

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**S.M.A. No.199 of 2015 and  
S.M.A. No.200 of 2015**

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Date Order with signature of Judge

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**1. S.M.A. No.199/2015**

For orders on CMA No.1543 of 2016

U/S 114 R/W 152 CPC U/S 296 of the Succession Act, 1925 filed by the respondent.

**2. S.M.A. No.200/2015**

For orders on CMA No.1545 of 2016

U/S 114 R/W 152 CPC U/S 296 of the Succession Act, 1925 filed by the respondent.

**10.04.2017**

Mr. Haq Nawaz Talpur, Advocate for the petitioner  
Mr. Aminuddin Ansari, Advocate for Respondent No.1.

Learned counsel for the applicant/objector to the SMA through these Review Applications, seeks review of the order dated **20.10.2016** whereby both S.M.As were converted into a civil suit. There has been serious contention raised by some of the legal heirs in both SMA Nos.199/2015 and 200/2015. It may be clarified that in both the cases that the petitioner and the objectors are admittedly legal heirs of late Shaikh Bukhsh Elahi, who died on 17.2.1995 and Mst. Gul-e-Rana, wife of Shaikh Buksh Elahi, who died on 24.4.2015.

Learned counsel for the objectors still contends that it was contentious matter, therefore, order should have been passed in terms of **Section 295** of Succession Act, 1925. He, however, seeks review on the ground that the observations of this Court that the two S.M.As were converted into a suit for administration and the preliminary decree is to be passed in terms of Order XX Rule 13 C.P.C is not proper and it is contrary to law. He is of the view that by declaring the dispute to be resolved through a suit for Administration was against the spirit of **Section 295** of the Succession Act, 1925.

It should, according to the counsel, be treated as “regular suit” and not suit for administration. However, he has not explained that what does he mean by regular suit.

Learned counsel for the petitioner, who had filed the two SMAs, has opposed the review applications. He contends that if in the order under review, there is anything which seems to be contrary to law, it is not supposed to be reviewed by this Court. Such contention may be raised before the appellate Court. Therefore, the contention of the counsel that the order can be reviewed by the same Court, if it is contrary to law, is misconceived. To appreciate the respective contentions of the counsel, I feel it appropriate to reproduce **Section 295** of Succession Act, 1925.

**295. Procedure in contention cases.** *In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provision of the Code of Civil Procedure, 1909, in which the petitioner for probate or letters of administration, as the case may be, shall be plaintiff, and the person who has appeared to oppose the grant shall be the defendant.*

On reading the order under review in the light of aforementioned provision, one would easily notice that the parties are identified in the order dated **24.10.2016**. The petitioner, who applied for Letter of Administration, should be plaintiff and those, who objected to such grant, should be defendant and it is specifically stated in the order. It is also mentioned in the order under review that it will be in the form of a suit for “Administration of the properties” of the deceased and this observation is according to the provisions of Order XX of the Civil Procedure Code 1909. Therefore, all the ingredients of **Section 295** of the Succession Act, 1925 are fully adhered to by this Court in its order under review. The insistence of the learned counsel on the use of word “regular” before the word “suit” in the **Section 295** to recall/review the expression

that “these S.M.As are converted into suit for administration/partition of the properties of the deceased” is misconceived. The Civil Procedure Code provides variety of regular suits in different categories in different situations. Even the suits for short cause in the summary chapter are also regular suit or the suit between the strangers about the title of immovable property under **Section 9, 12 or 42** of the Specific Relief Act, 1877 etc. are also regular civil suit. When parties are legal heirs of a deceased person and they are contesting about their share in the property left by the deceased, in such situation any one of the legal heir can file a suit for “administration” of the properties of the deceased or file an application under **Section 278** of the Succession Act, 1925 for grant of “Letter of Administration” in respect of the properties of the deceased. Therefore, in terms of **Section 295** of the Succession Act, 1925 in the case in which there is “contention” the proceedings are supposed to be converted into as nearly as may be a “regular suit” according to the provisions of the Code of Civil Procedure, 1909. A regular suit from the proceedings of “Letter of Administration” can only be converted into a “suit for administration” of the property of any “deceased person”. Therefore, the form of a regular suit in terms of **Section 295** of the Succession Act, 1925 can be regular suit, as nearly as may be, in terms of **Order XX Rule 13 CPC** which reads as follows:-

13. **Decree in administration suit.** (1) *Where a suit is for an account of any property and for its due administration under the decree of the Court, **the Court shall, before passing the final decree, pass a preliminary decree, ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.***
- (2) **In the administration by the Court of the property of any deceased person,** *if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of*

*annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit is pending with respect to the estate of persons adjudged or declared insolvent; and **all persons who in any such case would be entitled to be paid out of such property, may come under the preliminary decree, and make such claims against the same as they may be respectively be entitled to by virtue of this Code.***

In the case in hand, the dispute is about distribution of the properties of the deceased Sheikh Buksh Elahi and on the date on which the order under review was passed, the Court exercised powers of a Court of original civil jurisdiction, therefore, once an order was passed that the S.M.As stand converted into a regular civil suit for administration of the properties, the Court had the power to take further steps to minimize delay in disposal of the dispute between the legal heirs. Even otherwise, once S.M.As were converted into a civil suit for administration of the properties of the deceased Shaikh Buksh Elahi, the Court was under statutory duty to pass order for preliminary decree. The use of the word “shall” in **Order XX Rule 1 CPC** is mandatory in nature. The Civil Procedure Code, 1909, in the given facts of the case, does not envisage any other form of a suit except a suit for administration of properties of deceased under **Order XX**. And in **Chief Court Rules (O.S)** under **chapter XXII** dealing with the Testamentary and Intestate jurisdiction, when the proceeding become contentious, the court has to follow the procedure in its **Rule 413**, reproduced below, for convenience to understand the possible form from a suit in contentious proceedings in the matter under Testamentary and Intestate jurisdiction of High Court.

**413. Procedure.** *Upon the affidavit in support of the caveat being filed (notice whereof shall immediately be given by the caveator to the petitioner), the proceedings shall be numbered and registered as a suit in which the petitioner for probate or letters of administration shall be the plaintiff and the caveator shall be the defendant, the petition for probate or letter of administration*

*being registered as and deemed a plaint filed against the caveator and the affidavit filed by the caveator being treated as his written statement in the suit. The procedure in such suit shall be, as nearly as may be, according to the provisions of the Code. The decree shall be in Form No.32 in Appendix A.*

The proceedings have to be numbered and registered as a suit in accordance with Rule 413 of Sindh Chief Court Rules (O.S).

In view of the above, I do not find any error on the face of the order, therefore, the review application (CMA No.1543 of 2016) in S.M.A. No.199/2015 and review application (CMA No.1545/2016) in S.M.A. No.200 are dismissed.

**J U D G E**