

**IN THE HIGH COURT OF SINDH, KARACHI**  
**Miscellaneous Appeal No. 66 of 2022**

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Date Order with signature of Judge

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**Appellant:** Mst. Asmat  
Through Mr. Abdul Shakoor,  
Advocate.

**Respondent No.1:** Muhammad Ibrahim,  
Through Mr. Hameedullah Khan,  
Advocate.

**Date of hearing:** 25.10.2023  
**Date of Order:** 25.10.2023

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this Miscellaneous Appeal, the Appellant has impugned Order dated 18.07.2022 passed in SMA No. 448 of 2020; whereby, the Appellant's Application under Section 383 of the Succession Act, 1925 has been dismissed.

2. Heard Counsel for the parties and perused the record. It appears that the above SMA was granted in favour of Respondent No.1 vide order dated 7.01.2021, whereas, the Appellant then preferred an Application under Section 383 of the Succession Act, for revocation of the Letter of Administration on the ground that Respondent No.1 was not the actual legal heir of the deceased. It would be advantageous to refer to the finding of the Court below, which reads as under: -

“5. Heard both the counsels and perused the record. It appears that Petitioner Muhammad Ibrahim filed subject SMA in respect of Plot No. 23, Street (SK), Shahrah-e-Karim, Sector-1, Type-A, , measuring 120 Sq. yards, Pakistan Navy Employees Low-Cost, Co-Op, Housing Society Ltd., Karachi (new name Haroon Behria Cooperative Society Ltd.) being nephew of deceased Sanobar Khan with the claim that he was unmarried having no wife or child and he expired on 29.06.2020 at Karachi leaving behind legal heirs as Mst. Hasan Zadgi (Bhabhi of deceased), 2. Tasleem Amriz Khan (Paternal nephew), 3. Seema (Paternal Niece), 4. Shamim Shakeel (Paternal Niece), 5. Ibrhim (Paternal nephew), 6. Ruqiya (Paternal Niece), 7. Maria Mohsin Khan (Paternal Niece) and 8. Alia Shah (Paternal Niece) and he claimed that there was no other legal heirs and after adopting all the formalities including recording of evidence of area people and all the above named legal heirs and perusing the report of SHO of PS. Saidabad and FRC issued from NADRA, the subject SMA was granted in favour of petitioner in respect of subject property subject to furnishing

security in the sum of equivalent of the property with direction not to mortgage, charge or transfer by sell, gift or exchange the subject property. In my humble view that the subject SMA was granted after adopting all codal formalities according to law. It also appears that prior granting such succession certificate no objection received from any corner and the learned counsel for the Objector filed this application on 06.07.2021 after lapse of six months of impugned Order whereas subject SMA was filed in the year 2020. The perusal of record show that after enactment of Sindh Letters of Administration and Succession Act, 2021 this Court is ouster of jurisdiction to entertain any Succession Application unless a certificate is issued u/s 10 of Sindh Letters of Administration and Succession Act, 2021.”

3. From perusal of the aforesaid finding, it reflects that the Court while deciding the application has held that it lacks jurisdiction after introduction of Sindh Letter of Administration and Succession Act, 2021. At the same time the Court after making such observation has also relied upon some case law of the Honourable Supreme Court and has also decided the matter on merits. Insofar as lack of jurisdiction is concerned, apparently the Court was misdirected inasmuch as under the said Act, disputed matters cannot be referred to or decided by NADRA and are to be decided by the Court itself. Moreover, in this matter already a letter of administration has been granted by the Court, and therefore, objections if any, against such grant cannot be decided by NADRA. The Court below has failed to take note of this crucial aspect of the matter. Therefore, it was misdirected in holding that it had no jurisdiction.

4. Moreover, once the Court observed that it had no jurisdiction, then no further orders could be passed on merits of the case, inasmuch as when the Court lacks jurisdiction, it cannot sit over the *lis* before it by deciding merits of the case. This conduct of the Court below also does not appear to in consonance with settled law. The Court was required to decide the application on its merits, rather than shrugging of its responsibility; and therefore, the order impugned herein cannot be sustained. Accordingly, the same is set-aside; matter stands remanded to the concerned Court to decide the Application strictly on merits and by also keeping in view the provisions of Section 295 of the Succession Act, 1925, which provides that a contentious matter can be converted into a Suit, preferably within a period of 90 days from the date of this order.

**JUDGE**

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