

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
 High Court Appeal No. 342 of 2023  
 (Amir Ahmed Sethi Versus Aftab Ahmed Sethi and others)

<b>Dated</b>	<b>Order with signature of Judge</b>
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Present:  
 Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Omar Sial

Hearing Case (Priority)

1. For order on office objection/reply at A
2. For hearing of Main Case
3. For hearing of CMA No. 4200/2023 (stay)

**Dated 13.03.2024**

Mr. Rafiq Ahmed Kalwar Advocate for the appellants along with  
 Mr. Muhammad Yasir Advocate

Syed Ahsan Imam Rizvi, Advocate for the Respondent No1

Mr. Muneer Iqbal, Advocate for the Respondent No.2

Mr. Arif Shujaat M. Beg, Advocate for the Respondent No.3

M/s. Muhammad Yaseen Azad, Qazi Azizuddin, Barrister  
 Muhammad Sarmad Khan and Ms. Fozia Advocates for the  
 Respondent No.5

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**Muhammad Shafi Siddiqui, J.-** Mr. Rafiq Ahmed Kalwar, learned counsel for the Appellants, has impugned an order dated 26.09.2023 passed in a suit for administration bearing Suit No. 778 of 2011, which involves number of properties. The parties in this appeal are at dispute only in respect of one property bearing No.53-C, Block-2, PECHS, Karachi (“the property”).

2. Mr. Rizvi’s clients have disclosed their desire before learned Single Judge to sale their respective shares in the property to the occupant/tenant, which is seriously opposed by Mr. Kalwar on many counts, which are mentioned in the grounds “D” to “G” of memo of petition. It is a joint property and every inch of it is enjoyed by every co-owner and hence preferential right was questioned. Mr. Rizvi’s case is that some of the legal

heirs have given their no objections, whereas, two of them have seriously disputed such proposed transaction as it would not fetch appropriate value for their leftover share, if it is sold privately to the occupant having almost 75% share in the property.

3. We have heard the learned counsel for the parties and perused the material available on record.

4. The applicability of Section 44 of the Transfer of Property Act, 1882 (“the TPA”) which was relied upon, perhaps would apply when the transferor can ensure possession or other common or part enjoyment of the property and to enforce a partition of the same to the benefit of remaining shareholder. Since the entire property is in possession of the tenant, prima facie, the Respondents cannot ensure any of those pre-requisites of Section 44 of the TPA, however, before we could attempt to conclusively interpret Section 44 of the TPA, after complete hearing, we have proposed to the counsels that if the subject property is auctioned in a minimum timeframe, it would not only fetch better price, as the outsiders may be able to participate but the occupant/tenant can also participate actively in it. Similarly the private sale of share would also cause serious prejudice to the value of remaining shares of other shareholders. All counsels have shown their interest and have agreed subject to condition that auction may be concluded, preferably within three weeks’ time. It is agreed that the forced sale value of the property which has already been determined as Rs.150 Million be treated as one of the term of sale proclamation. Let a Sale Proclamation for public auction be prepared by the Nazir within one week’s time with participation of the counsels. Once such proclamation is prepared it may be published for inviting bids from public for a better offer. The charges of publication will be shared jointly by all the legal heirs. The

occupants/tenants are also at liberty to participate in the auction whereas the legal heirs as required under the law are entitled to match the highest bid if they deem fit and proper. The counsels shall make efforts that the entire process may be concluded at the earliest and in all fairness not more than three weeks.

The appeal is allowed in the above terms and impugned order is set aside in above terms, however, for the finalization of the prospective bids, the report be filed by the Nazir with the learned Single Judge, soon after the conclusion of the auction proceedings i.e. three weeks.

*JUDGE*

*JUDGE*

Anjad PS