JUDGMENT SHEET
IN THE HIGH COURT OF SINDH AT KARACHI.
M.A. No. 157 of 2003.

JUDGMENT

DATE OF HEARING: 19.5.2003.

APPELLANTS: Sabira Sultana and another through
Mr. Aga Faqir Muhammad Advocate.

RESPONDENTS: None present.
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MUHAMMAD SADIQ LEGHARI, J . The facts relevant to the order are that Javed Khan the respondent filed SMA No. 203/02 before the District Judge Karachi Central for grant of letter of administration in respect of the estate/property of his late mother Shahida Khanum. The property in respect whereof the letter of administration was sought is a house constructed on plot No. 24/8 B, Area, Liaquatabad, Karachi measuring 80 Sq. Yds, valued at Rs.5,00,000/-.

Petitioners/objectors Sabra Sultana & Sama Khanum the sisters of Javed Khan appeared in the Court as interveners and filed objections pleading substantially that the house shown in the schedule as property left by Shahida Khanum had already been gifted to them by registered deed dated 10.8.1998 and as such they are/were the owner of the house since before the death of their mother.

After receiving the objections the learned District Judge Karachi Central framed following two issues:-

1. Whether the property in question had been gifted by the deceased Shahida Khanum w/o Sardar Khan in favour of the objectors vide Gift Deed dated 10.8.1998 registered on 25.10.1998?
2. What should the order be?

By order dated 10.1.2003 the parties were directed to produce the documents and list of witnesses within seven days. By same order the objectors/petitioners/petitioners were also called upon to lead their evidence first. That order has been assailed through present application.

The application was admitted for hearing by order dated 24.2.2003. Despite service of the notice the respondents did not appear.

Today the application is fixed for regular hearing and arguments of the appellants learned advocate have been heard. Mr. Aga Faquir Muhammad the learned advocate for the appellants contends that it is the requirement of law that in case of contest in the S.M.A. it is to be treated as regular suit and the contesting parties are to be treated as plaintiff and defendants. He refers

to Section 295 of Succession Act, 1925. The learned Advocate also refers to rule 378 of Sindh Civil Courts Rules which relates to the Succession matters and provides for treating the contested matter/SMA as suit and proceedings with it as such adopting the procedure nearly as enumerated in the Civil Procedure Code. For the proper understanding of Section 295 of Succession Act and Rule 378 of Sindh Civil courts Rules they are reproduced below:-

> "Sec.295:- In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.
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> Rule 378:- Upon the affidavit in support of the caveat being filed (notice whereof shall immediately be given by the caveator to the petitioner), the proceedings shall be numbered and registered as a suit in which the petitioner for probate or letters of administration shall be the plaintiff and the caveator shall be the defendant, the petition for probate or letters of administration being registered as and deemed a plaint filed against the caveator and the affidavit filed by the caveator being treated as his written statement. In the suit. The procedure in such suit shall be as nearly as may be according to the provisions of the Code. The decree shall be in Form No.34 in Appendix B."

Bare look at the above provisions of law brings it out that in a situation where parties are contesting any issue the succession Misc. application is to be treated and registered as suit treating the applicant and objectors as plaintiff and defendants. Obviously the issues are to be framed for determining the controversial points which may be legal and/or factual.

In present matter the order of the learned District Judge Karachi Central shows that he started proceeding with the matter as a suit without assigning it a number as suit and treating the parties as plaintiff and defendant. Therefore it should be assigned number as suit and the parties be treated as plaintiff and defendants respectively.

On the point of issues Mr. Aga Faqir Muhammad, contended that in fact it is the respondent/appellant who asserted that the house in question belonged to their mother at the time of her demise and the objectors/defendants claim the same to have been gifted to them prior to the death of their mother therefore proper course would be to bifurcate the issues in such1 a way that the parties get chance to prove their respective assertions.

In my view the contention of Mr. Aga Faqir Muhammad has a substance in it. As Jawed khan asserted initially before the Court the house belonged to their mother at the time of her demise he must get an opportunity with onus upon him, to establish it. At the same time objector should also prove their claim.

In the result of above the revision application is disposed of directing the learned trial Court to treat the SMA as suit, and the parties as plaintiff and defendants and to recast the issues providing the parties with an opportunity to prove their respective assertions. The application is disposed of accordingly

JUDGE.