ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.73 of 2016

Date	*Order with Signature(s) of Judge(s)*

For hearing of main case.

13.05.2025

M/s. Abdul Samad Khattak, Ghulam Hussain and Farooq H.Abbasi, Advocates for the Appellant.
Ms. Deeba Ali Jaffri, Assistant Advocate General, Sindh.
Mr. Ahmed Khan Khaskhely, Assistant Advocate General, Sindh.

O R D E R

Mr. Muhammad Jaffer Raza, J:- The instant IInd Appeal has been filed against the Judgment dated 15.04.2016 and Decree dated 21.04.2016 in First Appeal No.219 of 2013. The said First Appeal emanated from the consolidated Judgment and Decree dated 06.08.2013 in Suit Nos.1129 of 2005 and 1313 of 2005. It is pertinent to mention at this stage that the former Suit was preferred by the Appellant. Learned counsel for the Appellant has invited my attention to the Order of the learned trial Court where learned trial Court has dismissed both Suits (particularly the Suit filed by the Appellant) on the ground that no Letter of Administration was sought prior to entering into the Sale Agreement. The learned trial Court in this respect has relied upon the cross-examination of the Appellant wherein he has admitted to the said Letter of Administration not being sought. The learned counsel for the Appellant has stated that for the purposes of the Sale Agreement such letter is not mandatory as his legal right was created as soon as he became the legal heir of his deceased father. In this respect, learned counsel for the Appellant has relied upon the following Judgments: -

Mst. Suban vs. Allah Ditta and Others[1]

[1] 2007 SCMR 635

Muhammad Siddique and others vs. Mst. Ayesha Bibi and others[2]

Ahmad Hussain vs. Haq Nawaz and others[3]

Bakht Ali vs. Sharifan[4]

Thereafter, learned counsel for the Appellant has invited my attention to the Order of the First Appellate Court and has also submitted that it is only the Appellant who filed the first Appeal. Learned counsel after inviting my attention to the Judgement of the learned Appellate Court has taken me more specifically to Paragraph No.14 of the said impugned Judgment:

Learned counsel argued that the learned Appellate Court appreciated the contention noted above vis-à-vis grant of Letter of Administration. However, the learned Appellate Court dismissed the Appeal on the ground that the Appellant was presumably not the only legal heir of the deceased and since he was not sole owner of the Property in-question, therefore, the Sale Agreement was not entertained/executed by him lawfully.

Learned AAG has assisted this Court and stated that both the Suits were rightly dismissed by the Courts below as no declaration under Section 42 could have been given. The "title documents" of the Appellant, she has stated, same are not "genuine" and an inquiry pertaining to the same is underway. She has categorically denied the title of both the Appellant and the Respondent No.1 has stated that the Order of the Courts below requires no interference.

I have heard both the learned counsels and examined the record.

Before delineating on the case at hand I wish to record that the Respondent No.1 was served repeatedly in the case and service was good held

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[2] 2016 YLR 383 [Lahore]
[3] 1989 CLC 795 [Lahore]
[4] 1996 CLC 1403 [Lahore]

as noted in the Order dated 08.3.2021, however, no appearance was affected on behalf of the said Respondents.

I have examined the Judgments of both Courts below and agree with the contention of the learned counsel for the Appellant that the Suit was wrongfully dismissed as being not maintainable. Reference in this regard can be made to the judgment in the case of **Mst. Suban** (supra) wherein it was held as under: -

> *"11. It is a proposition too well-established by now that as soon as someone who owns some property, dies, the succession to his property opens and the' property gets automatically and immediately vested in the heirs and the said vesting was not dependent upon any intervention or any act on the part of the Revenue Authorities or any other State agencies."*

Learned Appellate Court in its findings in Para-14 despite agreeing with the contention of learned counsel for the Appellant went over and above the Judgment and Decree of the learned trial Court and gave a finding which was never the subject matter for adjudication the learned Appellate Court.

I am mindful of the limited scope of Section 100 CPC against concurrent findings. However, I cannot be obvious to the infirmity which is apparent in the judgments by the learned Appellate and Trial court. Reliance in this regard can be placed on the judgment in the case of ***Sheikh Akhtar Aziz Versus Mst. Shabnam Begum and others***[5] wherein it was held as under: -

> *"14. As far as the argument of the learned counsel for the appellant that the learned High Court had travelled beyond the parameters of section 100, C.P.C., the same in the facts and circumstances of the case has been found by us to be totally misconceived. Although in second appeal, ordinarily the High Court is slow to interfere in the concurrent findings of fact recorded by the lower fora. This is not an absolute rule. The Courts cannot shut their eyes where the lower fora have clearly misread the evidence and came to hasty and illegal conclusions. We have repeatedly observed that if findings of fact arrived by Courts below are found to be based upon misreading, non-reading*

[5] 2019 S C M R 524

> *or misinterpretation of the evidence on record, the High Court can in second appeal reappraise the evidence and disturb the findings 52019 SCMR 524 9 which are based on an incorrect interpretation of the relevant law. We have examined the record and found that the issues have not properly been determined by the lower fora and there are material and substantial errors and defects in the reasoning and conclusions drawn by the trial as well as the first appellate Court which materially affected the outcome of the case on merit. The High Court was therefore, in our opinion, quite justified in interfering with this matter and correcting the errors of the lower fora in order to do complete justice."* (Emphasis added)

In light of the foregoing, the instant IInd Appeal is allowed. The matter is remanded back to the trial Court for decision afresh, on merits within 60 days from today.

The Appeal is allowed in the above terms.

J U D G E

Jamil