

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.344 of 2022

Date

Order with signature of Judge

Present:

Mr. Justice Aqeel Ahmed Abbasi

Justice Mrs. Kausar Sultana Hussain

**Mst.Nasreen Qaiser & another.....vs.....Irfan Qaiser Saigol
& others**

- 1.For orders on CMA Misc.No.3506/2022
- 2.For orders on office objection.
- 3.For orders on CMA No.3459/2022
- 4.For hearing of main case.
- 5.For orders on CMA No.3460/2022

28-10-2022

Mr.Taimur Ali Mirza, Advocate for the Appellants.

Mr.Rasheed Ashraf, Advocate for the Respondent No.1

O R D E R

1. Urgency granted.
- 2 to 5. Instant High Court Appeal has been filed against the impugned order dated 22.09.2022 passed by learned Single Judge in Suit No.1125/2021, whereby according to learned counsel for the appellants, as a matter of record, out of 03 properties being claimed by the respondents as part of the estate left behind by the deceased, only one property i.e. Bungalow No.90-1, 13th Lane, Phase-VII, DHA Karachi, is in the name and part of the estate left behind by deceased namely, Qaiser Ahmed Saigol, whereas, two properties are not in the name of deceased, as one property was already sold out to some third party and the other had been gifted in name of son of the deceased in his life time, whereas, in respect of the house in which the appellants are residing i.e. Bungalow No.90-1, 13th Lane, Phase-VII, DHA

Karachi there is a will in favour of widow of the deceased, and inspite of such facts, through impugned order, preliminary decree has been directed to be prepared in respect of all the above properties.

According to learned counsel for the appellants, preliminary decree can only be passed in respect of properties which are owned and in the name of the deceased and there is no dispute among the legal heirs in respect of their right or share in such properties, however, in the instant case, there is a dispute with regard to claim of the parties as two properties are neither in the name of deceased as the same were already sold and gifted, nor the claim of respondents is supported by any evidence, and in any case, the matter requires evidence.

Per learned counsel, when the impugned order was passed learned counsel for the appellants was reportedly unwell, however, without providing opportunity of being heard to the contesting parties, the impugned order has been passed and the office has been directed to prepare preliminary decree and the Nazir of this Court has also been directed for the auction/partition of the subject property.

It has been prayed by the learned counsel for the appellants that the impugned order may be set-aside and/or alternatively, it may be modified to the extent of preliminary decree in respect of Bungalow No.90-1, 13th Lane, Phase-VII, DHA Karachi, which is still lying in the name of deceased, in which the appellants are residing, whereas directions may be issued to the learned Single Judge to treat this matter as short cause and record the evidence of the parties and decide the same within a period of 02 months, whereas, in the meanwhile, the

appellants will not create any third parties interest in respect of subject property.

Pursuant to Court's Notice Mr. Rashedd Ashraf, Advocate has shown appears on behalf of the respondent No.1, claimed copy of the instant High Court Appeal along with Annexures and requested for time to file Vakalatnama along with reply/objections. However, while confronted the arguments advanced by learned counsel for the appellants and proposed disposal of instant High Court Appeal while seeking modification of the impugned order in the aforesaid terms, learned counsel for the respondent No.1 does not oppose the disposal of instant High Court Appeal in the above terms, however, submits that the same shall be subject to all just exceptions/objections which the respondent No.1 may raise before the learned Single Judge with regard to his right and entitlement on the subject properties. It has been further contended by the learned counsel for the respondent No.1 that he is real son and brother of the appellants, who is being deprived to use the subject property, which admittedly is still in the name of his deceased father, whereas, he and his family was ousted forcibly by appellants and now he is not being even allowed to enter into the said house, therefore, requests that appellants may be directed to allow peaceful entry into the house.

Heard learned counsel for the parties and perused the impugned order passed by learned Single Judge. In order to avoid delay and further litigation among the legal heirs of the deceased, it will be appropriate that preliminary decree in respect of Bungalow No.90-1, 13th Lane, Phase-VII, DHA Karachi, may be prepared, and thereafter,

the parties may lead their evidence within 02 months, whereas, after recording of evidence, learned Single Judge after hearing the parties, may pass appropriate order in accordance with law. In the meanwhile, the parties shall maintain status quo in respect of subject property, whereas, no third party interest shall be created till final disposal of the suit, and the Nazir shall not put the subject property to auction.

Instant High Court Appeal is disposed of in the above terms along with listed applications..

At this juncture, learned counsel for the respondent No.1 submits that the respondent No.1 has not been allowed to enter into the subject house, therefore, requests that appellants may be directed to allow the respondent No.1 and his family to enter and reside in his father's house and shall not create any hindrance in this regard. Since this aspect of the matter is not the subject matter of instant High Court Appeal, whereas, there is no order passed by the learned Single Judge to this effect, therefore, the respondent No.1 may obtain appropriate orders from the learned Single Judge to this effect by filing appropriate application in the suit which may be decided in accordance with law.

Judge

Judge