

his surviving legal heirs. Out of them, the plaintiffs No.1 & 2 were born to his first wife late Mst. Amtul Jamil and plaintiff No.3 and defendants No.1 to 4 from his second wife Mst. Shamima Nasreen. He further contends that the said deceased owned on his name two immovable properties, referred to in C.M.A. No.14697/2020 and the immovable property referred to in C.M.A. No.14696/2020 was initially owned by the deceased; however, he had gifted out the same to his second wife Mst. Shamima Nasreen in the year 1966, which was transferred on her name in the year 1997 in the record of PECHS and Ministry of Housing & Works, Government of Pakistan after completing all the necessary proceedings. He also contends that the said deceased had gifted and transferred the said house with clear understanding with Mst. Shamima Nasreen that after her demise all his sons and daughters including her step sons/plaintiffs No.1 & 2 shall have same right of inheritance as per Sharia with her own son and daughters/plaintiff No.3 and defendants No.1 to 4, as if they were born to and are her real children and in this regard the said deceased during his lifetime had written a joint Will on 20.01.1987 which was duly signed by his second wife Mst. Shamima Nasreen as well as plaintiff No.1 and defendants No.1 to 3. Subsequently, Mst. Shamima Nasreen also died on 07.10.2014; hence, the immovable property referred to in C.M.A. No.14696/2020 is also subject matter of this suit for administration.

On the other hand, learned counsel for the defendants No.1 to 4 records his no objection for the issuance of preliminary decree in respect of two immovable properties referred to in CMA No.14697/2020; however, he vehemently opposes passing of preliminary decree in respect of property referred to in C.M.A. No.14696/2020; however, he maintains that the said property was owned by Mst. Shamima Nasreen being its exclusive owner; therefore, after her death, the plaintiffs No.1 & 2, who are her step sons, have no legal right in the said property,

which has in fact incorrectly been made part of properties left by deceased Shaikh Naseeruddin. He further maintains that the alleged Will, dated 20.01.1987, was executed by the deceased father of the private parties, which has no legal impact on the property owned by his deceased wife Mst. Shamima Nasreen; therefore, plaintiffs No.1 & 2 are not entitled to get any share in the said property under said Will.

Heard the learned counsel for the parties and perused the material available on record.

Since there is no dispute with regard to two immovable properties referred to in C.M.A. No.14697/2020 as both the parties admit that the same are the property left by their deceased father, let a preliminary decree be passed in terms of Order XX Rule 18(2) C.P.C. by appointing the Nazir of this Court as Administrator in respect of said immovable properties with the mandate to conduct enquiry with regard to title of the deceased and to partition the same with metes and bounds, if possible, and then to allot actual share in the said properties by division and possession thereof. If the properties cannot be partitioned with metes and bounds, then Nazir is authorized to carry out the sale of the same firstly through private sale amongst the parties, and if no party is interested, then through open auction subject to Rules, whereafter, the amount be distributed amongst the legal heirs according to their respective share(s). Nazir's fees is to be paid as per rules, which shall be payable by all the parties to the extent of their respective shares. Such amount is to be paid out of sale proceeds subsequently. After completing the exercise, Nazir shall submit his report for passing of necessary order(s) for the purposes of passing a final decree in the matter. Office is directed to prepare preliminary decree under Order XX Rule 18(2) C.P.C. in the above terms.

So far immovable property referred to in C.M.A. No.14696/2020 is concerned, since there is a dispute over ownership of the said property between the plaintiff No. 1& 2 and defendants No.1 to 4, instead of passing any preliminary decree in respect of said property, I deem it appropriate to frame following issue:-

“Whether the WILL dated 20.01.1987 is a joint WILL of Shaikh Naseeruddin and Mst. Shamima Nasreen, if so what is effect?”

The learned counsel for the parties are directed to file list of witnesses, original documents and an application for appointment of Commissioner, if so desired, within 30 days hereof.

Both the applications stand disposed of.

3. Adjourned to a date in office.

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JUDGE