

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

M.A. No.26 of 2025

[Syed Sabir Hussain Zaidi Appellant]

Appellant: Through Ms. Noreen Naz, Advocate.

Date of Hearing & order: 30.10.2025

ORDER

ARSHAD HUSSAIN KHAN, J. The Appellant, through the instant Miscellaneous Appeal, has challenged the order dated 14.10.2024 passed by the learned IInd Additional District Judge, Karachi-East in S.M.A. No.445 of 2015, whereby third application of the appellant seeking permission to sell the property viz. Quarter No.36/4, Block-D, measuring 100 square yards situated in Malir Township, Karachi (**the subject property**), was disposed of as the permission to sell his share in the subject property was earlier granted to him.

2. Brief facts of the case are that the appellant filed S.M.A. No.445 of 2015 for issuance of Letter of Administration in respect of subject property left by the deceased Syed Sarfaraz Hussain Zaidi, who passed away on 24.01.2003. After completing codal formalities as the matter remained non-contentious, the petition was granted and Letter of Administration was issued in favour of the appellant / petitioner vide order dated 19.04.2016 whereupon the subject property was mutated in the names of the legal heirs. Thereafter, appellant filed two consecutive applications seeking permission to sell out whole property but both were disposed of with observation / direction that the appellant can sell only his share in the subject property. Lastly, by order dated 14.10.2024 another application of the appellant seeking permission to sell the subject property has been turned down on the ground that he has already been granted permission to sell his share, which has been impugned in the instant proceedings.

3. Learned counsel for the appellant contended that the learned Trial Court while passing the impugned order has not applied its judicious mind and the same is based on surmises and conjectures and is not sustainable

under the law. He further contended that the impugned order has been passed without considering the documentary proof produced alongwith the petition, as such, the impugned order is defective, perverse, prejudicial, infirm, inoperative and unsustainable in the eyes of law. He lastly prays that the appeal may be allowed and the impugned order may be set-aside.

4. Heard learned counsel for the appellant and perused the record carefully.

5. It is an admitted position that S.M.A. No.445 of 2015 filed by the appellant in respect of immovable property left by deceased Syed Sarfaraz Hussain Zaidi was granted and Letter of Administration was issued in favour of the appellant/petitioner, so also the subject property has been transferred in the names of all the legal heirs whereby the property record has been updated to reflect their ownership and upon mutation, the beneficial interest and title in their respective shares of the property have vested absolutely in all the legal heirs/co-owners. The Administrator's role post-mutation, for a co-owned property, is limited to his own share unless compelling necessity is shown.

6. Besides above, the permission to sell his share has already been granted to the appellant by the Trial Court but he has miserably failed to demonstrate any paramount legal necessity (such as the payment of overriding debts or liabilities of the deceased) that would require the compulsory sale of the shares belonging to the legal heirs-co-owners, as such, the learned Trial Court has rightly passed the order granting permission to sell only his share to the appellant and leaving him and other legal heirs at liberty to sell the subject property after completing all legal formalities before concerned department.

7. It may also be observed that one of legal heirs in the present case is minor and the Court in case of minor would be more cautious and obliged to protect his / her interest. In the instant Appeal the appellant has alleged that after valuation of the property, he has deposited the share of the minor namely Malaika Batool before Nazir of the Trial Court but record is silent that how and for what amount the property was evaluated and no amount of share of the minor allegedly deposited with the Nazir is mentioned, so also the appellant has not produced any single document regarding

evaluation of the property and computing the shares of the minor. Furthermore, no such plea was taken by the appellant before the Trial Court in his applications seeking sale of the subject property.

8. There appears no illegality and / or infirmity in the impugned orders. No force is found in the stance taken by the appellant in the present proceeding and further the appellant has also failed to point out any error and/or infirmity in the impugned order, which could warrant interference by this Court. Consequently, this Misc. appeal is dismissed alongwith pending applications.

JUDGE