

Order Sheet  
IN THE HIGH COURT OF SINDH AT KARACHI

S.M.A. No. 46 of 1998

Date	Order with Signature of Judge
Mst. JamilaNaheed	PETITIONER
Mohammad Abdul Bashir	DECEASED
Mrs. SaminaQasim	OBJECTOR

Date of hearing: 9-03-2018

None for the petitioner;  
Mr. Dildar Sheikh, Advocate for the objector

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**ADNAN IQBAL CHAUDHRY J.-**

1. This CMA No.120/2014 under section 263 of the Succession Act, 1925 by SaminaQasim (the objector) prays for revocation of Letters of Administration to the extent of the property claimed by her. Despite notice, the petitioner has not come forth to contest the application.

2. Letters of Administration for the estate of late Mohammad Abdul Bashir (hereinafter "the Deceased") was granted vide order dated 27-4-1998 to his sister, JamilaNaheed (the petitioner). The Deceased had passed away on 29-9-1997. The estate for which the Letter of Administration was granted included Commercial Plot No.SC-23, Sector 11-H, North Karachi Township, measuring 666.66 sq. yds., which had been leased to the Deceased by the KDA vide a registered deed dated 10-11-1991. It is the case of the objector that the said Commercial Plot No.SC-23 comprises of a building known as 'Citizen Apartments';that she had purchased in that building Shop No.23-A admeasuring 23.57 sq. yds vide a registered sub-lease dated 17-07-1997from the Deceased during his life-time; that the petitioner had knowledge of such fact; that the portrayal by the petitioner to this Court that the entire Commercial Plot No.SC-23 (which would include Shop No.23-A thereat) vested in the Deceased at the time of his death, was fraudulent and misrepresentation; thus Letters of Administration should be revoked to the extent of her Shop No.23-A which is part of Commercial Plot No.SC-23.

3. From the documents filed by the objector in support of her application, it appears that the Deceased carried on the business of builder and developer under the name and style 'Shaikhand Enterprises', and under such name, on 10-03-1997 he had allotted Shop No.23-A in Citizen Apartment on Commercial Plot No.SC-23 to the objector and delivered its possession to her vide letter dated 26-06-1997. The allotment letter and the possession letter of the said Shop No.23-A do appear to bear the signatures of the Deceased. It also appears that by a Power of Attorney dated 10-07-1997, the Deceased appointed one Sami Ahmed as his Attorney to appear before the Sub-Registrar to execute a sub-lease of Shop No.23-A in favor of the objector, which he did vide an Indenture of Sub-Lease dated 17-7-1997 registered on 28-8-1997 bearing Registered No.3361 by the Sub-Registrar T.Div.V, Karachi. Documents on the record also show that subsequently the objector had also mortgaged Shop No.23-A by a registered mortgage deed.

4. Vide order dated 12-12-2017, this Court appointed the Nazir to seek verification from the Sub-Registrar of properties of the aforesaid registered sub-lease claimed by the objector in respect of Shop No.23-A at Commercial Plot No.SC-23. By his report dated 1-3-2018 the Nazir reported that the sub-lease claimed by the objector had in fact been executed and registered. Therefore, there does not seem to be doubt that at the time the Deceased passed away, Shop No.23-A did not vest in him but vested in the objector. Thus the inclusion of the entire Commercial Plot No.SC-23 in the Letters of Administration without excluding Shop No.23-A, was without just cause, and to that extent the Letters of Administration are liable to be revoked under sub-clause (c) if not under sub-clause (b) of section 263 of the Succession Act, 1925, which read as under:

**“263. Revocation or annulment for just cause.**

The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation. Just cause shall be deemed to exist where :--

- (a) .....
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
- (d) .....
- (e) .....

5. While the above would have sufficed for deciding CMA No.120/2014, however by an earlier order dated 13-3-2017, this Court had noticed that while the sub-lease of Shop No.23-A in favor of the objector was a registered document, it had been executed by an Attorney of the Deceased on the basis of a Power of Attorney which was unregistered. Therefore, the objector's counsel was put on notice to address the question whether the sub-lease in favor of the objector could have been executed by an Attorney on the basis of an unregistered Power of Attorney. I therefore, proceed to address such question.

6. The Power of Attorney executed by the Deceased reads that its purpose was to enable his Attorney :

*“.....to execute, confirm and verify a Sub-lease regarding Shop No.23-A, on Ground Floor, on plot No.SC-23, Sector No.11-H, known as Citizen Apartment situated at North Karachi Township, in favor of Miss SaminaQasim d/o Qasim Dada Nagori.*

*That is to say :--*

*To present, appear before the concerned Sub-Registrar on my behalf, to sign, verify confirm the Sub-lease of the above mentioned Shop in favor of Miss SaminaQasim s/o Qasim Dada Nagori and to admit execution of the same”.*

7. Learned counsel for the objector submitted that the Power of Attorney given by the Deceased (during his lifetime) to his Attorney was a Special Power of Attorney given for the purposes of section 32 of the Registration Act, 1908 for the limited purposes of presenting and executing the sub-lease of Shop No.23-A before the concerned Sub-Registrar of properties, and thus it was only required to be authenticated under section 33(b) of the Registration Act, 1908 and was not required to be registered compulsorily under section 17 of the said Act.

8. The nature of instruments the registration of which is compulsory, are listed in sub-section 1(a) to 1(e) of section 17 of the Registration Act, 1908. The Power of Attorney given by the Deceased (relevant part reproduced above) is not an instrument that can be classified under any of the clauses of sub-section 1(a) to 1(e) of section 17 of the Registration Act, 1908. Vide the Registration (Sindh Amendment) Ordinance, 1996 promulgated on 28-12-1996, and then re-promulgated in the Registration (Sindh Amendment) Ordinance, 1997 on 12-5-1997, section 17 of the Registration Act, 1908 in its application to Sindh was amended to insert sub-clause (f) in sub-section (1) thereof to make a “Power of attorney when authorizing the attorney to sell any immovable property”

an instrument the registration of which was compulsory. The latter Ordinance appears to have held the field when the subject Power of Attorney dated 10-07-1997 was executed by the Deceased. Nonetheless, from the contents of the subject Power of Attorney (reproduced above), where the principal having already agreed with the objector to sell Shop No.23-A to her, was only instructing his agent to convey the same to the objector and leaving no discretion or judgment to be exercised by the agent, I am of the opinion that it was not a Power of Attorney that authorized the attorney to sell immovable property; rather it was a Power of Attorney that authorized the attorney to execute the sub-lease of immovable property in favor of the objector and to present such sub-lease to the Sub-Registrar for registration. Such a Power of Attorney is envisaged under section 2 of the Power of Attorney Act, 1882 which reads:

“2. Execution under power-of-attorney.- The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power, and every assurance, instrument and thing so executed and donee, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.”

9. Having concluded as above that the subject Power of Attorney was also not an instrument falling under the erstwhile sub-section 1(f) of section 17 of the Registration Act, 1908, its registration was not compulsory; and having found as such, the questions whether the subject Power of Attorney was one under section 32(c) of the Registration Act, 1908, or whether it was duly authenticated under section 33 of the said Act, are not moot to these proceedings given their limited scope, and especially where no issue to the subject Power of Attorney was raised by the concerned Sub-Registrar nor has any issue been raised by any party to the registration of the sub-lease of Shop No.23-A in favor of the objector.

10. On being satisfied that the point recorded in the order dated 13-3-2017 is no impediment to CMA No.120/2014, and for reasons discussed in paras 3 and 4 above, I hereby revoke the Letters of Administration granted to the Petitioner pursuant to order dated 27-4-1998, but only to the extent of Shop No.23-A admeasuring 23.57 sq. yds in the building ‘Citizen

Apartment' on Commercial Plot No.SC-23, Sector 11-H, North Karachi Township.

CMA No.120/2014 stands allowed in the above terms.

Dated: 19-04-2018

JUDGE