

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
High Court Appeal No.134 of 2017

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Order with Signature of Judge(s)

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1. For hearing of main case.
2. For hearing of CMA No.686/17 (Stay)

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**08.04.2019.**

Mr. Imtiaz Ahmed Shaikh, Advocate for the appellant.  
Mr. Abdul Sattar Mughal, Advocate for the respondent No.1.

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This High Court Appeal has been filed impugning the order dated 18.01.2017 and the preliminary decree dated 30.01.2017.

Briefly stated the facts of the case are that the respondent No.1 filed a suit against the present appellant and the respondents No.2 to 5 for administration, rendition of accounts, specific performance, declaration, injunction and recovery of damages bearing Suit No.1256 of 2010, which is pending adjudication. While the suit is pending, the present respondent No.1 filed an application under Order XXXIX Rules 1 & 2 read with Section 151 CPC bearing CMA No.8325 of 2010 for restraining the defendants (appellant and respondents No.2 to 5) and their legal heirs, servants, agents, attorneys, representatives, successor-in-interest, persons, police and any other person(s) acting on their behalf from illegally dispossessing him from Flat No.D-11, Jumani Arcade, Gulshan-e-Iqbal, Block-14, Main University Road, Karachi, which was under his legal and lawful possession, as one of legal heir of his father

Abbas Ali Rajput (late) and for further restraining them not to pursue or proceed with any other proceedings, including, rent proceedings till final decision of the suit under reference, in the interest of justice, equity and dispensation of relief alongwith CMA No.8326 of 2010 for appointment of receiver under Order XL Rule 1 read with Section 151 CPC. The matter so far as these CMAs proceeded before the learned Single Judge who passed the interim order by observing that “in order to ascertain about the nature of business, if any, and the purported share of the respondent No.1 in the said business as well with regard to other properties it would be just and proper that a preliminary decree is passed, whereas CMA No.8326 of 2010 was dismissed”.

Mr. Imtiaz Ahmed Shaikh Advocate has appeared on behalf of the appellant and stated that the learned Single Judge was not justified in granting preliminary decree. He stated that the respondent No.1 has no claim over the properties left by the deceased, namely, Abbas Ali Rajput, who died on 02.12.1999 in USA.

Mr. Abdul Sattar Mughal Advocate has appeared on behalf of the respondent No.1 and stated that there is a dispute between the legal heirs of the deceased Abbas Ali Rajput with regard to properties left by him and until and unless the matter is finally decided in the suit bearing Suit No.1256 of 2010, the learned Single Judge was justified in granting preliminary decree in the said suit. He further stated that this High Court Appeal is premature since the

matter is subjudice before the learned Single Judge in respect of the dispute arising in that suit, hence, this High Court Appeal does not merit consideration and may, accordingly, be dismissed.

We have heard both the learned counsel at considerable length and have also perused the record.

It is seen that the main cause of action for filing the suit by the present respondent No.1 was with regard to the properties left by the deceased, namely, Abbas Ali Rajput and, in our view, until and unless that issue is resolved by framing proper issues, taking evidence and hearing the parties at length, the matter could not be decided. It is an undeniable position that the matter between the parties is subjudice in Suit No.1256 of 2010, hence, in such circumstances, if the properties in possession of the appellant are sold or any third party interest is created, the proceedings in the suit would definitely hamper. Hence, in our view, the learned Single Judge, after hearing the parties, was justified in passing the preliminary decree so that neither a third party interest could be created nor the appellant could dispose of the properties, if any, left by the deceased, as the matter would be decided after completing the legal procedure in this behalf in the above referred suit. We, therefore, find absolutely no justification to interfere in the order of the learned Single Judge. The appellant's counsel, in our view, has failed to justify or demonstrate as to what prejudice has been caused to him in view of the preliminary decree, when admittedly the suit between the parties with regard to the properties left by the

deceased, if any, is pending. This High Court Appeal, therefore, is found to be not maintainable and is, accordingly, dismissed alongwith the listed application.

Judge

Judge