

**IN THE HIGH COURT OF SINDH AT
KARACHI**

SMA No.38 of 2014

*[In the matter of Letter of Administration of deceased,
namely, Fateh Muhammad and others]*

Date of hearings : 21.09.2020 and 19.10.2020

M/s. Syed Nasir Abbas Rizvi and
Aftab Islam, Advocates for Petitioner.

Ms. Samina Iqbal, Advocate for
NADRA.

ORDER

Muhammad Faisal Kamal Alam, J: Petitioner's counsel has filed CMA No.301 of 2020, under Section 114 Read with Section 151 of CPC (*Civil Procedure Code*), seeking, primarily, review of Order dated 08.01.2020, whereby, CMA No.1268 of 2019 of Petitioner was dismissed. Through this CMA No.1268 of 2019, Petitioner apprised the Court that one of the original legal heirs of one of the deceased- Muhammad Riyaz Khan (one of the co-owners of the subject property) has passed away, therefore, Letter of Administration may be extended to the legal heirs of late Sikandar Begum (sister of said Muhammad Riyaz Khan).

2. The matter was fixed for rehearing on 19.10.2020 of CMA No.301 of 2020, *inter alia*, seeking some clarification. The matter was heard at length on 19.10.2020. With regard to non-mentioning the name of legal heirs of one of deceased sisters, namely, Samar Khanum, (who was also one of the sisters of late Muhammad Riyaz Khan), who died before the said Muhammad Riayz Khan, Mr. Nasir Abbas Rizvi,

Advocate, states that the legal heirs of above sister-Samar Khanum will not get any share in the inheritance because their mother (the said sister) was predeceased, that is, she passed away before the death of Muhammad Riyaz Khan. In this regard, he has referred to order dated 24.11.2014 that this fact was brought on record on that day so also his application available at page-11 of the Court file.

3. In order to appreciate the above contention of Petitioner's Advocate, a legal proposition was sent to the Legal Research Cell of this Court, which has forwarded the research. Reliance is placed on Section 4 of the Muslim Family Laws Ordinance, 1961 and the case law expounding the said provision. In this regard, a recent Judgment of this Court reported in the case of *Khawaja Rashidullah and another vs. Khawaja Faridullah-PLD 2018 Sindh page-129*, is relevant, wherein, number of other reported decisions have been cited for answering the above question. It is the consistent view of the Courts that Section 4 of the Muslim Family Laws Ordinance, 1961, only relates to the predeceased son or daughter of a '*propositus*' (*the person from who a line of descent is derived on a genealogical table*) and the said provision cannot by analogy be applicable to other category of legal heirs.

4. In view of the above, the arguments of learned counsel for the Petitioner is correct that the legal heirs of said predeceased sister, (late) Samar Khanum, will not inherit anything from the immovable property, which is subject matter of present proceeding.

5. Adverting to the second contention of learned counsel for Petitioner, that reported decision of this Court-*PLD 2014 Sindh page-541, (Muhammad Shafiq: In the name of) [the said Judgment]* will not be applicable to the facts of the present case, because in the present petition, Letter of Administration was already issued to Petitioner on

27.02.2017. Learned Advocate has produced a copy of the same during hearing, which is taken on record.

6. The above said Judgment is also carefully considered, wherein the SMA (petition) though allowed but security could not be arranged and in the meantime two of the legal heirs also died. With this factual background, the above reported Judgment was pronounced, gist of which is that fresh proceeding is not required for those persons who were originally mentioned in the Petition but died during pendency of a SMA, and after fulfilling certain formalities, the Letter of Administration can be extended to the legal heirs of those, who died during proceeding.

7. Record shows that present matter has throughout remained non-contentious and the main petition was originally granted by the order dated 30.11.2015. Between the original order of 30.11.2015 and issuance of Letter of Administration on 27.02.2015, other orders from time to time were also passed.

8. The present SMA though was allowed on 30.11.2015, when the above sister-Mst. Sikandar Begum was alive, but before issuance of Letter of Administration, she also passed away on 11.08.2016. Thus, I do not agree with this contention of learned Advocate that the said Judgment is not applicable to the facts of the present case.

9. The conclusion is that Review Application under consideration (*CMA No.301 of 2020*) is partly allowed and the earlier order of 08.01.2020 is also reviewed to the extent of description of parties and their respective status. Consequently, CMA No.1268 of 2019, which was dismissed by the order of 08.01.2020, is also restored and is granted in view of the guideline mentioned in the above reported Judgment. Letter of Administration may be extended to the legal heirs of deceased-

Sikandar Begum subject to the fulfillment of the procedure mentioned in the above said Judgment. Relevant portion whereof is reproduced herein under _

- “i.a notice may be published in the newspaper inviting objections, if any, against the extended grant and to ascertain the existence or otherwise of other legal heirs of the said next of kin.***

- ii. In the event of no objection, extended Letter of Administration may be granted requiring the appellant to submit extended Letter of Administration Bond as per rule.”***

Dated 26.10.2020

JUDGE

M.Javid.pa