

IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No.3 of 2026

(Dr Masuma Hasan v. Public At Large)

Before:

Sana Akram Minhas J

Appellant	Dr Masuma Hasan Through, Mr. Asad Ali Khan Advocate / Attorney & Son of Appellant / Legal Heir of Deceased
Respondent	Public At Large
Date of Hearing:	28-8-2026
Date of Decision:	14-9-2026

J U D G M E N T

- Sana Akram Minhas, J:** This Miscellaneous Appeal, preferred under Section 299 of the *Succession Act, 1925*, is directed against the order dated 10.1.2026 (“**Impugned Order**”) passed by the learned VIth Additional District Judge, Karachi East (**VIth ADJ**”), whereby the Appellant’s Succession Miscellaneous Application (“**SMA**”) No.924/2025 (“**SMA 924**”), seeking issuance of Letters of Administration in respect of the immovable property left behind by her deceased husband, late Fatehyab Ali Khan (“**Deceased Fatehyab**”), who expired on 26.9.2010, was dismissed as not maintainable.
- The Impugned Order proceeded on the basis that the subject immovable property – namely, Bungalow bearing No.93-C, Block 6, PECHS, Karachi, measuring 1200 square yards (“**Subject Property**”) – stood in the name of the previous lessee/owner, namely Wajihuddin (“**Wajihuddin**”), and that mere possession of the original documents by the Appellant, without proof of a lawful transfer of title, was insufficient to establish that the Subject Property belonged to the Deceased Fatehyab.

Previous Litigation History

3. According to the learned Counsel for the Appellant – who is also the Appellant’s Attorney and son, as well as a legal heir of the Deceased Fatehyab – the issue arising from an objector’s claim to the Subject Property had already been considered in an earlier round of litigation. A Division Bench of this Court, vide judgment dated 6.11.2023 passed in High Court Appeal No.162 of 2023 (“HCA 162”) – reported as **Dr. Masuma Hasan v. Imtiaz Ali Khan** (PLD 2025 Sindh 96) (“DB Judgment”) – allowed the Appellant’s HCA 162 and set aside the order dated 8.3.2022 issued by a Single Judge of this Court, whereby the Appellant’s SMA No.155/2021 had been directed to be converted into a civil suit and the objector, namely Imtiaz Ali Khan son of (late) Mumtaz Ali Khan (“Objector”), pleaded therein.
4. Elaborating on the facts leading to, and culminating in, HCA 162, the Counsel stated as follows:
 - i) Initially, the Appellant filed SMA No.390/2012 before the IIIrd Additional District Judge, Karachi East, seeking administration of the Subject property left by Deceased Fatehyab. During the proceedings, the Objector – a nephew of Deceased Fatehyab and son of Deceased Fatehyab’s brother (late Mumtaz Ali Khan who had died on 13.5.1976) – filed objections asserting that the Subject Property actually belonged to the Objector’s father and that Deceased Fatehyab was merely his benamidar. By order dated 30.8.2017, the IIIrd Additional District Judge, held that, having regard to the market value of the Subject Property, the court lacked pecuniary jurisdiction and accordingly returned the SMA No.390/2012 to the Appellant.
 - ii) After a lapse of almost three and a half years (3 ½ years), the Appellant recommenced the administration proceedings by filing SMA No.155/2021 before the High Court of Sindh at Karachi on 23.2.2021.
 - iii) As in SMA No.390/2012, the Objector, appeared before this Court in SMA No.155/2021, claiming title to the Subject Property as a son/legal heir of the alleged real owner (i.e. late Mumtaz Ali Khan), with the Deceased Fatehyab asserted to be his benamidar.
 - iv) The Single Judge of this Court, by order dated 8.3.2022, passed in Appellant’s SMA No.155/ 2021, directed:
 - (a) conversion of the Appellant’s SMA No.155/2021 into a civil suit, with a direction to the office to assign a case number, and further directed the Appellant to file an amended title

impleading the Objector as one of the defendants in the said suit; the other defendant being the custodian of the record relating to the Subject Property; and

- (b) that the memorandum of petition be treated as the plaint and the objections filed by the Objector as his written statement.
- v) The Appellant challenged the Single Judge's aforesaid order dated 8.3.2022 in HCA 162, which HCA was allowed by the DB vide the DB Judgment.
- vi) Pursuant to the DB Judgment, SMA No.155/2021 was restored to its original form but, owing to the change in pecuniary jurisdiction – consequent upon the amendment to the *Civil Courts Ordinance, 1962* through the *Sindh Civil Courts (Amendment) Act, 2025 (Sindh Act No.VI of 2025)* – was transferred from the High Court to the concerned Additional District Judge and renumbered as SMA 924 (from which the Impugned Order arises).

The DB Judgment In HCA 162 (reported in PLD 2025 Sindh 96)

5. As stated above, the Appellant challenged the Single Judge's order dated 8.3.2022 (converting SMA No.155/2021 into a civil suit) in HCA 162, which was allowed by the DB Judgment and the said order set aside. The DB, after examining the objections raised by the Objector and the material available on record concerning the Subject Property, held that:
 - i) The Objector being neither a legal heir nor a legatee of the Deceased Fatehyab, was a stranger to the estate. Relying upon the principles laid down in **Muhammad Zahid v. Ghazala Zakir (PLD 2011 Kar 83)**, the DB held that the Objector's claim that the Subject Property was owned by his father (late Mumtaz Ali Khan), and that the Deceased Fatehyab was merely his benamidar, could not be adjudicated in the SMA/administration proceedings. Such claim, if the Objector so desired, was required to be agitated in separate proceedings. The mere assertion of such claim did not, therefore, entitle the Objector to participate in, or seek conversion of, the SMA/administration proceedings into a civil suit. The Single Judge's order dated 8.3.2022 was accordingly set aside.
 - ii) The DB further considered the fact that the Subject Property was not recorded in the name of the Deceased Fatehyab and examined the history of the property and the material relating to the mortgage and redemption proceedings. In particular, the DB took note of the

payments made by the Deceased Fatehyab towards redemption of the Subject Property after the death of Mumtaz Ali Khan on 13.5.1976, the proceedings arising from Suit No.378/1969, the subsequent execution proceedings, and the custody of the original title documents. The DB also directed the High Court's Nazir¹ to ascertain the status of the relevant execution proceedings and the chain of title concerning the Subject Property and to place the requisite information before the Single Judge in SMA No.155/2021 for further consideration in accordance with law.

6. It is, however, material to emphasize the precise effect of the DB Judgment. The DB did not finally adjudicate the title to the Subject Property in favour of the Deceased Fatehyab or his legal heirs, nor did it finally determine the Objector's alleged beneficial ownership. Rather, the DB determined the proper scope of the administration proceedings and held that the Objector's competing claim could not be adjudicated therein. The Objector was left at liberty to agitate any such claim in separate proceedings, and the DB expressly clarified that its factual discussion was not to be treated as a final adjudication or settlement of the competing rights of the parties.

Questions For Determination

7. The questions that fall for determination are:
 - i) Whether, in the facts and circumstances of the case, the VIth ADJ was justified in dismissing the Appellant's application for Letters of Administration (namely, SMA 924) merely because the Subject Property stood formally in the name of Wajihuddin, notwithstanding the material on record and the DB Judgment; and
 - ii) Whether, in exercise of its appellate jurisdiction under Section 299 of the *Succession Act, 1925*, this Court can, for the limited purpose of

¹ In compliance with the directions issued to the High Court's Nazir, he placed his Compliance Report dated 9.2.2024 before the Single Judge in SMA No.155/2021. The Report recorded that Execution No.80/1976 in Suit No.378/1969 had been disposed of by order dated 8.9.1979 after payment of Rs.45,000/- by Judgment-Debtor No.2 (Deceased Fatehyab), with a further pay order of Rs.6,300/- deposited in Court; Execution No.119/1980 against Deceased Fatehyab was subsequently struck off for non-payment of costs on 25.3.1982.

As regards the chain of title, the PECHS record confirmed that the Subject Property had been allotted to Wajihuddin in 1957 and leased in his name in 1966; Wajihuddin died on 17.8.2005, and the Society had no information regarding any subsequent transaction or transfer.

The Nazir further reported that the original title documents of the Subject Property had been handed over to Hasan Ali Khan, one of the sons of the Deceased Fatehyab, pursuant to a Single Judge's order dated 27.2.2012 passed in Suit No.378/1969, and that receipt thereof was acknowledged by the Appellant's Counsel by Statement dated 9.2.2024.

administration of the estate, direct inclusion of the Subject Property in the estate of the Deceased Fatehyab and proceed towards issuance of Letters of Administration, without finally adjudicating any independent claim of title or beneficial ownership which may be agitated in separate proceedings.

Decision

8. The arguments advanced by Counsel for the Appellant have been considered and the record, including the DB Judgment in HCA 162, has been examined.

Effect Of The DB Judgment In HCA 162 On The Present Misc. Appeal

9. The DB Judgment is of considerable significance to the controversy presently before this Court. The DB had already held that the Objector, being a stranger to the estate of the Deceased Fatehyab, could not introduce his independent claim of beneficial ownership into the SMA/administration proceedings so as to convert those proceedings into a title suit. Equally significant is the fact that the DB examined the material relating to the Subject Property, including the history of the mortgage, the redemption proceedings, the payments made by the Deceased Fatehyab, and the custody of the original title documents. Paragraph 9 of the DB Judgment assumes particular significance:

9. **Further, according to paragraph 13(d) of Ghazala Zakir (supra) it is immaterial whether or not the property in question stood in the name of the deceased at the time of his death. In the case at hand, the Subject Property was not in the name of the deceased, Fatehyab Ali Khan. The records of rights do not show him as its owner. The Subject Property stood in the name of Wajihuddin.** The Judgment dated 05.06.1970 in Suit No.378/1969 discusses in detail, with reference to evidence brought on record, ALICO's² claim against Wajihuddin in the background of the Agreement of Sale, alleged transfer of a mortgage from Wajihuddin to Fatehyab, the consequence of payment to Plaintiff of said suit by Fatehyab, Fatehyab's refusal to pay to Wajihuddin instalments under the Agreement of Sale after March 1968, Wajihuddin claim from Fatehyab for interest for delay in payment, ALICO's letter to Fatehyab accepting the transfer of mortgage from Wajihuddin to Fatehyab, and Fatehyab not filing any claim for enforcement of his right in the Subject Property, etc. Be that as it may, the Court's record also reflects that from the date of the Preliminary Decree dated 23.10.1971 to the Final Decree dated 29.01.1973 and in Execution No.80/1976, Fatehyab Ali Khan alone made payments to the Court towards the redemption of Subject Property as execution went undefended by Wajihuddin.³ In State

² American Life Insurance Company (Pakistan) Ltd, formerly known as ALICO (Pakistan) was acquired by IGI Insurance Ltd in 2014

Life Insurance Corporation Execution No.119/1980, the Decree-holder submitted a Statement to drop execution proceedings against J.D.-1, Wajihuddin, and proceed against J.D.-2, Fatehyab Ali Khan, alone. Mumtaz Ali Khan finds no mention in the Court proceedings. He never stepped in the proceedings. Further, after March 1968, Fatehyab's payments were made in Court to redeem the mortgage loan of Wajihuddin after Mumtaz Ali Khan had passed away on 13.05.1976. Finally, following the Final Decree dated 29.01.1973, the original title documents of the Subject Property were submitted to the Court and are presently in the physical custody of Nazir³ of this Court. **Therefore, in the first instance, Imtiaz Ali's contention that the Subject Property is not in the name of Late Fatehyab Ali Khan is immaterial and has no bearing on converting his estate's administration petition into a suit.** Further, as available on record, the case facts do not assist Imtiaz Ali's contention to convert Dr. Masuma's Administration Petition into a suit and implead Imtiaz Ali Khan in the said suit.

[Emphasis added]

10. The effect of the above observation must, however, be understood in its proper context. The DB was considering whether the Objector's objection could justify conversion of the SMA/administration proceedings into a civil suit. It did not, by that observation, finally declare the title of the Subject Property in favour of the Deceased Fatehyab. The significance of the observation for the present Appeal is that formal title in Wajihuddin's name, by itself, could not be treated as a bar to the continuation of the SMA/administration proceedings.

Consideration Of The Present Record

11. The learned VIth ADJ dismissed the SMA 924 on the ground that the Subject Property formally stood in the name of Wajihuddin and that the Appellant had failed to establish a lawful transfer of title from Wajihuddin to the Deceased Fatehyab. With respect, this approach attributed undue weight to the formal entry of title while failing to consider the material circumstances surrounding the Subject Property, including those already examined by the DB in HCA 162.
12. The record demonstrates that the Deceased Fatehyab had been actively dealing with the Subject Property and had made payments towards its redemption, including payments made after the death of Mumtaz Ali Khan (Objector's father) on 13.5.1976. The proceedings in Suit No.378/1969, the preliminary and final decrees passed therein, the subsequent execution proceedings, the payments made by the Deceased Fatehyab towards redemption, and the custody of the original title documents form part of the material on record which bears directly upon the nature and extent of the

³ As per the Reports dated 9.2.2024 and 4.10.2024 of the Nazir of the High Court, the original documents of the Subject Property were released to Hasan Ali Khan (one of the sons of the Deceased Fatehyab), pursuant to a Single Judge's order dated 27.2.2012 passed in Suit No.378/1969 (*Americal Life Insurance Co. v. Wajihuddin & Another*) i.e. well before the issuance of the DB Judgment dated 6.11.2023

Deceased's interest in the Subject Property. These circumstances could not be disregarded solely because the formal record continued to reflect Wajihuddin's name.

13. It is also significant that the DB, while examining the very objection now sought to be relied upon against the Appellant, did not hold that the SMA No.155/2021 proceedings were liable to fail merely because the Subject Property stood in Wajihuddin's name. On the contrary, after examining the relevant history and record, the DB set aside the order converting the SMA No.155/2021 into a civil suit and directed that the requisite information concerning the execution proceedings and chain of title be placed before the Single Judge for consideration in the proceedings relating to the grant of Letters of Administration.
14. The present Misc. Appeal must, therefore, be considered in the light of the entire record, including the material which was before the DB in HCA 162. The issue is not whether this Court should finally adjudicate an independent claim of beneficial ownership as between the estate of the Deceased Fatehyab and a stranger. The issue is whether, on the material already available, the Subject Property may properly be taken into account for the limited purpose of administering and transmitting the estate of the Deceased Fatehyab.

Finding Regarding The Subject Property

15. Upon consideration of the entire record and the DB Judgment in HCA 162, this Court is satisfied that the mere fact that the Subject Property continued to stand formally in the name of Wajihuddin cannot, in the peculiar facts and circumstances of the present case, constitute a sufficient ground for excluding the Subject Property from the administration proceedings relating to the estate of the Deceased Fatehyab.
16. The material on record, particularly the history of the property, the mortgage and redemption proceedings, the payments made by the Deceased Fatehyab, the execution proceedings and the custody of the original title documents, discloses a substantial and documented connection between the Deceased Fatehyab and the Subject Property. In the circumstances, the formal entry of Wajihuddin's name cannot, by itself, be regarded as conclusive for the limited purpose of determining whether the Subject Property may be brought within the administration of the Deceased's estate.
17. Accordingly, for the limited purpose of administration and transmission of the estate, this Court holds that the Subject Property may be included in the estate of the Deceased Fatehyab for purposes of the Letters of Administration. This

finding is confined strictly to the administration of the estate of the Deceased Fatehyab. It shall not be construed as a final adjudication of any independent title, beneficial ownership, or benami claim that may be asserted by the Objector or any other person in competent proceedings. The liberty granted by the DB in HCA 162 to agitate any such independent claim in appropriate proceedings remains unaffected. Any such claim, if instituted, shall be determined by the competent forum in accordance with law and on its own merits.

Objector's Separate Claim

18. It may also be noted that the Objector did not appear before the VIth ADJ in the proceedings culminating in the Impugned Order, and the Impugned Order was not passed upon the basis of any objection or claim advanced by him in those proceedings. The present determination is, therefore, not an adjudication of any objection by the Objector before the VIth ADJ. The relevance of his earlier claim is confined to the effect of the DB Judgment, which had already held that any independent claim asserted by him was to be pursued in separate proceedings.
19. In response to a query from the Court, Counsel for the Appellant stated that no such separate proceedings have been instituted by the Objector to date. Be that as it may, the absence of such proceedings does not, by itself, finally extinguish any right which the Objector may otherwise be entitled to assert in accordance with law. It does, however, mean that there is presently no separate title adjudication before this Court which warrants withholding or delaying the administration proceedings on that score.

Erroneous Approach In The Impugned Order

20. In these circumstances, the learned VIth ADJ fell in error in treating the formal title standing in the name of the previous owner Wajihuddin as determinative of whether the Subject Property could be taken into account in the administration of the estate of the Deceased Fatehyab. The Court was required to examine the entire factual and documentary history of the Subject Property and the effect of the DB Judgment in HCA 162, rather than dismissing SMA 924 solely on the basis of the formal entry of ownership.
21. The approach adopted in the Impugned Order would, in effect, require the Appellant to recommence litigation despite the fact that the same subject matter had already been examined by the DB and the conversion of the administration proceedings into a civil suit had expressly been set aside. Such

an approach would be inconsistent with the object and effect of the DB Judgment, which contemplated further consideration of the material on record in accordance with law, rather than treating the formal entry of title as determinative of the Deceased's interest in the Subject Property.

22. This Court, exercising appellate jurisdiction under Section 299⁴ of the *Succession Act, 1925* – which confers upon it the powers available to an appellate court under the *Code of Civil Procedure, 1908* – is not precluded from finally determining the present Appeal where the relevant material is already available on the record and no further factual inquiry is necessary for the limited purpose of administration identified above. Remanding the matter merely for a reconsideration of the same material would serve no useful purpose and would unnecessarily prolong proceedings which have already remained pending for a considerable period.

Conclusion

23. For the foregoing reasons, this Court is satisfied that the Impugned Order cannot be sustained. The Subject Property (bearing Bungalow No.93-C, Block 6, PECHS, Karachi, measuring 1200 square yards) shall, for the limited purposes of administration and transmission of the estate of the Deceased Fatehyab, be treated as forming part of his estate and be included in the Letters of Administration.
24. Consequently, the present Miscellaneous Appeal is **allowed**. The Impugned Order dated 10.1.2026 is **set aside** and the SMA No.924/2025 shall stand restored. The VIth ADJ shall proceed with issuance of Letters of Administration in favour of the Appellant in respect of the estate of the Deceased Fatehyab, including the Subject Property, subject to compliance with all statutory requirements, payment of requisite court fees, stamp duty, transfer charges and any other lawful formalities required for issuance of the Letters of Administration and transmission of the estate.
25. For avoidance of doubt, the inclusion of the Subject Property in the estate of the Deceased Fatehyab for purposes of administration shall not amount to a final adjudication of title, beneficial ownership or benami claim which may be asserted by the Objector or any other person. Any such claim shall remain subject to determination by the competent forum in accordance with law.

⁴ **Section 299. Appeals from orders of District Judge.** Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908 (V of 1908), applicable to appeals.

Nothing in the present Judgment shall be construed as disturbing the directions or observations contained in the DB Judgment dated 6.11.2023 in HCA 162.

26. The learned VIth ADJ shall take consequential steps in accordance with law and, subject to the aforesaid formalities, proceed with the issuance of the Letters of Administration without requiring the Appellant to institute fresh proceedings merely for the purpose of including the Subject Property in the administration of the estate of the Deceased Fatehyab. In view of the circumstances of the case, there shall be no order as to costs.

JUDGE