

# IN THE HIGH COURT OF SINDH KARACHI

## SUIT NO. 1640 OF 2010

Zubaida Khatoon ..... Plaintiff

versus

Muhammad Iqbal (since deceased  
through his legal heirs) & others ..... Defendants

None present for the plaintiff.

Mr. Muhammad Naqqash, advocate  
for legal heirs of defendant No.1

Mr. Zulfiqar Ali Langa, advocate for defendant No.2

Mr. Mustafa Safvi, advocate for defendant No.3

Date of hearing : 28.08.2024

Date of Judgment : 07.11.2024

### JUDGMENT

**OMAR SIAL, J:** Muhammad Hashim passed away on 20.01.2003. He was survived by four children; Zubaida Khatoon (Plaintiff), Muhammad Iqbal (Defendant No.1), Abdul Qadir (Defendant No.2) and Shaukat Ali (Defendant No.3). An SMA bearing No. 29/2008 for his estate comprising of two immovable properties was granted and the properties duly stood mutated in the name of Hashim's four children. Subsequently, the Plaintiff agitated in the SMA that her share of the property was not being paid to her by the defendants and hence, she moved an application for the properties to be sold. The said application was disposed of via Order dated 01.09.2010 as the purpose of the Succession Petition stood served and she was directed to file appropriate proceedings for the receipt of her share. It was then that she filed the instant suit for administration, permanent injunction and partition. The estate of Muhammad Hashim comprises of the following properties;

- i. House situated on Plot No.13, Block 7 and 8, A Yamni Road, Jinnah Cooperative Housing Society Limited, admeasuring 795 square yards. ("the House")

- ii. Shop No. M.R. 7/3, 11-B-381, situated at Bombay Bazar, Karachi (“the Shop”)

2. Order XX, Rule 13 of CPC, 1908 mandates that in a suit for administration a preliminary decree shall be passed ordering the necessary inquiries and accounts to be taken and made. This however was never done in this suit at any stage of the proceeding nor had any application been preferred for the same by any of the parties to streamline the process of administration and avoid the unnecessary complexity that has arisen due to the lack thereof.

3. Be that as it may, the valuation of both the properties was recorded in Order dated 03.10.2011. Subsequently, Abdul Qadir offered to buy off the share of Zubaida Khatoon in the House. The said request was granted and the share of Zubaida Khatoon was deposited by Abdul Qadir with the Nazir of this Court and this share was subsequently released to Zubaida Khatoon pursuant to Order dated 04.01.2016 thereby, satisfying her claim.

4. On 17.08.2017, an option was given to Abdul Qadir and Shaukat Ali to buy off the share of Muhammad Iqbal in the House. The buy off money was deposited by Abdul Qadir on 16.09.2017 via 26 pay orders in the sum of Rs. 13,000,000. The said sum was released by the Nazir to Muhammad Iqbal pursuant to Order dated 23.10.2017 and the same is reflected in the Order dated 22.11.2017. The said Order also directed the Nazir to hand over the possession of Muhammad Iqbal’s portion to Abdul Qadir. The twist in the plot arose on 25.05.2018 when the counsel for Shaukat Ali entered appearance and contended that half of the payment made to the Nazir by Abdul Qadir, against the share of Muhammad Iqbal, was made from the funds of Shaukat Ali. Hence, both are entitled to share title of Muhammad Iqbal (Defendant No.1’s) portion in equal measure. To substantiate this argument, Shaukat Ali filed a statement with this Court demonstrating that 13 of the 26 pay orders were prepared from his bank account. This assertion was denied by Abdul Qadir.

5. Against the above background on 18.10.2019, amended issues were framed superseding the issues framed on 16.02.2015. The same are as under;

1. Whether the Plaintiff is entitled for the administration of the following properties?
  - i. House/building situated on Plot No.13, Block 7 & 8, A, Yamni Road, Jinnah Cooperative Housing Society Ltd. Karachi, measuring 795 Square Yards.
  - ii. Shop/property No. M.R 7/3, 11-B-381, situated at Bombay Bazar, Karachi.
  
2. Whether the Plaintiff is entitled for the decree as prayed for?
  - A. Whether the share of Defendant No.1 was purchased solely by Defendant No.2 or jointly by Defendant No.3?
  
  - B. Whether the Defendant No.2 took loan of Rs.6,500,000/- from Defendant No.3 and the Pay Orders mentioning "Shaukat Traders" were in fact loan advanced to Defendant No.2? If yes, what would be its effect?
  
3. What should the decree be?

Issue No. 2A and 2B

6. Only Abdul Qadir and Shaukat Ali led evidence. Abdul Qadir led his evidence personally and admitted that half of the sale consideration was tendered to him by Shaukat Ali but the understanding was that the same was merely a loan. In his cross he has admitted, *"It is correct that as per contents of para 5 of my application I have stated that I and defendant No.3, Shaukat Ali, are ready to purchase the share of the defendant No.1 Muhammad Iqbal for a sum of Rs.1,29,00,000/-. It is correct that I have not mentioned in the application filed by me that I intended to obtain my loan from the defendant No.3 for the purchase of share of the defendant No.1. It is correct that I have not filed any documents wherein, I made any*

*request for grant of loan for defendant No.3...It is correct that defendant No.3 deposited Rs.65 Lacs in my account. It is correct that defendant No.3 deposited sum of Rs.65 lacs in the shape of 13 pay orders amounting to Rs.5 Lacs each with the Nazir of this court in suit No. 1640/2016. It is correct that the said amount is fifty percent share of Muhammad Iqbal. It is correct that Muhammad Iqbal has withdrawn his total share of Rs. 1,29,00,000/- from the Nazir. It is correct that I have not filed any record of payment with my A/E. It is correct that I have not filed any documents which could show that I made any offer for repayment of alleged loan or Shoukat Ali demanded any alleged any amount from me...It is correct that the defendant No.3 is residing and holding possession of the 1s floor of the suit property. It is correct that the suit property has not been partitioned yet. It is correct that I have not filed any proof of obtaining loan from the defendant No.3. It is correct that the defendant No.3 himself with his own handwriting with the Nazir of this Court. It is correct that the Nazir also got verified from the office of the Habib Metro Bank that the pay order was prepared from the account of Shouqat traders of the defendant No.3 vide letter dated 09.10.2019.”*

7. Shaukat Ali entered the witness box as well as his son namely, Muhammad Ahmed Rajput. Both stated on oath that no loan had been tendered to Abdul Qadir by Shaukat Ali. That the 13 pay orders (amounting to 50% share of Muhammad Iqbal in the House) were prepared from his bank account. The same stands confirmed by the letter issued by the Habib Metropolitan Bank Limited to the Nazir of this Court dated 09.10.2019 which is correct and is part of the record. Further, in the cross examination no question was put to Shaukat Ali by Abdul Qadir’s counsel, asserting that the money paid by him to Abdul Qadir was merely a loan. The effect of such omission is that the said key fact stands admitted by Abdul Qadir.<sup>1</sup> The question regarding the provision of loan was put to Muhammad Ahmed Rajput. However, he categorically denied such an assertion and his testimony stood uneffaced.

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<sup>1</sup> 2021 SCMR 1805, Muhammad Rafiq v. Abdul Aziz

8. It is probable that both, Abdul Qadir and Muhammad Shaukat did not express interest to buy off the share of Muhammad Iqbal simultaneously and severally in order to save funds and avoid the applicability of section 3(2) of the Partition Act, 1893 which provides that, *“If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.”*

9. Be that as it may, in view of the above admissions and the documentation brought on record by Shaukat Ali, I find that, (2A) no loan was tendered by Shaukat Ali to Abdul Qadir and (2B) that the share of Muhammad Iqbal in the House was jointly bought by Abdul Qadir and Shaukat Ali and they are entitled to it in equal proportion.

#### Issue No.1 and 2

10. So far as the issue no.1 is concerned, the claim of Zubaida Khatoon stands satisfied. This is evident from the fact that she preferred an application for withdrawal of the instant suit (CMA No. 15400/2021). Further, Nazir Report dated 14.02.2022 also reflects that her counsel filed a statement before it that Zubaida Khatoon had received her due share against both the properties from Abdul Qadir. However, since this is a suit for administration in which Defendants stand in the position of Plaintiff<sup>2</sup> the application was disallowed via Order dated 01.04.2022.

11. I do note however that the administration of the Shop has not been completed. There are various Orders which reflect that Shop had been valued and even further proceedings in relation to the same had been undertaken by the Nazir, the last of which is reflected in his report dated 14.02.2022 which was taken on record. The said exercise was stopped because of the statement of the counsel of Zubaida Khatoon that his application (CMA No. 15400/2021) for the withdrawal of the suit is pending. Thereafter, no further proceedings

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<sup>2</sup> 2016 PLD 91 Islamabad, Muhammad Zufikar v. Additional District Judges (West) Islamabad

took place before the Nazir in relation to the sale of the Shop and no further orders were made in relation to it.

12. There is no dispute that the property is jointly owned and has been in the possession of Abdul Qadir who has been profiting from its possession to the exclusion of Muhammad Iqbal's heirs and Shaukat Ali. This fact has been stated in the affidavit in evidence of both Shaukat Ali and Muhammad Ahmed Rajput and they have not been confronted on the said issue by Abdul Qadir equating to admission on his part.<sup>3</sup> Accordingly, Nazir is directed to take stock of the rental proceeds, if any, received by Abdul Qadir against the said shop and distribute the same amongst the above in accord with their share as per Shariah. Further, he is directed to proceed with the sale of the Shop and realise the proceeds thereof towards the share of each legal heir.

### Issue No.3.

13. The suit stands decreed in the following terms;

1. Plaintiff's (Zubaida Khatoon's) claim stands satisfied pursuant to Order dated 04.01.2016 and Statement dated 01.02.2022 submitted by the Plaintiff with the Nazir of the Court which is reflected in Nazir Report dated 14.02.2022.
2. Plaintiff's (Zubaida Khatoon's) share in the House and the Shop was bought by the Defendant No.2. (Abdul Qadir) This is as per the statement of Zubaida Khatoon submitted with the Nazir of this Court on 01.02.2022.
3. Defendant No.1's (Muhammad Iqbal) share in the House was bought by the Defendant No.2 (Abdul Qadir) and 3 (Shaukat Ali) jointly and in equal proportion. Hence, Defendant No.1's interest is to be transferred to both in equal proportion.

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<sup>3</sup> 2021 SCMR 1805, Muhammad Rafiq v. Abdul Aziz

4. The Shop is to be put up for sale by auction and all its proceeds including its rental proceeds, if any, are to be distributed amongst the Defendant No.1's heirs, (Muhammad Iqbal since deceased) Defendant No.2 (Abdul Qadir) and Defendant No.3 (Shaukat Ali) in accord with their share under Sharia.

14. In view of the above disposal, both the pending CMA(s) 7035/2024 and 8402/2022 are dismissed as being infructuous.

JUDGE