

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
H.C.A. No.33 of 2024

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Date	Order With Signature Of Judge
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- 1.For hg of CMA No.1036/24
- 2.For hg of main case
- 3.For hg of CMA No.184/24

07.03.2025.

Mr. Khaleeq Ahmed, advocate for appellants.  
Syed Nadeem-ul-Haque, advocate for respondents.

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**MUHAMMAD IQBAL KALHORO, J:-** Respondent Nos. 1 and 2 claiming to be widow and son of late Commander Hussain Aftab filed a suit for declaration, direction, distribution of shares, administration, partition and permanent injunction in respect of assets left by the deceased against appellants. In the suit, they filed an application for a preliminary decree. Upon service, the appellants filed a written statement and counter affidavit to the application for the preliminary decree questioning the status of the respondents to be legal heirs of deceased Hussain Aftab.

2. After the written statement, in which the status of the appellants was challenged, the application for preliminary decree was withdrawn by the respondents. However, subsequently, on 27.11.2023, when the suit was taken up on an urgent application, learned single Judge taking into consideration the fact that the suit was for administration etc. of the assets left by the deceased, he without hearing the appellants, ordered for preparation of preliminary decree and directed the Nazir to ascertain assets left by the deceased. In compliance, the preliminary decree was prepared on 08.12.2023, which appellants have challenged in this appeal along with order dated 27.11.2023.

3. We have heard learned counsel for the parties.

4. Learned counsel for respondents has filed a statement along with certain documents and supported the impugned order and preliminary decree by stating that this appeal is time barred etc. Whereas, learned counsel for appellants has urged that preliminary decree was passed in absence, without hearing him and without even attending to the objections raised by the appellants in the written statement questioning the status of the respondents as legal heirs of the deceased. Until and

unless the issues are framed and evidence led, the said controversy cannot be decided.

5. We feel persuaded by the arguments advanced by learned counsel for the reasons that the application for a preliminary decree earlier moved by the respondents was withdrawn by them when they were confronted with the suspicion over their status as legal heirs of the deceased. After withdrawal of such application, no application seeking such relief was pending before the learned single Judge to get into it and order for preliminary decree. On 27.11.2023, the counsel for the appellants was not present and some other counsel was holding brief on his behalf. The matter was taken up on an urgent application, and then without notice to the appellants, the order for preliminary decree was passed overlooking contents of the written statement questioning the status of the respondents. We feel that the impugned order was passed in haste without ascertaining the real facts just because *prima facie* the suit for administration etc. of the assets of the deceased was filed by the plaintiffs/respondents. The appellants have raised serious questions over the status of the respondents in their reply, which need to be decided first before proceedings with the case on merits. We, therefore, are of a humble view that the impugned order and the preliminary decree are not sustainable in law. Accordingly, we set aside the same, remand the matter to the learned single Judge/trial Court to proceed with the matter on merits by framing the relevant issues and allowing the parties to lead evidence thereon before ordering for a preliminary decree in terms of Order XX Rule 13 CPC.

The appeal is accordingly disposed of in above terms along with pending applications.

JUDGE

JUDGE

HANIF



