

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI
Misc. Appeal No.104 of 2022

Date

Order with signature of Judge

Fresh Case

1. For orders on office objection a/w reply as at 'A'
2. For order on CMA No.6669/2022 [exemption]
3. For Hg of Main Case.

30.01.2023.

Mr. Muhammad Ali Soomro, advocate for the appellant.

ARSHAD HUSSAIN KHAN, J. The appellant through instant Misc. Appeal has assailed the order dated 28.09.2022, passed by learned IXth Additional District and Sessions Judge, Karachi [West] in SMA bearing No.365 of 2022, under Section 278 of the Succession Act, 1925, filed by the present appellant whereby said petition was dismissed.

2. Learned counsel for the appellant during the course of his arguments while reiterating the contents of the appeal has argued that the learned trial court has failed to appreciate the material documentary evidence brought on the record by the parties in its true perspective and has misread the same which led the learned trial court towards the wrong conclusion. He has argued that the trial court committed material illegality and the impugned order is absolutely illegal and ultra vires. He has urged that the impugned may be set aside and letter of administration may be granted in favour of the appellant.

3. I have heard learned counsel for the appellant and perused the impugned order.

From perusal of the record, it appears that the learned trial court has given comprehensive reasons for dismissal of the aforementioned S.M.A. And before proceedings further, it would be appropriate to mention here the concluding para of the impugned order, which reads as under :-

“..... I have gone through the FRC issued by
Register General of Pakistan on 13.07.2021 and from

perusal of the same it appears that Mst. Shabana was also shown as one of the legal heirs of deceased persons. In para No.2 of the petition the name of legal heirs of deceased persons were mentioned but in the same Shabana was neither shown as one of the legal heir of deceased persons nor she filed no objection in respect of above petition. Admittedly, late Rasheed Khan was also one of the legal heir of above named deceased persons but the legal heirs of Rasheed Khan neither made party nor they filed no objection. Objector produced Will/Wasiyatnama dated 05.05.1996 which was allegedly executed by the deceased Qasim Khan in presence of the witnesses which has not been challenged by the petitioner in any competent court of law.

In the light of above discussion and circumstances, it is crystal clear that the petitioner has not come with clean hands, consequently the above SMA is hereby dismissed with no order as to cost. The petitioner is at liberty to file civil suit before the competent court of law having jurisdiction”.

4. After hearing learned counsel for the appellant and perusal of the record, I am of the view that the disputed questions of facts are involved in the matter, which can only be resolved after recording evidence of the parties. Moreover, learned counsel, appearing on behalf of the appellant, failed to point out any illegally, irregularity and infirmity in the impugned order. In the circumstances, instant Misc. Appeal is hereby dismissed in limine along with pending applications.

JUDGE