

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.52 of 2023

Khoula Siddiqui Advocate
Versus
Tariq Bin Azad and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Hearing case (priority)

1. For orders on office objection/reply at "A".
2. For hearing of main case.
3. For hearing of CMA No.911/2023 (stay).

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Dated 26.01.2024

M/s Asim Iqbal and Farmanullah Khan, Advocates for appellant.

Mr. Zahir Hussain Shaikh, Advocate for Respondent No.1.

Mr. Naseem Akhtar, Advocate for Respondents No.2 to 5.

Mr. Shabbir Ahmed Shaikh, Advocate for Respondent No.6.

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Muhammad Shafi Siddiqui, J. - The appellant has impugned an order of 21.02.2023 passed in suit No.371/2021. On the crucial day when the impugned order was passed, an urgent application bearing No.2828/2023 was filed and on the request of defendants' counsel that is defendant No.5 and 6, who appeared on that day on an urgent application, CMA No.1903/2023 was taken up. This was an application on which the impugned order was passed, which was not fixed.

2. Earlier on 27.01.2023 in presence of the counsels identified in the said order, an order was passed whereby the Nazir was directed to collect the rent from the tenants and distribute it amongst the legal heirs and a report was also called from the Nazir. On account of failure of tenants to deposit the amount with the Nazir, the Nazir was entrusted with the future actions, in accordance with law.

3. Perhaps the defendants were aggrieved of it and moved an urgent application on the crucial day when the impugned order was

passed on CMA No.1903/2023 (not fixed). The order of 27.01.2023, whereby the Nazir was entrusted to collect the rent (perhaps on the strength of the appointment of the arbitrator), was recalled. The reason that prevailed was that there was no administrator appointed till the date when the order was passed on 27.01.2023 and that the property identified as 4/7, Sheet No.4, Model Colony near Model More, Karachi, is in the name of deceased's widow/respondent No.6, (also identified as defendant No.6 in the suit).

4. It was a suit for administration and to secure rent for legal heirs at the initial stage, there was no necessity of appointing an administrator first, however, only question of Mr. Shabbir is of title which is in the name of respondent No.6.

5. Mr. Asim Iqbal, learned counsel for the appellant has taken us to the documents whereby this property was purchased in a court auction by deceased. It is claimed that in Execution No.34/1992 the deceased paid the amount from his account in favour of Emirates Bank where property was mortgaged and got the property redeemed. It was by virtue of the order dated 08.02.2001 and the sale deed/sale certificates were accordingly issued. It is claimed to be benami and respondent No.6 is an ostensible owner.

6. It was appellant's case that the respondent No.6 was holding this property as benami and hence all proceeds, including rental income, are liable to be distributed amongst the legal heirs.

7. Mr. Shabbir Ahmed Shaikh, learned counsel for respondent No.6 submits that this is a question which is to be determined by the court and would require evidence.

8. We agree that it was eventually be decided by the learned single Judge on the strength of the evidence likely to be recorded by

the parties, however, prima facie it seems that the amount was paid from the account of deceased Azad Bin Haider and at this point of time respondent No.1 (son of deceased), cannot get away with the entire rental income of the aforesaid property depriving the daughters of deceased. In all fairness, he could only claim his share out of the rental income from the said property from the Nazir, whereas, rest of the amount shall remain with the Nazir duly invested in a profit bearing scheme, until and unless it is resolved by the court. Order accordingly.

9. After passing of this order, it is suggested by Mr. Shabbir Ahmed Shaikh, learned counsel for respondent No.6 that soon after the framing of the issues in suit, the matter may be referred to the commissioner for recording evidence, preferably in four [04] months' time. This is not opposed by Mr. Asim Iqbal, learned counsel for the appellant, hence no sooner the issues are framed, it is agreed that any commissioner, with the consent of all counsels, shall be appointed for recording evidence, preferably in four [04] months. Order accordingly.

10. With this understanding, the instant High Court Appeal is allowed alongwith pending application(s).

JUDGE

JUDGE

Ayaz Gul