

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
M.A. No. 38 of 2023

Date	Order with signature of Judge
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For order as to non-prosecution.

19.07.2023

Mr. Riaz Ahmed Phulpoto, Advocate for the appellant.
Respondent No.1 is also present.

Through this appeal, the appellant impugned the order dated 13.03.2023 passed by learned respondent No.3, whereby, the succession application filed by the appellant for grant of letter of administration/succession certificate was dismissed.

Learned counsel for the appellant contended that rule of prudence dictates that whenever the matter is contentious in nature, the Court may covert the succession matter into a regular suit but the learned respondent No.3 instead of converting the SMA filed before it dismissed the same, therefore, the impugned order is not tenable and be set aside.

Heard and perused the record. The essence of the impugned order is that the appellant claimed that his deceased father gifted the entire assets to him in his life time but the respondent No.1 present in Court today negated the said assertion of the appellant. The learned respondent No.3 in the impugned order having observed the nitigrities of the issue reached to the following conclusion:-

“8. It is also worth to mention here that SMA can be converted into regular suit only if objections filed by the objector found prima facie justifiable. If the objections of the objector are justifiable and arguable, the objector is to be treated as defendant and his objection as written statement in terms of

section 295 of the Succession Act r/w Rule 413 of Sindh Chief Court Rules 90S). In present case, it appears that petitioner has filed present SMA without consultation and joining the legal heirs shown in para No.1 of application u/s 295 of the Succession Act. In this situation if any order is passed as prayed, the same cannot be treated as an order passed on the objections of the objector to treat the SMA as contentious. Be that as it may, it is admitted fact that petitioner claims the assets of deceased as donee, while excluding the other legal heirs, thus this court has no jurisdiction to decide such question of declaration of gift in favour of petitioner and convert the instant petition into regular suit without availability of objections of any objector on record”.

It is gleaned from appraisal of the foregoing that the appellant concealed the material facts to be disclosed and mentioned in the Succession Miscellaneous Application (“SMA”) before learned District Judge and that the learned respondent No.3 having observed such lacuna rightly decline to allow the SMA filed by the appellant. It is also admitted by Respondent No.1 that the deceased had another wife, who is not listed in the SMA. Seemingly a fraud has been purprated with the courts.

Be that as it may be the matter at hand being a contentious and that the appellant is beseeching for a declaration on the ground that the entire assets was gifted to him by the deceased and it is a settled principle that under the statutory hierarchy, the learned Civil Court has a jurisdiction to grant a declaration. The impugned order does not suffer from any illegality or irregularity, therefore, this appeal is dismissed, however, the appellant is at liberty to redress his grievances under the statutory hierarchy.

JUDGE