

*Order Sheet*

IN THE HIGH COURT OF SINDH, KARACHI

**S.M.A. No. 34 of 2015**

Date	Order with signature of Judge
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1. FOR ORDERS ON CMA No. 2258/2019
2. FOR HEARING OF CMA No. 1007/2018
3. FOR HEARING OF CMA No. 1008/2018

Mr. M. Safdar, Advocate for the Petitioner.

Mr. M. Tariq Advocate for the Applicants/objectors.

**Date of Hearing: 02.09.2020**

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**ARSHAD HUSSAIN KHAN, J:-** This order will dispose of two [2] applications, filed by the Applicants / Objectors viz: **(i) [CMA No. 1007/2018]** under Order XXII Rule 2 CPC read with Section 151 CPC, seeking implement of Applicants as legal heirs of [late] Rafiqan Bibi to inherit her 1/6<sup>th</sup> share and share of their brother namely [late] Muhammad Ayub in the properties of present case and **(ii) [CMA No. 1008/2018]** Application under Section 378 of Succession Act read with Section 151 CPC seeking amendment in the Succession Certificate / Letter of Administration, already granted in favour of the petitioner.

2. Present Applications were filed by the Applicants on 04.05.2018. The petitioner upon receiving notices of the same filed counter affidavits denying the allegations levelled in the applications as well as the affidavits filed in support thereof and sought dismissal of the applications. The Applicants in reply thereto also filed their rejoinder affidavit wherein they reiterated the contents of their applications.

3. The case of the present Applicants is that they, being the only surviving legal heirs of [late] Rafiqan Bibi, are entitled to inherit her 1/6<sup>th</sup> share in the properties of deceased M. M. Tariq and as such they seek amendment in the Letter of Administration already granted in favour of the petitioner in the year 2015. Their stance in the present applications are that the petitioner concealed the death of Rafiqan Bibi from the court and had obtained the Letter of Administration and as such they are entitled to get their names inserted in the Letter of Administration.

4. Learned counsel for the applicants during the course of his arguments has contended that the above SMA was allowed on 10.08.2015 and the Letter of Administration was issued on 16.11.2015, whereas, Rafiqan Bibi, one of the legal heirs of deceased M.M. Tariq, died on 16.07.2015 during the pendency of above SMA. However, the said fact was concealed by the petitioner from the court and had obtained the Letter of Administration. It is also argued that upon the death of Mst. Rafiqan, her 1/6<sup>th</sup> share in the properties of the deceased M.M. Tariq, devolved upon the Applicants including one Muhammad Ayub, the third brother of Applicants. It is further argued that after the death of Rafiqan Bibi, the Applicants have also obtained Letter of Administration in respect of 1/6<sup>th</sup> share of Rafiqan Bibi in the properties of the present proceedings from the court of District Judge Karachi, East. Further contended that the said Ayub also died on 18.08.2017 and upon his death now his share also devolved upon the Applicants being his only surviving legal heirs as the said Muhammad Ayub was unmarried and as such only the Applicants are now entitled to inherit the share of her mother (Rafiqan Bibi) in the properties of the instant proceedings for which the present Applications have been filed. It is also argued that the allegations levelled in the counter affidavit are incorrect, frivolous besides misleading in nature. Lastly, argued that unless the present applications are allowed the Applicants shall suffer losses.

5. Conversely, learned counsel for the petitioner while vehemently controverting the contents of the applications as well as arguments advanced by learned counsel for the applicants, submits that the applications are frivolous and afterthought besides being misconceived in nature and as such the same are liable to be dismissed with cost. It is contended that the titled SMA was filed on 05.03.2015 and in support thereof Rafiqan Bibi, being one of the legal heirs of deceased M.M. Tariq, also sworn her personal affidavit of No Objection to the grant of the SMA. Thereafter, said Rafiqan Bibi through an application sought exemption from her personal appearance in the case as being old lady and cancer patient. She also informed the court that she had executed a General Power of Attorney in favour of Muhammad Farooq Anjum, one of the Applicants in the present applications, in respect of her share in the properties of deceased M.M. Tariq and he will represent her further in the SMA. This Court noted the attendance of Rafiqan Bibi

and dispensed with her further appearance in the case. Thereafter, said Farooq Anjum had been appearing in the matter not only as the attorney of Rafiqan Bibi but also as third-party witness. It is also contended that Rafiqan Bibi was the permanent resident of Toba Tek Singh [Punjab Province] and as such the petitioner could not gain knowledge about the death of Rafiqan Bibi before issuance of Letter of Administration nor the applicant / attorney informed the petitioner about her death. However, the petitioner came into knowledge when Applicants including one Muhammad Ayub started demanding their mother's share in the properties of deceased M. M. Tariq. Subsequently, the present Applicants including Muhammad Ayub filed Succession Case before District Judge, Karachi East, for 1/6<sup>th</sup> share of Rafiqan Bibi in respect of the properties of deceased M.M Tariq, which was allowed. Thereafter, a settlement was reached between the parties in the year 2016 and in pursuance of the terms of settlement, the present Applicants including Muhammad Ayub had to execute relevant transfer documents in respect of the properties mentioned in the present SMA, however, they failed to do the needful. Subsequently, said Muhammad Ayub was also died in the year 2017. Although his succession case was filed by the present Applicants in Toba Tek Singh [Punjab Province], however, the petitioner and her children were neither arrayed as being legal heirs of predeceased brother, nor any share in the property of the said Muhammad Ayub was offered to the petitioner and/or her children. It is also contended that the Applicants have not disputed any of the documents annexed with counter affidavits to the present Application. It is further contended that the petitioner never concealed any fact from the court. In fact, it is the applicant Farooq Anjum, the attorney of Rafiqan and third-party witness of the titled SMA, who concealed the death of Rafiqan Bibi from the petitioner as well as this Court and also received the share amount of Rafiqan Bibi from the moveable property and as such the malafide is apparent on the part of Applicants who kept quiet for a long time and now in order to frustrate the family settlement reached between the parties, filed the present Applications on the false and flimsy grounds. He has lastly argued that the Applications are not maintainable and as such the same are liable to be dismissed.

6. I have heard the arguments of learned counsel for the parties and with their assistance also perused the material available on the record.

From the record, it appears that on 05.03.2015 the titled SMA was filed in respect of assets/properties of deceased M.M. Tariq Advocate, by his widow being the petitioner. Deceased at the time of his death left behind petitioner Fehmila Akhtar (widow), Muhammad Bilal (son), Ruba Urooj, Turfia Urooj (daughters) and Mst. Rafiqan Bibi (mother) being his surviving legal heirs. Muhammad Bilal and Mst. Rafiqan Bibi sworn their respective affidavits of No objection for grant of SMA in favour of the petitioner. Whereas for both the daughters who were minors, the petitioner upon application was appointed as Guardian ad-litem and the matter remained non-contentious one despite publication. Consequently, on 10.08.2015 the above SMA was granted and Letter of Administration upon deposit of original title documents of the subject immovable properties was issued. Whereas the amount lying in the bank accounts were collected by the Nazir and disbursed amongst the major legal heirs and the share amount of minors were invested in profit bearing scheme. Record also shows that Rafiqan Bibi, being one of the legal heirs of deceased M.M. Tariq, also sworn her personal affidavit of No Objection to the grant of the SMA. Thereafter, said Rafiqan Bibi upon an application was granted exemption from her personal appearance in the case as being old lady and cancer patient. She had also executed a General Power of Attorney in favour of Muhammad Farooq Anjum, one of the Applicants of the present applications, in respect of her share in the properties of deceased M.M. Tariq. Thereafter, said Farooq Anjum had been appearing in the matter not only as the attorney of Rafiqan Bibi but also as third-party witness. It is also an admitted position that Rafiqan Bibi was the permanent resident of Toba Tek Singh [Punjab Province] and there is nothing available on the record, which could show that the death of Rafiqan Bibi was reported by the Applicants specially by Mr. Farooq Anjum either to the petitioner or to the Court before and/or after the grant of Letter of Administration. Conversely, Farooq Anjum after the grant of Letter of Administration received Rafiqan Bibi's share in respect of the amount lying in the deceased [M.M. Tariq] Bank's Account from the Nazir and in this regard the Nazir's endorsement is also available on the record. In the circumstances, the allegation of concealment of death of Rafiqan Bibi by the petitioner at the time of grant of letter of administration, appears to be ill-founded and not sustainable. On the contrary, it was the duty of Applicant Farooq

Anjum to inform the court immediately about the death of Rafiqan Bibi being her attorney as well as third-party witness in the SMA, however, the applicant not only kept quiet for a long time but also received the share amount of Rafiqan Bibi from the Nazir. Such conduct reflects malafide on the part of the Applicants.

7. Record also transpires that the present Applicants including their brother Muhammad Ayub, in the year 2016 filed Succession case bearing No. 97 of 2016 in respect of 1/6<sup>th</sup> share of Rafiqan Bibi, which was allowed by the court of learned District Judge, Karachi [East], on 02.05.2016. Thereafter, on 12.05.2016 a family settlement in respect of subject immovable properties reached amongst the Applicants including Muhammad Ayub, the petitioner and her children and one Mr. Ali Nawaz. Record further reveals that Muhammad Ayub also died on 18.08.2017 and some succession proceeding was also filed in respect of assets of said Muhammad Ayub, however, no record of the same has been produced by the Applicants.

8. It is also not disputed that after the grant of present SMA and issuance of Letter Administration in respect of the subject properties, the Parties have entered into family settlement dated 12.05.2016 and in pursuance thereof both the parties had to perform their part of obligations. Record also shows that the Applicants have concealed the facts of family settlement in their Application, however, when the said fact is brought on the record by the petitioner through her counter affidavit, the Applicants though have not disputed the family settlement, however, they took stance that they entered into said family settlement under coercion. There is nothing available on the record, which could show that the Applicants after entering into family settlement in year 2016, ever mentioned the said fact in any of the pleadings they filed in respect her mother's share in the subject properties or they approached any court of law for cancellation of the same.

In the given circumstances, I am of the considered view that the Applicants have failed to substantiate their stance in the aforementioned Applications and as such the same are dismissed as having no merits.

JUDGE

Karachi  
Dated: 16.09.2020