ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 1312 / 2003

DATE	ORDER WITH SIGNATURE OF JUDGE

1) For hearing of CMA No. 14088/2017
2) For hearing of CMA No. 12017/2017
3) For hearing of CMA No. 14175/2015
4) For hearing of CMA No. 14176/2015
5) For hearing of CMA No. 7494/2014
6) For hearing of CMA No. 7301/2014
7) For hearing of CMA No. 15278/2014
8) For hearing of CMA No. 5702/2016
9) For orders on Nazir report dated 19.12.2016.

Date of hearing: 15.12.2017

Date of Order: 10.01.2018

Mr. Abbas Rizvi Advocate for Intervener.
Mr. Choudhry Atif Rafiq Advocate for Defendant No. 1.
Mr. Syed Amir Shah Advocate for Defendant No. 2.
Mr. Sharfuddin Mangi State Counsel.

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1 to 8) All listed applications as well as entire Suit is being disposed of through this common order / judgment. Application listed at Serial No.1 has been filed under Order 1 Rule 10 CPC by the Intervener who has prayed for joining him as a Defendant as according to him he has purchased the Suit property from one of the Defendants in this matter and has also filed his Suit for Specific Performance before this Court. Application listed at Serial No. 2 has been filed by Defendant No.1 under Section 151 CPC seeking certain directions; however, the Counsel while arguing has not pressed this application. Application listed at Serial No.3 is also an application filed by Defendant No.1 through which the Defendant No.1 seeks permission to deposit the share of Defendant No.2 as per valuation report submitted by the Architect through Nazir of this Court pursuant to order dated 2.9.2014 so as to enable this Court to dispose of instant Suit. Application listed

at Serial No.4 is also filed by Defendant No.1 under Order 1 Rule 10 CPC, through which Defendant No.1 seeks transformation as Plaintiff No.3 on the ground that he has already purchased shares of all the other parties to this Suit, except Defendant No.2. Application listed at Serial No.5 has been filed by Defendants No.2 and 4 through which it has been prayed to permit Defendant No.2 to purchase a part of the Suit property i.e. Annexe from her share in the entire property, whereas, she is ready to pay the balance, if any. Application listed at Serial No.6 is filed by Defendant No.1 through which he seeks permission to withdraw the rent deposited by the tenant with the Nazir of this Court. Application listed at Serial No.7 has been filed on behalf of Defendant No.3 seeking directions to Defendant No.1 and Plaintiff No.1(a) to deposit her share with the Nazir of this Court and alternatively for partition of the property to settle her share. Lastly, Application listed at Serial No.8 is filed by Defendant No.1 which is similar in terms to (CMA No. 14175/2015) at Serial No.3 above, seeking directions to the Nazir to receive the share of Defendant No. 2.

Very precisely the facts relevant for disposal of this Suit and all these applications are that instant Suit was initially filed by two Plaintiff's namely *Sohail Hassan* and *Irfan Hassan* against Defendant No.1 to 5 for Declaration, Permanent Injunction, Cancellation of Documents and Partition of Property and Accounts. These Plaintiffs were real brothers (since expired) as well as Defendant No.1 (Tariq Saeed) whereas; Defendants No.2 and 3 are their sisters. Defendant No.4 is the husband of Defendant No.2, whereas, subsequently Defendant No.5 was deleted from the array of Defendants as he was not a family member. (In fact Defendant No.4 is not an owner of the Suit property, not being a legal heir, but only husband of Defendant No.2). The primary dispute amongst the brothers and sisters as above is in respect of property bearing No.D-

146, KDA Scheme No.1, Karachi, measuring 914.47 square yards (**Suit property**) (inherited property of all except Defendant No.4) which in fact is divided in two portions. One is called the main portion or building and the other is the Annexe. Presently, the pending dispute is between Defendant No.1 and Defendant No.2 as apparently after a very long litigation amongst the brothers and sisters, Defendant No.1 has bought the shares of all others. In fact now he claims to be owner to the extent of 87.5%, whereas, the Defendant No.2 who occupies the Annexe is objecting to the mode and manner in which the Defendant No.1 seeks disposal of these applications as well as the entire Suit.

Learned Counsel for Defendant No.2 has referred to order dated 2.9.2014 and submits that valuation of the property in question has not been done on the basis of current market value, whereas, Defendant No.2 is ready and willing for disposal of the property in question, firstly by a partition to the extent of Annexe which is in her possession, and the value of such portion be ascertained, whereafter, she is ready and willing to pay off Defendant No.2 if so needed. He further submits that in the alternative, the valuation be carried out of the entire property on the current valuation basis, and thereafter, her share should be paid off. He submits that Defendant No.1 is relying upon a valuation made somewhere in 2015, which cannot be accepted by the Court as it seriously prejudices the interest of Defendant No.2. The precise objection made by him is regarding the date of valuation as according to him it should be current market value and not the one already made by the Nazir through an Architect.

On the other hand, learned Counsel for Defendant No.1 at the very outset does not press his two applications bearing CMA Nos. 12017/2017 (at Serial No.2) as well as 5702/2016 (at Serial No.8), and submits that his two applications at serial No.3 and 4 be considered for

disposal of the entire Suit. Per learned Counsel, it is not in dispute that Defendant No.1 has paid the entire share of the two Plaintiffs (since deceased) through their legal heirs and so also the share of Plaintiff No.1 (Sohail Hasan) so devolved upon the parties after his death as he died issueless, and therefore, now Defendant No.1 is owner of the property to the extent of 87.5% by virtue of his share, the purchased and devolved share of Plaintiff No.1. Learned Counsel further submits that Defendant No.2 has time and again delayed the matter, whereas, after valuation of the property vide order dated 2.9.2014, Defendant No.1 has already approached the Court through CMA No.14175/2015, when the valuation was already done and therefore, in view of Sections 2 and 3 of the Partition Act, 1893, the date of valuation is crystalized and Defendant No.2 is only entitled for payment of her share on the basis of such valuation. Per learned Counsel all along Defendant No.2 has been enjoying the possession of the Annexe in question and has never paid rent to any of the other parties, whereas, time and again matter has been delayed at the beheast of Defendant No.2. According to him now a fresh valuation would not only be against the law, but shall seriously prejudice the rights of Defendant No.1. In support he has relied upon ***Gopal Chandra Mitra and others V. Kalipada Das and others (AIR 1987 Calcutta 210) and Mrs. Malati Ramchandra Raut & others V. Mahadevo Vasudeo Joshi & others (AIR 1991 SC 700).***

I have heard both the learned Counsel and perused the record. It appears that this case has a chequered history as briefly discussed hereinabove inasmuch as this Suit for Partition of the Suit property is pending since 2003 for a number of reasons. Though in the title it has been stated that instant Suit is for Declaration, Permanent Injunction, Cancellation of Documents and Partition of Property and Accounts, but in pith and substance it is primarily for *Partition*. During pendency,

unfortunately Plaintiffs No.1 and 2 have since expired, and thereafter, their legal heirs were brought on record. Plaintiff No.1 died issueless, and therefore, his wife and other brothers (Plaintiff No.2 through Legal Heirs) and sisters (Defendant No.2 & 3) were brought on record as his legal heirs.

Initially on 28.5.2007 a consent order was passed, whereby, different modalities were incorporated to have the issue settled as at the relevant time there were other claimants who had come before the Court on the ground that Plaintiff No.1 owed certain money to those claimants. However, by a series of orders, all those issues now stand settled. Thereafter, on 13.9.2013 in the form of a preliminary decree an order was passed, whereby, the shares of all other parties to the Suit (except Defendant No.2) were settled and paid off and following order was passed:-

> "1. Granted.
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> 2. CMA No.9682/2013. Through this application it is prayed that the compromise reached between the widow of the deceased plaintiff No.1 and the defendant No.1 may be accepted. Learned counsel states that deceased Plaintiff No.1, namely, Sohail Hassan, was one of the co-owners of the suit property bearing No. D-146, KDA Scheme No.1, Karachi. Upon his death his share to the extent of 1/4th share devolved on his widow, plaintiff No.1(A) while the remaining devolved on his brothers and sisters as he died issueless. The said widow of plaintiff No.1 has agreed to relinquish her 1/4th share in the suit property in favour of the defendant No.1, namely, Tariq Saeed for a total consideration of Rs. 9,500,000/- (Rupees Ninety Five Lac only). The defendant No.1 has handed over Pay Order in the sum of Rs. 9,500,000/-, bearing No. POH-5482215, drawn on Bank Al-Habib, dated 10.09.2013, to the attorney of the said widow namely, Mrs. Sharmeen Janjua wife of Arif Nawaz Janjua, in Court today. As per clause 8 of the compromise application, the defendant No.1 has also agreed to take full responsibility to pay all the liabilities/debts of the deceased Sohail Hassan and has also taken liability to settle all other liabilities if any determined against the said deceased to the extent of the share of the widow of the said deceased. The defendant No.1 has paid a sum of Rs. 4,000,000/- through Cheque No. HMS-10076496 dated 28.10.2013, drawn on Habib Metropolitan Bank, to one Mr. Muhammad Saleem in court in respect of the loan amount outstanding against deceased plaintiff No.1, Sohail Hassan. Accordingly, the listed CMA is granted and the compromise reached between the parties is accepted.

At the request of the learned counsel for the parties, the following CMAs were also taken up although the same were not fixed in Court for hearing.

CMA No.4340/2013. This application has been filed by the widow of plaintiff No.2 wherein she has stated that she has agreed, on her behalf and on behalf of the minors, to relinquish their share in the said property in favour of defendant No.1. Her daughter, Nadia Hassan, who is a major, has also agreed to relinquish her share in favour of the defendant No.1 in lieu of payment of her share in cash by the said defendant. Learned counsel for the LRs of plaintiff No.2 states that he has received the share of Mst. Aisha Irfan, widow of deceased plaintiff No.2, amounting to Rs.1,100,000/- through pay order ABC No. AAA11213705 dated 22.8.2013, drawn on Allied Bank of Pakistan Limited, Liaquat National Hospital Branch, Karachi and that of Nadia Hassan, daughter of the deceased plaintiff No.2, who is major, in the sum of Rs. 1,300,000/- through Pay order ABC No. AAA11213706 dated 22.8.2013, drawn on the same bank. Since the rest of the legal heirs of the deceased plaintiff No.2, namely, baby Fabiha Hassan, baby Manahil Hassan, master Ahmed Hassan and Master Danya Hassan, are minors, he prays that their share may be deposited with the Nazir of this Court within thirty days, who may invest the same in Government profitable security till the said minors attain majority. Since the mother of the minors is their natural guardian, and it is prayed that she may be appointed guardian ad litem, she is appointed as such. AS the interest of the mother is not adverse to the interest of the minors, I allow her to enter into the said compromise on behalf of the minors with defendant No.1. Accordingly, the compromise application between the LRs of the plaintiff No.2 and defendant No.1 is accepted. The share amount of the widow and the major daughter of the deceased plaintiff No.2 has been received by them. The defendant No.1 is directed to deposit the share of the said minors with the Nazir of this Court within 30 days from the date of this Order, who shall invest the same at above. This CMA also stands disposed of in the above terms. Office to prepare preliminary decree accordingly.

CMA No.3470/13. Learned counsel has invited my attention to Order dated 5.4.2013, whereby the defendant No.3, who was present in Court on that date, admitted that she has received her share in respect of the suit property from defendant No.1 and has relinquished her rights/entitlements therein in favour of defendant No.1. He, therefore, prays for a preliminary decree in favour of defendant No.1 in respect of the share of defendant No.3 in the suit property. Accordingly, this CMA is also allowed and the office is directed to prepare preliminary decree accordingly.

Vide order dated 26.8.2013, the defendant No.1, Tariq Saeed was transposed as Plaintiff No.1(B), Mrs. Zahreen Manazir and Ms. Zafreen Hassan were transposed as Plaintiffs No.1(B) and 1(C) respectively. Since the other plaintiffs, i.e. LRs of late Plaintiffs No.1 and 2 have received their share in respect of the suit property, therefore, the suit will now proceed between the remaining parties."

In fact, the aforesaid order was in the nature of a preliminary decree (as this being primarily a Partition Suit) which was subsequently prepared on 4.10.2013. This order also catered for settlement of share of Defendant No.3 as well as legal heirs of Plaintiffs No.1 and 2 except to the extent of Defendant No.2 who is also Plaintiff No.1(C) by virtue of devolvement of share of Plaintiff No.1 (Sohail Hasan). It further appears that subsequently, another order was passed on 2.9.2014 for valuation of property when two applications bearing No.7494/2014 and 7301/2014 were listed before the Court. Insofar as CMA No.7494/2014 is concerned, the same was been filed by Defendant No.2 and the precise prayer so stated in the said application is to the effect that according to Defendant No.2 by virtue of inheritance from her father she has 1/8th share in the Suit property as a daughter, and thereafter 3/16th share from the share of late Sohail Hassan (her brother) i.e. Plaintiff No.1 who has expired during pendency of these proceedings. She further claims her share in the rental income of the property collected by the Nazir of this Court. She also claims return of loan of Rs. 20,00,000/- given by her husband (Defendant No.4) to Defendant No.1. It is further stated in the application that Defendant No.2 is willing to purchase the Annexe of the Suit property for herself because of her sentimental attachment as she is living there since her childhood, whereas, she is ready to pay the market value of the said Annexe and such amount may be adjusted from her inherited share, the loan outstanding against Defendant No.1 and the available share from rent, and the balance if any, would be paid by her and finally Defendant No.2 has prayed to issue directions to the Nazir of this Court to get the property evaluated as a whole and of the Annexe and the main building separately. It appears that thereafter, Nazir furnished his report dated 27.3.2015 which was taken on record on 27.4.2015, however, subject to

filing of objections, if any. Subsequently, on 26.10.2015 Defendant No.1 filed two applications bearing CMA Nos.14175/2015 and 14176/2015. Through these applications, the Defendant No.1 sought permission to deposit the share of Defendant No.2 on the basis of valuation report of the property in question submitted by the Architect through the Nazir of this Court.

So in nutshell there are two contesting parties as of today and both of them are pressing upon their respective applications which are CMA Nos.7494/2014 filed by Defendant No.2 and CMA No.14175/2015 and 14176/2015 filed by Defendant No.1. In fact decision on these three applications would cover the entire controversy between the parties including the Suit. It is noted that though the learned Counsel for Defendant No.2 has contended that Defendant No.2 is not willing to accept the settlement of dispute on the basis of valuation already conducted by the Nazir of this Court through an Architect and his main contention is that the fresh valuation be carried out and that should be in respect of the entire Suit property and so also separately for the Annexe and the main building, and thereafter, an option be given to Defendant No.2 to buy the portion of Annexe after adjustment of her share in the property, and payment of balance, if any; but on perusal of the order sheet it reflects that after filing of CMA No. 7494/2014 and passing of order dated 2.9.2014, no objections of whatsoever nature have been filed on behalf of Defendant No.2 on the Nazir report dated 27.3.2015 which is already taken on record. Perusal of the Nazir report dated 27.3.2015, reflects that pursuant to order dated 22.9.2014 with the consent of Counsel for Defendant No.2 Mr. Zia Jafferi Architect was appointed for evaluating the property in question. The report further reflects that though the Architect evaluated the property but was reluctant to file his final report because of non-payment of his

professional fee as agreed. Thereafter, Nazir filed another report on 23.5.2015 in which the final report of the Architect was annexed and according to this report the valuation ascertained for the main building is Rs. 50,636,310.00 (Rupees Five Crore Six Lac Thirty Six Thousand Three Hundred and Ten only) and of the Annexe is Rs. 25,291,250/- (Rupees Two Crore Fifty Two Lac Ninety Two Thousand Two Hundred and Fifty only) making it a total of Rs. 75,927,560/- (Seven Crore Fifty Nine Lacs Twenty Seven Thousand Five Hundred and Sixty Only), whereas, the forced sale value of the main building is Rs. 40,509,048/- (Four Crore Fifty Lacs Nine Thousand and Forty Eight Only) and for the Annexe is Rs. 20,233,000/- (Two Crore Two Lac and Thirty Three Thousand Only) and the total forced sale value is Rs. 60,742,048/- (Six Crore Seven Lac Forty Two Thousand and Forty Eight Only).

It is to be noted that when this Suit was filed, the Plaintiffs at that point of time had sought partition of the Suit property, if possible, and if not, then sale of the same and distribution of respective shares. They at the relevant time were owners to the extent of at least 50% share in the property and did fall within the contemplation of Section 2 of the Partition Act, to make a request for partition and if not, then a sale of the property. It appears to be an admitted position that by reason of the nature of the property in question coupled with the number of shareholders presently, including the special circumstances of the case, the division of the property cannot reasonably or conveniently be made, and distribution of proceeds would be more appropriate. In fact all others have taken their share from Defendant No.1. In such situation, the Defendant No.2 cannot claim partition of the Suit property as the same apparently cannot be partitioned with meats and bounds, whereas, even otherwise, through her application she has also not prayed for any partition but for evaluation of the main building and Annexe, and thereafter, permission to buy out the Annexe.

This perhaps, in view of provisions of the Partition Act is impermissible. The Defendant No.2 has herself come before the Court for evaluation of the property. This impliedly means she wanted her share after proper valuation of the property. Though in mind she had the intention of retaining the Annexe, but for circumstances as noted above, it cannot be granted and or approved, except with the consent of Defendant No.1, which is not the case. The Defendant No.1, after valuation of the property has already approached the Court with an application made in 2015, which is pending. The only recourse now available before the Court as well as the parties is resort to 3 of the Partition Act, which reads as under:-

> **3. Procedure when sharer undertakes to buy.—**(1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained and may give all necessary and proper directions in that behalf.
>
> (2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholders who offers to pay the highest price above the valuation made by the Court.
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> (3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all cost of or incident to the application or applications."

From perusal of the above it spells out that in case wherein the Court is requested under the provisions of Section 2 ibid to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf. Sub-section 2 provides that if two or more shareholders

severally apply for leave to buy as provided in Sub-section (1), the Court shall order a sale of the share or shares to the shareholders who offer to pay the highest price above the valuation made by the Court. For the sake of repetition I may observe that in this Suit the two original plaintiffs came before the Court (being 50% shareholders through devolved share and entitled to seek partition) and in terms of Section 2 of the Partition Act, since partition was not possible, an order for valuation was made on 2.9.2014. Interestingly, this order was passed on the application of Defendant No.2 itself. And it is a matter of record that as soon as the valuation was carried out Defendant No.1 has approached this Court through his (CMA No. 14175/2015) for buying out the only remaining share of Defendant No.2 on the basis of such valuation report. It may be appreciated that Defendant No.2 has never made any such prayer or averment, and for that matter, she is otherwise not entitled to make any such effort being a minority shareholder. Now the question which is under consideration of the Court is only to the effect that what shall be the actual date of valuation in such matters. Ordinarily, the Court could have exercised its discretion so vested to get appropriate valuation of the property in question. Alternatively, there may be a situation when parties otherwise, consent to any such modalities. However, in this matter, as of today, both these parties are contesting and only one of them i.e. Defendant No.1 has made an effort to buy the share(s) of the other co-sharers i.e. all others as well as Defendant No.2. Whereas, the request made by Defendant No.2 through her CMA bearing No.7494/2014 is of and within itself, not within the contemplation and the provisions of the Partition Act. At the most it could only be considered once the co-sharers consent to it. Admittedly, there is no consent to the effect that Defendant No.2 be permitted to buy out the Annexe after settling the issue. Therefore, this application

cannot be considered by the Court. I am of the considered view that in the given facts and circumstances of this case, which are peculiar and distinct in nature, there cannot be a situation other than permitting Defendant No.1 to buy out the share of Defendant No.2, not only for the reason that he is now the majority shareholder, but the law also permits and provides for such an eventuality. The defendant No.2 despite being a minority shareholder, has got these proceedings protracted for such a long period on one pretext or the other, which I am not dilating upon consciously, but in any case cannot be made basis for granting her further premium on what she has already had.

It is not in dispute that Defendant No.1 has already bought the shares of other Co-sharers at different point of time, whereas, preliminary decree(s) to that effect have also been passed by the Court and he in compliance with the provisions of Section 3 of the Partition Act, has sought permission of the Court to deposit the share of Defendant No.2 on the basis of Valuation made on Court orders passed at the request and application of the said defendant. In such facts of the case, the request of Defendant No.2 for another valuation neither seems to be justifiable nor lawful, as she is enjoying possession of Annexe, (which comprises more than her share) since decades, whereas, the majority shareholder is out of possession as it is with the Nazir of the Court in respect of main building. In such cases where the shares held by contesting parties are not in dispute; the fact that valuation has already been done pursuant to order dated 2.9.2014; the matter has lingered on unnecessarily; the Defendant No.1 has timely made an application under Section 3 ibid to buy out Defendant No.2, it would not matter that since 2015 no order has been made on such application. A right in law has accrued in favor of Defendant No.1 under Section 3 ibid, whereas, valuation has already been made as requested by Defendant

No.2 itself, and the same has been taken on record, on which there are no objections before the Court, therefore this and or any other reason is not relevant to the time of accrual of right arising under Section 3 ibid. Moreover, as stated two other parties have taken their share and have not objected to the said valuation. Again non-passing of a preliminary decree to the extent of Defendant No.2 is also immaterial to the question as to the time of accrual of right under Section 3 of the Act.

Insofar as the question regarding the actual date of valuation and the applicability of Section 2 and 3 of the Partition Act is concerned, the learned Counsel for Defendant No.1 has relied upon two judgments from the Indian jurisdiction. One by a Division Bench of the Calcutta High Court in the case of ***Gopal Chandra Mitra*** supra; and second of the Supreme Court of India in the case of ***Mrs. Malati Ramchandra Raut*** supra. Insofar as the judgment of the Calcutta High Court is concerned, I am of the view that the same is not relevant as it relates to Section 4 of the Partition Act and its interpretation. Section 4 applies to an issue when some share has been transferred to one who is not a member of the family in dispute. Here this is not the case. However, insofar as the judgment of the Supreme Court of India as above is concerned, I am of the view that the same is very much relevant to the present controversy, as it interprets the provisions of Section 2 and 3 of the Partition Act, 1893 and as to the date of valuation of the property in dispute. It would be advantageous to refer to the relevant findings in that case which reads as under:-

> "9. It is the duty of the Court to order the valuation of the shares of the party asking for a sale of the property Under Section 2 and to offer to sell the shares of such party to the shareholders applying for leave to buy them in terms of Section 3 at the price determined upon such valuation. **As soon as a request for sale is made by a shareholder Under Section 2, any other shareholder becomes immediately entitled to make an application Under Section 3 for leave to buy the shares of the former. The right to buy having thus arisen and become crystallized, the date**

with reference to which valuation of the shares in question has to be made is the date on which the right arose.

10. The learned Single Judge rightly observed that there was no dispute about the extent of shares held by the defendants. The fact that the legal representatives representing the estate of a deceased defendant had not yet obtained probate or letters of administration did not mean that the right which arose in favour of that defendant, upon his making an application for leave to buy under Section 3, was a right which did not accrue to the benefit of his estate, but was postponed till the legal representatives obtained probate or letters of administration. That right was never in abeyance; it had accrued in favour of the deceased during his life when he sought leave Under Section 3 and came to be vested in his estate. That being a right of purchase, the valuation of the shares has to be made as on the date of accrual of the right, and valuation being a fact finding process must be resorted to as soon as possible after such accrual.

11. Accordingly, the valuation, though made subsequently, has to be made with reference to the time at which the right arose which, in the present case, as found by the learned Single Judge, was on 5th July, 1972 when the defendants filed their affidavit seeking leave to buy, or, at any rate, on 9th October, 1972 when they filed their written statement reiterating that request. In a case such as this, where the extent of shares held by the plaintiffs and the defendants is not disputed, the fact that the proceedings continued by reason of the appeal filed by the plaintiffs against the order refusing to allow them to amend their plaint, or for any other reason, was not relevant to the time of accrual of a right arising under Section 3. The fact that a preliminary decree may have to be passed before passing a final decree and that no such decree has yet been made is again not relevant, on the facts of this case, to the question as to the time of accrual of a right Under Section 3.

12. In the circumstances, whenever the shares in question in the properties come to be sold to the persons entitled to buy them Under Section 3, the price of those shares will have to be determined on the basis of the valuation made with reference to the time of accrual of the right. This, as found by the learned Single Judge, was the price prevailing in July 1972.

13. The learned Judges of the Division Bench have, in our view, erred in setting aside the judgment of the learned Single Judge. Accordingly, we set aside the impugned judgment and restore that of the learned Single Judge. The appeal is allowed in the above terms with costs throughout." (**Emphasis supplied**)

From perusal of the aforesaid findings, it is clear that the valuation of a property may have been made subsequently in such matters, but has to be made with reference to the time at which the right arose and in the instant matter such right arose firstly when the

valuation was ordered, and thereafter, at the most by filing of an application to that effect which the Defendant No.1 did on 8.10.2015 when CMA No.14175/2015 was filed. Therefore, in view of the given facts and circumstances of this case, I am of the view that the applications of Defendant No.1 ought to be granted. Accordingly instant Suit as well as pending applications are disposed of in the following manner.

1. Defendant No.1 is directed to deposit the share of Defendant No.2 with the Nazir (her share as well as devolved share of Plaintiff No.1) as per the valuation of entire Suit property at Rs. 75,927,560/- (Seven Crore Fifty Nine Lacs Twenty Seven Thousand Five Hundred and Sixty Only) carried out by the Nazir through an Architect, pursuant to order dated 2.9.2014 within a period of 30 days from passing of this order.

2. Once the said amount is deposited, the Nazir shall take over the possession of the entire Suit property including the Annexe from the Defendant No. 2 and hand it over to Defendant No.1. The Defendant No.2 shall execute relinquishment deed in favor of Defendant No.1 or his nominee, once the amount as above is deposited, whereafter she will be entitled to receive her share from the Nazir, failing which the Nazir shall carry out necessary formalities for executing Relinquishment / Transfer / Mutation of the property in question in the name of Defendant No.1 and or his nominee on behalf of all parties to the Suit including Defendant No.1. Nazir would be entitled for his fee as per rules which is to be paid by Defendant No.1, whereas, all fees, taxes and charges for transfer etc. are to be borne by Defendant No.1.

3. The fee to the Architect (Rs: 100,000/-) may be paid from the amount of advance rent available with the Nazir of this Court. The remaining amount of rent shall be disbursed between the Defendants No.1 and 2 according to their respective share.

In view of above discussion and observations, the above applications are decided as under:-

1) CMA No. 14088/2017 is dismissed. The Applicant cannot be made a party to this Suit and shall pursue its remedy in its independent Suit which has already been filed.
2) CMA No. 12017/2017 is dismissed as not pressed.
3) CMA No. 14175/2015 is allowed as above.
4) CMA No. 14176/2015 is also allowed and Defendant No. 1 is transposed as Plaintiff and amended title be filed accordingly.
5) CMA No.7494/2014 of Defendant No. 2 is dismissed for the above reasons.
6) CMA No. 7301/2014 has become infructuous and is accordingly dismissed.
7) CMA No. 15278/2014 has also become infructuous and is accordingly dismissed.
8) In view of the order passed on application listed at Serial No.3 this application (CMA No. 5702/2016) has also become infructuous and is accordingly dismissed as infructuous.
9) Nazir Report dated 19.12.2016 is taken on record.

All applications stand disposed of whereas the Suit is decreed as above.

Dated: 10.01.2018

J U D G E

ARSHAD/