

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No.245 of 2014.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of C.M.A-1597 of 2014.
2. For regular hearing.

09.02.2018.

Mr. Rustam Ali Khan, Advocate for the applicants.

Mr. Wali Muhammad Jamari, Assistant A.G.

Syed Ali Anwar Shah, Advocate for respondent No.4.

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Learned counsel for the applicants contends that the proceedings as initiated by respondent No.4 were bad on account of non-consideration of the earlier proceedings, non-joinder of necessary parties and that the jurisdiction of partition of agricultural land having exclusively available with the revenue authorities. It is further contended on part of learned counsel for the applicants that the respondent No.4 having failed to prove the element of private partition as alleged the decrees is not available to him as granted as the proceedings were barred by Order 2 Rule 2 C.P.C. It is also contended that the learned appellate Court had failed to frame points for determination as required. It is also contended that on account of absence of jurisdiction the proceedings were not available and that in the present circumstances all the issues were liable to be considered which is absent. In support of his contentions, learned counsel for the applicants relies upon the cases of **Sheikh Muhammad v. Hashmat Sultana (1989 SCMR 34)**, **Ali Gohar Khan v. Sher Ayaz (1989 SCMR 130)**, **Mir Daud Khan v. Mahrullah (PLD 2001 Supreme Court 67)**, **Rashid Beg v. Rehmat Ullah Khan (PLD 2001 Supreme Court 443)**, **Baqar Khan v. Dil Jan (2000 MLD 1165)**, **Rehmat v. Muhammad Suleman (2001 MLD 364)**, **Noor Rehman v. Muhammad Yousuf (2000 CLC 1138)**, **Muhammad Yusuf Khan v. Board of Revenue (2002 CLC 739)**, **Ghous Bux v. Altaf Hussain (PLD 1993 Karachi 410)**, **Abdul Majeed v. Majeedan Bibi**

(2006 CLC 1155), Jamia Masjid Rehmania v. Muhammad Shaheen (2003 MLD 2001) and Latifan v. Muhammad Ishaq (PLD 1974 Lahore 65).

2. Learned counsel for respondent No.4 on the other hand, submits that the said respondent had filed a suit on account of his share to the extent of 16½ percent and 2½ percent of his wife. It is further contended that it was admitted in the evidence that the said respondent was acquiring share and its produce and as such states that the element of private partition was present. It is also contended on part of learned counsel for respondent No.4 that it was open for the applicants to acquire impleading of parties under Order 1 Rule 10 C.P.C., which has never been attempted and that the right and title of the said respondent was put into question when the gift favouring him was denied, as such also the matter was tenable before the civil Court.

3. In rebuttal, learned counsel for the applicants contends that it is duty of the plaintiffs to implead the parties and that private partition was not admitted on part of the applicants and that all the owners were having separate entries.

4. Learned AAG supports the impugned orders.

5. Having heard the learned counsels, the learned AAG and gone through the record with their assistance, it may be observed that the proceedings of partition in the manner cannot be objected to where entitlement was not got determined otherwise. As to the actual partition the same is to be effected by revenue authorities, which may be supervised by the civil Court and apart from the said element nothing has been shown to disturb the findings of the learned Courts below as available in the matter. This revision application as such is dismissed with normal costs alongwith the pending application. It is however, directed that the partition in the matter is to be got effected by the revenue authorities in accordance with rules.

JUDGE

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