

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**H.C.A. No.321 of 2023**

**[Prof Mufti Mrs. Urooj Qadri v. S. M Asem Qadri & another]**

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
------	-----------------------------------

**Present: - Muhammad Shafi Siddiqui  
Jawad Akbar Sarwana, JJ**

Hearing case (priority)

1. For hearing of CMA No.3915/2023.
2. For orders on office objection a/w reply as at "A".
3. For orders on CMA No.3916/2023.
4. For hearing of main case.
5. For hearing of CMA No.3917/2023.
6. For hearing of CMA No.3918/2023.
7. For hearing of CMA No.3919/2023.
8. For hearing of CMA No.3920/2023.
9. For hearing of CMA No.3921/2023.
10. For hearing of CMA No.3922/2023.
11. For hearing of CMA No.3923/2023.
12. For hearing of CMA No.3924/2023.

.....

**Dated 25.10.2023**

Appellant present in person.

Mr. K.A. Wahab, Advocate for Respondent No.1.

.....

This Appeal impugns an order dated 28.02.2023 passed in Suit No.1475/2019. At the outset this appeal is apparently barred by time, as this appeal has been presented on 07.09.2023. Surgery of wrist of appellant was done on 31.03.2023 in consideration of which condonation sought, whereafter she was discharged from hospital. An affidavit was filed on 28.03.2023 to inform the Court that case may not be proceeded for another three [3] months. By the end of June, the time requested was over and she took more than additional two [2] months to file appeal. No further explanation has been provided, hence appeal is barred by time.

Notwithstanding above, we have considered the merit also. Appellant raised twofold contentions. Primarily it is urged that the constructed property is divisible into two portions in light of regulations 18-3.1.3 and secondly that it should be auctioned strictly between the two co-owners.

We have heard the Appellant as well as Respondent's counsel Mr. K.A. Wahab and perused the material available on record.

The impugned order reflects that somehow regulation 20-1.1.5 was pressed by appellant. The application of the said regulation was misconceived as the said regulation is not applicable to the facts and circumstance of the case.

In addition to above, the property in question being a constructed property is not divisible. It is urged that since the property was not inspected, therefore, it cannot be conceived that whether the property could be divisible or not. We have perused the plan which also shows the constructed area at page-91. At the very outset regulation 18-3-1.3, as it stands by virtue of amendment June 21, 2018, does not apply to the constructed property, the said regulation deals with the residential plots only. Notwithstanding such restriction, even otherwise the claim of the Appellant over the property could only be to the extent of its 1/3 area which in any case not possible because of the carved plot's restriction (400 sq. yards) which will be more than 33% and additionally construction thereon, which is an impediment. Even if she shows her willingness, as she did during arguments that she would buyout the property to the extent which falls beyond 33% to buy 400 sq. yards as permitted under the aforesaid regulation, the constructed portion over it cannot be sub-divided. There has to be compulsory open space on both sides of the divided plot, which is not possible considering the constructed area. Parties may not get proper value if constructed area is damaged and/or divided by cutting into two halves, and then to further demolish for maintaining compulsory open space over the divided plots.

Insofar as the last contention of the appellant with regard to matching highest bid for buying out each other's share is concerned, learned single Judge has already observed that two co-owners may do so and the public auction as such cannot be avoided which might deprive parties from getting maximum amount of the property. The Appeal as such is misconceived and is dismissed along with pending applications.

JUDGE

JUDGE

Ayaz Gul