

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

H.C.A. No.31 of 2013.

Date	Order with signature of Judge
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Hearing/Priority Case.

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1. For hearing of main case.
 2. For hearing of CMA No.393/2013.
 3. For hearing of CMA No.395/2013.
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24.11.2015

Attorney of appellant Qamar Zaman, Advocate present in person.
Mian Mushtaq Ahmed, Advocate for Respondent.

Through instant appeal, the appellant has called in question order dated 15.01.2013 passed by the learned Judge of this Court exercising testamentary and intestate jurisdiction, whereby, the appellant's application under Section 151 read with section 280 of the Succession Act, 1925 (CMA No.207/2011) for setting aside the Letter of Administration on the ground that the same was obtained through fraud was dismissed.

It was contended by the attorney and husband of the appellant, who by profession is an Advocate, that the year of birth of deceased Mst. Munawar Begum in the Succession petition was shown as 1949, whereas the date of birth of her children/legal heirs, namely (1) Muhammad Aslam has been shown as 24.04.1953, (2) Shehnaz Mukhtar as 09.05.1956, (3) Muhammad Alam as 01.01.1958 and (4) Salma Atiq as 10.10.1963 and such unnatural difference of age between the mother and children belies their relationship and, therefore, Letter of Administration granted in their favour was liable to be set aside.

On the other hand, Mian Mushtaq Ahmed, Counsel for the respondent, contends that the appellant's husband Mr. Qamar Zaman, Advocate, who claims to be the attorney of the appellant was in fact engaged by late Syed Muhammad Ahmed in Rent Case(s) No.400/2005, 100/2006 & 161/2006, and since father of respondent was an old aged man, whereas, the relationship between the attorney and him were

fiduciary, as such taking advantage of his said position, managed to unduly influence him for selling of the property which was in the name of his wife, on the ground that it was not possible for him at his age to get the same vacated from the tenants. He further submits that in fact when the alleged agreement was prepared by the attorney, the owner of the property Mst. Munawwar Begum had already passed away on 21.5.2004, therefore, the power of attorney in favour of the respondent's father had already been revoked / cancelled. Per Counsel the appellant had also filed Suit(s) for specific performance which have since been withdrawn, and now through instant proceedings has challenged the Succession Certificate on a false premise that there is unnatural difference of age between the mother and her children, which in fact has also been corrected subsequently by NADRA. He submits that the attorney of the appellant has misused his position of being an Advocate of late Syed Muhammad Ahmed and has usurped the property of his legal heirs.

We have heard both the Counsel and have perused the record. The attorney present in Court concedes that he is a practicing Advocate and had appeared as an advocate for Late Syed Muhammad Ahmed in the aforementioned rent cases. At the very outset, we had confronted the attorney that as to how he could enter into an agreement of Sale with his client in respect of the property for which he was appearing as a counsel in Rent Case(s) as detailed hereinabove, the attorney could not controvert such position, however, submits that there is no legal bar in doing so. The attorney was also confronted as to how his application was maintainable in a Succession matter, by which he had challenged the same on the ground that there was some unnatural difference of age, as even if there was such difference in age, he was not an aggrieved person and it was for the legal heirs to come forward with sub objection, if any, again he could not satisfy this Court in this context. Moreover, we have also perused the record, which reflects that the mistake in the date of birth of Mst. Munawwar Begum w/o Syed Muhammad Ahmed stood corrected by NADRA from 1949 to 1939 by responding to notice of the learned Single Judge of this Court, whereby they had furnishing the actual "A" Form of Mst. Munawwar Begum, which has not been disputed by the attorney of the appellant. Further, this case appears to be one of its kind wherein, the Advocate of the Landlord has managed to enter into an agreement of Sale in respect of the same property for which he was engaged to get the tenants evicted through due process of law. This appears prima facie a case of

misconduct on his part as the Canons of Professional Conduct and Etiquette provides in clause (1) of Chapter II, issued by the Pakistan Bar Council, that *an Advocate shall not acquire an interest adverse to a client in the property or interest involved in the case.*

In the circumstances, we are of the view that instant appeal besides being frivolous in nature, is also misconceived as the appellant is neither an aggrieved person nor has any right to challenge the letter of Administration in question. Moreover, the attorney of the appellant, Mr. Qamar Zaman Advocate has apparently misused his position as an Advocate of respondent's father, and his case appears to be prima facie of Misconduct, and therefore, the observations hereinabove, shall be treated as a Complaint under Section 41(2) of the Legal Practitioners & Bar Councils Act, 1973, whereas, the disciplinary Committee of Sindh Bar Council shall initiate appropriate proceedings against him which shall be completed within three months or earlier as provided under section 41 (1A) of the Act, and thereafter shall place a proper compliance report before us through MIT-II.

In view of such position, on 24.11.2015, we had dismissed instant appeal with Cost of Rs. 50,000/- and had also ordered for referring the matter of appellants attorney to the Disciplinary Committee of Sindh Bar Council and these are the reasons for such short order. The appellant shall deposit the cost in the account of Sindh High Court Clinic immediately.

Office is directed to list the case for compliance, thereafter.

JUDGE

JUDGE

