

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SMA No.74/2015

Date

Order with signature of Judge

Before Mr. Justice Nazar Akbar

For orders on CMA No.1336/2016

14.10.2016

Raja Qasit Nawaz Khan, advocate for the Plaintiff.

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1. Learned counsel for the petitioner seeks to remove Nazir to effect mutation in terms of order dated 03.10.2016. I have gone through the order sheets, there is no such order dated 03.10.2016. However, it is dated 20.9.2016. It is indeed very unfortunate that this application has been supported by an affidavit of lawyer and not by the affidavit of the petitioner or her attorney. And yet the date of order mentioned in the application even after correction in hand by the lawyer is incorrect. It means the petitioner is not even aware of the said order, and its implication and even the purpose and contents of the application. The counsel for the Petitioner on **20.9.2016** has already obtained an order on CMA No.1286/2016 that the requirement of furnishing two sureties (see Rule 399 & 400 of Sindh Chief Court Rules) may be waived. The said application was also supported with the affidavit of the learned counsel himself. The said application was also not filed by the petitioner herself.

2. The Lawyers are not supposed to replace their client for any substantial relief which their client want from the court through lawyers. A distinction has to be drawn between the client / litigant and his/her lawyer. Lawyers cannot swear affidavit of facts relating to the circumstances of their client in which need for an order from the court of Law was felt by their client even on the advice of lawyers. Such facts and circumstances can only be in the personal knowledge

of their client when neither the application nor the affidavits in support of application is signed by the client, it is difficult to believe that instruction were given by the client for such an application. If this practice is allowed, I am afraid in future hundreds of litigants would be in serious problems at the hands of unscrupulous lawyers. Is there any dearth of complaint by the clients against their lawyers? It is the litigant who has to swear an affidavit that the accompanying application has been filed by his counsel under his instruction. It cannot be vice versa. One day even plaints and main petitions can be sworn by the lawyers on the strength of having a power (Vakalatnama) giving by even a pardanasin woman or housewife. Therefore, since the instant application (CMA No.1336/2016) is not accompanied with an affidavit of the petitioner, it is dismissed. Office is directed that in future OFFICE OBJECTION should be raised on all such applications including application for urgent hearing if the same are not supported by an affidavit of the party on whose behalf such an application has been filed.

3. In the case in hand, while going through the file, I have noticed that efforts have been made to transfer immoveable property of the deceased Mirza Jawad Baig under the cover of court order in favour of the petitioner through deed of relinquishments without comply with relevant laws. The relinquishment deeds are on simple stamp paper of Rs.1000/-. The parties may transfer their interest inherited by them in immoveable properties either by way of gift or sale or even relinquishment to the extent of their share to the other legal heir or anyone but such transfer should be through the duly executed lawful instruments. It must be kept in the view that a simple declaration of relinquishment of right in immoveable property worth more than Rs.100/- is not a legal transfer of the property in favour of

the beneficiary of the so called deed of relinquishment. Relinquishment deed in respect of immovable property or share in the said property is like conveyance as defined under **Section 2(10)** of the Stamp Act, 1899 and compulsorily registerable under **Section 17** of the Registration Act, 1908, provided the value of the property mentioned in the deed is over Rs.100/-. Even the deceased father of the petitioner in his lifetime could not have transferred his own immovable property to his daughter through simple declaration of relinquishment on stamp paper of just Rs.1000/- when an owner in his lifetime cannot divest his interest in an immovable property without complying the requirements of the relevant provisions of Transfer of Property Act, **1882**, Registration Act **1908** and Stamp Act, 1899, then how legal heir of the owner could be exempted from the application of these laws for the transfer of their respective share worth more than Rs.100/- in an immovable property to anyone.

4. I have also noticed that on the death of Mst. Atika Baig wd/o deceased Mirza Jawad Baig pending the succession petition, an order to amend the petition was obtained by the learned counsel but the petition was not properly amended. The petitioner in the amended petition has not disclosed names of legal heirs of deceased Atika Baig. Even in the title of the petition' it was not mentioned that the petition is also in respect of the estate of deceased Atika Baig. When the petitioner alone could not inherit the entire estate of her father on his death, likewise she cannot be the sole legal heir of her mother (Mst. Atika Baig). Real brothers and sisters of deceased Atika Baig should have also been mentioned in the amended petition. In para-7 of the so-called amended petition the petitioner has claimed that her deceased mother has relinquished her share in the estate of her

deceased husband in favour of the petitioner. However, Deed of Relinquishment of her share by deceased Mst. Atika Baig in favour of the petitioner is not on the record. In fact there is none. Only a general power of attorney dated **02.4.2015** executed by the deceased mother of the petitioner in favour of one Fasihullah Shaikh, on stamp paper of Rs.1000/- is on the record. On the death of Mst. Atika Baig, the said power of attorney executed by her has also expired. Mst. Atika Baig has died before the relinquishment deed could be executed even by her attorney in favour of the petitioner and therefore there is no relinquishment deed of the share of Mst. Atika Baig in the estate of her husband deceased Mirza Jawad Baig in favour of the petitioner on record. It is strange that on perusal amended succession petition I did not find a date of presentation of the amended succession petition. Nor there is office note that how far the amended petition on the death of Mst. Atika Baig, was in inconformity with the requirements of **Rule 376 and 377** of Sindh Chief Court Rules (O.S). Office is directed to explain that why the amended petition has gone unattended by the staff concern whose duty is to check / scrutinize the Succession petitions before placing the same in Court for orders. Office is to further explain how the so called main petition was listed for hearing before the decision on application (CMA No.306/2016) for amendment in the main succession petition.

5. In view of the fact that neither the amended succession petition was properly amended nor even the legal heir of deceased Mst. Atika Baig were disclosed in the amended petition, the petitioner is, therefore, directed to file fresh amended petition by incorporating all the necessary details regarding Mst. Atika Baig required in terms of **Rule 376 and 377** of Sindh Chief Court Rules (O.S). Once the properly drafted amended petition is filed, the relevant staff should

minutely check it. Notice of amended succession petition should be sent to her legal heirs and published in daily Jang and Dawn before placing it again in Court for order.

6. The properties of the deceased Mirza Jawad Baig are so far in the name of the deceased and all the legal heirs mentioned in para-3 of the original petition were entitled for the transfer of the same to their joint name by the petitioner as long as Atika Baig was alive. However, on the death of Mst. Atika Baig, in the amended petition, for the share inherited by her, the amended petition should disclose her legal heirs. Once all the codel formalities are honestly completed and the petition of letter of administration is granted, it would be duty of the petitioner to administer the properties of both the deceased parents as per law which may include first mutation in the name of respective legal heirs and then it would be the choice of the new owners by way of inheritance to deal with their respective individual shares in the joint property the way they may wish to but strictly in accordance with law. However, grant of letter of Administration is always subject to the Rules. The purpose of obtaining sureties by the court in terms of **Rules 399 and 340** of the **Sindh Chief Court Rules (O.S)** is to ensure that the petitioner would administer the properties of the deceased in accordance with law and honestly. Rules 399 and 340 are reproduced below:-

399. Forms of administration and succession certificate bonds. An Administration bond shall be in form No.28 in Appendix. A. A Succession certificate bond shall be in Form No.29 in Appendix A.

400. Amount of administration bond and succession certificate bond. Unless otherwise ordered by the Court or in non-contentious matters by the District Delegate, an administration bond or succession certificate bond shall be **given with two or more sureties**, approved by the Nazir for the amount of the

value of the property for which the grant is made
or succession certificate issued:

If the petitioner is unable to furnish sureties, the court may pass an appropriate orders keeping in view the circumstances of each petitioner disclosed by the petitioner in his / her personal affidavit and not in the affidavits of lawyer of the petitioner. It is pertinent to mention here that even such an application is also required to be supported by affidavit of no objections from all the other legal heirs because the petitioner cannot administer / deal with the properties of the deceased until the petitioner furnishes the sureties as required in terms of above quoted rules. And such an application is not supposed to be granted as a rule, rather an order on an application for relaxing the rule of furnishing the surety should be based on the good cause shown by the applicant on oath.

JUDGE