

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 549 of 2007

Date	Order with Signature(s) of Judge(s)
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1. For order on Commissioner's report dated 10.10.2020
2. For hearing of CMA No. 8066/17.
3. For hearing of CMA No. 8065/17.
4. For hearing of CMA No. 6553/13.
5. For hearing of CMA No. 16305/19.
No title has been filed.

23.02.2021

M/s. Abdul Majeed & Sami Majeed Advocates for plaintiff.

M/s. Mushtaq A. Memon & Shahid Ali Ansari, Advocates for defendants No. 2 & 3.

Mr. Muhammad Zafar Alam, Advocate for applicant/intervener Shafaq Sabeeh wife of Sabeeh Mubarak Ahmed.

None is present for defendant No. 4.

Learned counsel for applicant/intervener states that he has also filed an application bearing C.M.A. No. 2393 of 2020; however, today the same has not been fixed for hearing by the office. With the consent of learned counsel for the parties the said application is taken up.

3. This application (C.M.A. 8065 of 2017) as well as C.M.A. No. 2393 of 2020 have been filed on behalf of applicant/intervener Shafaq Sabeeh. Former application (C.M.A. 8065 of 2017) has been filed under Order I, rule 10, C.P.C. seeking her impleadment as defendant and deletion of her property, while later application (C.M.A. No. 2393 of 2020) has been filed on her behalf seeking modification of the ad-interim order dated 10th May, 2007.

Learned counsel for applicant/intervener contends that the plaintiff has filed this suit for administration, declaration, partition, possession, injunction and cancellation of documents against the defendants in respect of several properties including one immovable property i.e. *Plot No. 332, Beach Street No.1,*

admeasuring 2000 square yards, situated in D.H.A. phase-VIII, Karachi, which has been described by the plaintiff in paragraph No. 3(iii) of the memo of plaint as one of the suit properties, so also in prayer clause f(iii), which is actually owned by the applicant/intervener. He further contends that Tayyab Ahsan Ali, who is maternal grandson of deceased Muhammad Saleem Gore alias G. S. Jan has already filed a statement dated 18th January, 2020, wherein he has categorically stated that defendant No. 5, namely, Shafaq Sabeen is not his wife. Learned counsel adds that neither the applicant/intervener has occupied any asset of the said deceased nor under Sharia she is entitled to inherit any share from the properties left by the said deceased; hence, she has wrongly been made party in the instant suit.

Learned counsel for defendants No. 2 & 3 concedes to the contentions of learned counsel for applicant/intervener.

Learned counsel for the plaintiff states that infact the correct name of defendant No. 5 is Sabeen M. Rasool, who is wife of Tayyab Ahsan Ali, maternal grandson of the said deceased; however, due to typographical mistake her name has been mentioned in the title of the suit as Mrs. Shafaq Sabeen. He further states that after filing of this suit, the plaintiff verified the properties left by the aforesaid deceased and later on it transpired that the property shown in paragraph No. 3(iii) of the plaint and prayer clause f(iii) as property of the said deceased, was/is not owned by the said deceased. He; therefore, seeks disposal of both these C.M.As. by allowing him to file amended plaint by deleting the name of defendant No. 5 from the title of the plaint and aforesaid property from the memo of plaint and prayer clause. Order Accordingly.

Both the application stand disposed of.

1. As per report of the learned Commissioner, the time granted to him to conclude the Commission has expired; therefore, he has requested for extension of the same. Accordingly, time granted to the learned Commissioner is extended by three months. Commissioner's report is taken on record.
2. Learned counsel for applicant/intervener does not press this application, as the same has become infructuous. Accordingly, this application stands dismissed as not pressed.
4. Learned counsel for the plaintiff under instructions does not press this application, which stands dismissed as not pressed.
5. By means of this application, the defendant No. 4 seeks appointment of new Commissioner to record evidence of the parties on the ground that the present Commissioner is not willing to proceed further into the matter. It appears that the present Commissioner, vide his report dated 8th October, 2020, has himself requested for extension of the time to conclude the Commission, which shows that he is infact willing to record evidence of the parties. Hence, this application stands disposed of. The defendant No. 4 is; however, at liberty to repeat the same, if the circumstances so warrant.

Athar Zai

JUDGE