in the preceding paragraphs.

It is also a matter of record that the contesting Defendants never appeared before the Nazir, but today have filed the above referred Affidavit of Objections to the Nazir's Report and Counter Affidavit to the Application under Section 151 of C.P.C. – C.M.A. No.7886 of 2019. In this Affidavit of Objections to Nazir's Report, the contesting Defendant No.1 **has taken yet another new stance**; that the subject property was ostensibly owned by his late grandfather Abdul Rab Khan and by virtue of an 'Iqrarnama' dated 04.09.1979, sworn by main deceased Abdul Rab Khan, father of contesting Defendants is the real owner. This assertion on the basis of Affidavit (oath) is again contrary to the aforementioned stance of contesting Defendants, particularly, as contained in their Objections / Counter Affidavit to CMA No.585 of 2014, in which the said contesting Defendants have stated that by virtue of an oral Will by the main deceased (Abdul Rab Khan), the subject property was to be transferred to the deceased father of contesting Defendants (Late Anwar-ul-Haq Khan). The stance of contesting Defendants is **further falsified by the fact** that if their late father was the ostensible / benami owner of the Subject Property, then why during his life time, he did not claim the same or file any proceeding to that effect? if his other siblings, including present

Plaintiffs were reluctant to transfer the subject property to the said deceased Anwar-ul-Haq Khan.

In the Affidavit of Objections filed to the Nazir's Report (by contesting Defendants), it is stated that two of the paternal aunts (Phoophies), namely, Aisha Munawar and Bilquis Zaib, also accept the stance of contesting Defendants about the subject property. It is further stated that one of the paternal aunts, Bilquis Zaib, has mentioned this fact in her General Power of Attorney dated 04.10.2013, which is appended with the aforesaid Affidavit of Objections (to Nazir Report). The said General Power of Attorney has been perused; some of the clauses have been highlighted in such a manner that they have become illegible; *whereas*, recital of this document clearly states that said Bilquis Zaib Khan, paternal aunt of contesting Defendants and sister of present Plaintiff has nominated the present Plaintiff (Ashraf Hussain Khan) as her attorney in respect of subject property, while further mentioning that the said Bilquis Zaib Khan is one of the co-sharers in the subject property, besides other brothers and sisters. The contents of this General Power of Attorney, on which the contesting Defendants have placed their reliance clearly belie the claims of contesting Defendants. It means that once again contesting Defendants have made averments contrary to record and made an attempt to play fraud upon this Court. Even for the sake of arguments, if one of the legal heirs relinquishes his or her share in favour of contesting Defendants or any one of them (as pleaded by contesting Defendants), it does not mean that the said legal heir is accepting the claim of contesting Defendants, but that relinquishment can be taken as a goodwill gesture on the part of a family member.

Admittedly, Plaintiffs and Defendants, *particularly*, contesting defendants have not disputed the legal status of each other, that is, the plaintiffs are direct descendants of the main deceased **Abdul Rab Khan who in the official record till** date has been shown as sole owner.

This is proceeding for distribution of estate amongst the legal heirs and it cannot be allowed to be proceeded at the whims of any of the parties. Till date no

Written Statement has been filed by the contesting defendants and after almost ten (10) months they have opted to file objections to the Nazir's report. The stance of contesting defendants is contradictory and this contradiction is on the basis of affidavit, which entails adverse consequence as also observed in the above earlier order.

From the record of the case, it is quite apparent that contesting defendants are trying to create obstacle in a fair distribution of the sole property of the main deceased (late Abdul Rab Khan) amongst the legal heirs, which includes contesting defendants. Such attempts should be thwarted in a case / *lis* where not a single tangible documentary evidence is produced to substantiate the plea taken by the contesting defendants.

Where the legal character / status of the parties are not disputed but only objections (that too self-contradictory), are raised in respect of an estate left by a deceased, then proceedings of the nature should be dealt with as a priority case, because the rights and interest of parties involved are governed under the Islamic Law of Inheritance, which is on a higher pedestal, *inter alia*, in view of the Enforcement of Sharia Act of 1991. It is not necessary that in every civil proceeding triable Issues are framed and evidence is to be led, despite the fact that the matter can be decided otherwise on the basis of legal Issues. The reported decision of the Honourable Supreme Court in the case of *Muhammad Sharif and others v. Nabi Bux and others* [2012 S C M R page-900] is relevant.

During course of proceeding, if it appears that some individual(s) creating impediment in just and fair distribution of the inheritance amongst all the undisputed legal heirs, including, by filing applications (to cause delay) or taking self-contradictory stance / pleas, then depending on the facts and circumstances of a given case, a criminal proceeding against a delinquent person / party can also be lodged; because such a conduct and act falls within the Prohibitions mentioned in the Holy Quran, that no one should be allowed to usurp property of another. (Reference: Surah Al-Nisa, Verse: 29).

Conclusion of the above discussion is that the contentions of contesting Defendants are baseless. Nazir is directed to initiate proceeding for disposal of the suit property and its distribution amongst all the legal heirs, including contesting Defendants. However, for getting a maximum price, the legal heirs may either dispose of property themselves through a private sale but under the supervision of Nazir or the legal heirs (Plaintiffs and Defendants) may purchase share(s) of each other. This exercise should be completed within six (06) weeks. Nazir is further authorized to take action against any person who attempts to create obstacle in implementation of the above order.

As far as initiating criminal proceeding against the contesting defendants is concerned, that matter will be taken up on the next date of hearing. With regard to the shares of legal heirs of Mazhar-ul-Haq, that is of Defendants No.6, 7 and 8, their share after sale of subject property will remain in custody of Nazir till anyone of them approaches this Court for its due payment and distribution.

The application [**CMA No.7886 of 2019**] stands disposed of in the above terms.

Hyder/PA

Judge