

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
HCA No.23 OF 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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1. For order on CMA No.647/2023 (U/A).
2. For order on office objection.
3. For order on CMA No.409/2023 (Ex/A)
4. For hearing of main case.
5. For order on CMA No.410/2023 (stay)

16.02.2023

Mr. Hakim Ali Khan, Advocate for the Appellants.

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1-5. This High Court Appeal was filed impugning the order dated 09.12.2012 passed by the learned Single Judge in Suit No;.1383/2012 along with Suit Nos.1204/2019, 97 and 621 of 2022 . Mr. Hakim Ali Khan, Advocate has appeared on behalf of the present appellant and stated that one Khawaja Muhammad Awan expired and left behind certain properties. Suits have been filed on behalf of the present Appellants and the Respondents for Administration, Partition and Settlement of Accounts in respect of the properties left by the deceased.

It is the contention of the learned counsel appearing on behalf of the Appellants that the learned Single Judge was not justified in directing the Nazir of this Court to take steps in respect of the disposal of the property bearing No.B-312, measuring 1632 sq. ft. 3rd floor, Clifton Garden-I, Karachi constructed on Plot No.FL-I, situated in Block-3, KDA Scheme No.5 Kehkashan, Clifton Karachi by ignoring the other properties left by the deceased. According to the learned counsel, the order of the learned Single Judge is not justified as he has given directions to the Nazir in respect of only one property left by the deceased for disposal and distribution of sale proceeds amongst all legal heirs by ignoring the fact that there were other properties also left by the deceased to which also similar treatment

should have been accorded by the learned Single Judge. According to the learned counsel, the instructions given by the learned Single Judge in respect of the property, which is in possession of the present appellants, would cause serious prejudice to them; hence the said directions issued by the learned Single Judge may be set aside.

We have heard the learned counsel at some length and have perused the record, which clearly shows that late Khawaja Muhammad Awan left behind by him a number of properties, which are being disputed in the several suits filed before this Court however it is only the above referred property which is not being disputed to be the property left by the deceased.

It is in those circumstances, when it is an admitted position by the plaintiffs as well as by the defendants in the suits and in the present appeal also, that the above referred property did belong to the deceased and there is no dispute about its ownership being with the deceased. Hence, in these admitted situation, in our view, the learned Single Judge was quite justified in directing the Nazir of this Court to take appropriate action with regard to the disposal of said property and distribution of the sale proceeds amongst all legal heirs in accordance with law.

In our view, the matter with regard to the disputed properties was quite rightly not touched upon by the learned Single Judge since there were under dispute and the learned Single Judge quite has dilated upon the property which is not disputed to had belonged to the deceased. Therefore, for all practical purposes when the said property was not disputed had belonged to the deceased it had to be distributed amongst all legal heirs as per their legal sharia shares.

We therefore found no merit in the present appeal. The Nazir is directed to abide by the instructions already given in Suit No.1383/2013 in accordance with law. The appellants however would be at liberty to participate in the auction proceedings, if any, undertaken by the Nazir subject to fulfillment of all legal and codal formalities prescribed by the law.

The instant appeal thus is found to be bereft of any merit; the same therefore stands dismissed in limine alongwith the listed applications.

JUDGE

JUDGE

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