

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

**Before: Muhammad Iqbal Kalhoro &
 Mohammad Abdur Rahman, JJ,**

H.C.A. Nos.1 to 5 of 2024

Muhammad Faisal
Versus
Mst. Meh Jabeen & others

Date	Order with signature of Judge
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- 1. For orders on office objection a/w reply at “A”
- 2. For hearing of main case.
- 3. For hearing of CMA 26/24

Dated: 08.09.2025

Mr. Zulfiqar Ali Khan, advocate for appellant.
Mr. Abdul Razzaq, advocate for respondents No.2 to 6.

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Muhammad Iqbal Kalhoro, J.- Certain suits are pending between the parties, who are siblings and legal heirs of late Abdul Khaliq. The appellant has filed suits for specific performance of contract, and declaration in respect of the properties left by their late mother to be the benami owner. Whereas, respondents who are sisters have filed the suit for administration and partition relating to the same property. In respect of two properties, Bungalow No.43/9-B, Block-6, PECHS, Karachi, and Plot No.S-36, 16th Street, Phase-I, D.H.A., Karachi, the claim of the appellant is that in terms of a family agreement, these properties were given to him and he is their owner. The properties are however currently standing in the name of late mother of the parties. Learned Single Judge through the common impugned order has directed the Nazir to hold auction and sell out these two properties, after the preliminary decree was passed and Nazir had submitted a report that the said two properties were undisputed and were in the name of late mother of the parties.

The case of the appellant is that even in respect of these two properties, since he has made a claim in his suit that in response to a family agreement, the said properties are to be mutated in his favour, the same

cannot be auctioned. Learned counsel for the appellant submits that if these properties are sold in auction, the suit filed by the appellant will virtually become infructuous as nothing would be left for adjudication. His arguments however have been rebutted by learned counsel for the respondents stating that these properties are in the name of deceased mother of the parties and there is no evidence of any family agreement that these properties were promised to be mutated in favour of the appellant.

Be that as it may, in respect of these two properties the suit is still pending between the parties before relevant Senior Civil Judge. Earlier against some orders challenged in the appeal No.288 to 292 of 2022, a Division Bench of this Court has already ordered amalgamation of all the suits, framing of consolidated issues and deciding the suits expeditiously by directing the relevant Court to hold the proceedings on day-to-day basis. Both the counsel have stated that the suits are pending for evidence and for one reason or the other the proceedings have not been concluded.

We are of a view that when the very properties are the subject matter of respective suits pending between the parties, the same cannot be sold out through an auction because it will make the cause of action infructuous prematurely without there being any determination by the Court in respect of rights of the parties in it. Therefore, the impugned order dated 16.11.2023 is not sustainable, and is accordingly set aside and the appeals are allowed. However, the learned trial Court is directed to expedite the matters and dispose them of within four months. The compliance report shall be submitted through MIT-II of this Court.

Judge

Judge