

Learned counsel for the Appellant has stated that the SMA ought to have been allowed by granting letters of administration to the appellant with a will annexed therewith. Learned Appellate Court vide Impugned Order has dismissed SMA with direction to approach NADRA Authority alongwith the Will and apply for letter of administration.

During the course of my own research I have stumbled upon the judgment passed in the case of **RE: Mrs. HOMAI MINWALLA**¹ where it was held as under: -

“On a true construction of the will there is no manner of doubt that the properties of the testator that were bequeathed to the petitioner vested in her interest as well as possession upon the death of the testator as an absolute owner. The petitioner was not appointed either expressly or by necessary implication as an executor to administer the testator's property and to carry into effect the provisions of the will. Nor was she residuary legatee who was entitled only to the residue of the estate after the administration was completed and who was entitled to be put in possession of the residue and to the completion of her title to the legacy only after the executor or administrators had discharged their obligations with regard to the satisfaction of debts and legacies. The directions contained in para.1 of the will with regard to the payments of debts have not effect of constituting the petitioner an executor or a residuary legatee because the testator's intention clearly was to vest his properties in interest as well as in possession of the petitioner upon his death and not after debts were paid by her to the process of administration of the properties. At the highest, the absolute bequest in favour of the petitioner imposes an obligation on her to carry out those directions as a part and parcel of the bequest. On a fair, proper reading of the material provisions of the will, there is no manner of doubt, therefore, that the petitioner was constituted the sole/universal legatee under the will, in whom the properties of the testator vested, both in interest as well as in possession, upon the death of the testator

¹ 1989 CLC 1953

and that the petitioner was not appointed as an executor of any will, either expressly or by necessary implication, nor was she constituted a residuary legatee.

In view of the foregoing discussion, the petition in so far as it prayed for grant of probate is not maintainable. The petitioner moved an application for alternative prayer for the grant of letters of administration and also filed amended petition. I grant the application. The amended petition is brought on record. I have pointed out earlier that Section 232 of the Act enables the grant of the letters of administration with the will annexed of the whole estate, or of so much thereof as may be unadministered, to a universal or a residuary legatee, provided such legatee proves the will, when the deceased has made a will, but has not appointed an executor. In the instant case, the deceased made a will. He has not appointed an executor. However, as found earlier the petitioner has been constituted a universal legatee by testamentary disposition in respect of the whole of the property left by him at the time of his demise. The petitioner has proved the will. Therefore, letters of administration with the will annexed can be legitimately granted to her.”
(Emphasis added)

I have heard learned counsel and perused the record. The Impugned Order directs the Appellant to approach NADRA Authority to process letter of administration in accordance with law. However, the Impugned Order cannot be sustained as under the Sindh Letter of Administration and Succession Certificate Act, 2021 (“Act”). NADRA Authority under the Act can only issue letter of administration in matters in which there is no probate. Existence of a Will can only be proved through Court of Law, hence instant case is beyond the scope of the Act.

In light of what has been held above the Impugned order is set aside and the case is remanded back to learned trial Court with direction to the Appellant to prove the execution of the Will in the first instance. If the

Appellant proves the execution of the Will, the court may proceed with grant of letter of administration under Section 232 of the Succession Act.

In terms of the above, instant Miscellaneous Application is disposed of.

JUDGE

MUSHARRAF ALI