

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**H.C.A. No.302 of 2024**

[Muhammad Nadeem Khan & others Vs. Mrs. Nilofer Islam Nabi & others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:

Mr. Justice Muhammad Shafi Siddiqui C.J.

Mr. Justice Jawad Akbar Sarwana

Hearing case (Priority)

1. For orders on office objections a/w reply at 'A'.
2. For hearing of main case.
3. For hearing of CMA No.1880/2024 (Stay).

**22.10.2024**

Mr. Ahmed Masood, Advocate for the appellants

a/w Mr. Adil Channa Advocate.

Chaudhry Atif Rafique, Advocate for the respondents.

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**Muhammad Shafi Siddiqui, C.J:** While a suit for performance as Suit No.1458/2024 was pending, the title shows that at the time it was against defendant No.3 Ashraf Ali Khan who was sued through attorney Muhammad Anis Khan. During the proceedings, the attorney expired and on an application (CMA No.12418/2016) the legal heirs of Muhammad Anis Khan were ordered to be brought and arrayed as the legal heirs; defendant No.3 (i) to 3 (vii). The suit was for performance against the principal though through attorney. The counsel for the plaintiff (Mrs. Nilofer Islam Nabi) after almost eight years realized the consequences and moved an application (CMA No.1286/2024) to implead Ashraf Ali Khan as defendant No.3 and strike off the name of current defendant Muhammad Anis Khan and his legal heirs.

2. The application was filed after eight years and the impugned order was passed. Mr. Ahmed Masood vehemently contended that it was the attorney who is deemed to be the owner of the property

and that is why in suit for performance defendant No.3 was arrayed through attorney. However, after the sad demise of the attorney, only the legal heirs of Muhammad Anis Khan (attorney) were and are the contesting defendants.

3. We have heard the learned counsels and perused the record. At the outset, perhaps it was inadvertently ordered eight years ago that the legal heirs of the attorney be brought on record instead of the principal holding the title of the property, without prejudice to the rights of the attorney who claimed title on the basis of the power of attorney coupled with interest as required in terms of Section 202 of the Contract Act. Regardless this is not the matter before us. It is to be determined on the basis of evidence available on record whether Ashraf Ali Khan defendant No. 3 is the principal owner was only ostensible in the shape of title whereas virtually it was passed on to the attorney by virtue of a registered power of attorney coupled with interest or otherwise. Although there is no such declaration to such effect but Mr. Ahmed Masood submits that there is sufficient evidence to be seen under the wisdom of recent pronouncement by the Hon'ble Supreme Court in the case of Nasrullah Khan and another Vs. Mst. Khairunnisa and others (2020 SCMR 2101).

4. Chaudhry Atif Rafique, learned counsel, in order to resolve the controversy, submits that since it is a suit for performance, therefore, they would not want decision in the absence of self-claimed owner as attorney; hence he concedes that the legal heirs of the attorney Muhammad Anis Khan may remain as a contesting party alongwith Ashraf Ali Khan the principal as an additional defendant say defendant No.4.

5. The legal heirs of the attorney Muhammad Anis Khan prior to the impugned order were arrayed as defendant No.3 (i) to 3 (vii). The evidence has also been recorded. To facilitate smooth proceedings and not to complicate the matters, we are inclined to keep these references in place notwithstanding that assignment of numerical numbers has no bearing on the merits of parties' claims which are to be considered by the trial Court based on evidence. The principal Ashraf Ali Khan shall now be arrayed as defendant No.4 in the suit. For removal of doubts, it is clarified that the evidence may still have to be reconciled in terms of numerical numbers assigned to the defendants and the legal heirs.

The appeal stands disposed of alongwith listed application.

CHIEF JUSTICE

JUDGE

Asif