

FORM No. HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P. No.48544 of 2024

Dost Muhammad (deceased) **Versus** Muhammad Sarwar and others
through L.Rs and others

Sr. No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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11.12.2024 Sardar Abdul Majeed Dogar, Advocate for petitioners.
Mr. Arshad Malik Awan, Advocate for respondent Nos.1 to 12.
Mr. Waheed Alam, Asst. Advocate General for respondent Nos.13 to 16.

Petitioners in this constitutional petition have challenged orders dated 06.6.2024 and 22.7.2024 of the courts below in terms whereof the application for appointment of Receiver was accepted and appeal thereagainst was dismissed.

2. Respondent Nos.1 to 12, Muhammad Sarwar, etc. (now represented by their legal heirs) instituted a suit for declaration that they were entitled to their Islamic share from the inheritance of late Fateh Din who passed away on 01.2.1905. Suit was resisted by the petitioners/defendants. An application under Order XL, Rule 1, C.P.C. for appointment of Receiver was filed which was allowed by the learned Civil Judge, who appointed the Revenue Officer as Receiver vide order dated 06.6.2024. Petitioners/defendants challenged the order in appeal which was dismissed by learned Addl. District Judge vide order dated 22.7.2024. These orders are now assailed in the instant constitutional jurisdiction

3. Learned counsel for the petitioners submitted that the impugned orders are illegal and untenable; that the status of respondents as LRs and the extent of their share in late Fateh Din's estate is yet to be determined as per order of Supreme Court while petitioners' entitlement stands determined in the earlier round of litigation which was given effect in the Revenue Record; that the respondents had no right at present to claim appointment of Receiver nor had any prima facie case for the issuance of such an order and that the courts below failed to satisfy as to existence of mandatory grounds for seeking appointment of Receiver under Order XL, Rule 1, C.P.C. and were persuaded by extraneous and untenable circumstances; that the respondents being not in possession, petitioners held the property to the extent of their share in accordance with law who could not be deprived of the possession in the garb of the appointment of Receiver at the instance of persons who are yet to seek determination of their rights, if any, in the property and in any case their claim was to the extent of fractional share; that no relief in the form of appointment of Receiver which was a harsh remedy could be allowed; that their suit was not maintainable and that the courts below ignored all these important questions. Contrariwise learned counsel for the respondents supported the impugned orders and maintained that in the circumstances of the case and keeping in view the chequered history it was obvious that the respondents were deprived of the mesne

profit of land to the extent of their share and that the interest of justice warranted the appointment of Receiver to preserve the rights of all concerned and that the petitioners were not denied of any title by the impugned order and, therefore, they could not feel aggrieved thereof and that the order in the circumstances was just and fair which did not warrant interference.

4. The submissions made by learned counsel for the parties have been considered, the relevant documents have also been examined. Factual perspective which is relevant for the decision of this petition are that Fateh Din died on 01.2.1905, he was owner of 2315 kanals and 16 marlas of land in village Shaam Din Wahgra, Tehsil Depalpur, District Okara. On his demise the land devolved upon his widow (Mst. Baigan), and mother (Mst. Shahadat Bibi) as limited owners under the custom. On Mst. Shahadat Bibi's death in 1925, widow of deceased Fateh Din, Mst. Baigan became the life estate-holder of entire land which came to an end on promulgation of Punjab Muslim Personal Law Shariat Application Act (Removal of Doubts) Ordinance, 1972 under whose provisions inheritance devolved upon the LRs of Fateh Din, the last male owner under Islamic law and mutation was entered in the name of late Fateh Din's widow, mother and one sister, namely, Mst. Roshnai. Muhammad Anwar instituted a civil suit on 02.6.1965 claiming that Fateh Din had another sister Mst. Mehran and that he being her LR was entitled 1/26 share in the estate of

Fateh Din. The learned Civil Judge dismissed the suit but in appeal the suit was decreed declaring Mst. Mehran as sister of late Fateh Din. The matter went up to Supreme Court of Pakistan and the findings regarding the existence of Mst. Mehran Bibi as sister of Fateh Din were upheld vide judgment dated 22.2.1999 and Muhammad Anwar was declared to be entitled to get 4/195 share in the estate. The findings were given to the extent of share of Muhammad Anwar while the other claimants were left to get their shares determined through court of law.

5. The operative part of judgment dated 22.2.1999 of the Supreme Court in Civil Appeal No. 85 of 1994 titled Mst. Baigan widow of Fateh Din through L.Rs. and others v. Muhammad Anwar and others is as follow:

"In these circumstances, we are not inclined to interfere with the concurrent findings of fact recorded by the 2 Courts below on issues No. 2 to 4 holding Muhammad Anwar as collateral of late Fateh Din. However, in so far the question of determination of share of Muhammad Anwar in the estate left behind by deceased Fateh Din is concerned, the learned counsel for the appellants as well as respondent No.1 agreed that the calculation of the share of Muhammad Anwar was not in accordance with the law of Shariah. The learned counsel were, accordingly, given time to calculate the share of Muhammad Anwar on the basis, that Fateh Din at the time of his death was survived by his mother Mst. Shahadat, Widow Mst. Baigan, Sisters Mst. Roshani and Mehran. The learned counsel admit that on the basis of above mentioned legal heirs, the shares of Mst. Shahadat works to 2/13, Mst. Baigan 3/13 and 2 sisters Mehran and Roshani 8/13. Accordingly, the appellants are entitled to 3/13 share out of the estate of late Fateh Din while plaintiff's share in the estate of the deceased works out to 4/195 as Mst. Thari, who was daughter of Mst. Mehran had 2 daughters namely, Mst. Sughran and Mst.

Sakina and 2 sons Anwar and Sarwar. The learned counsel for Muhammad Ramzan (respondent No.6), who was later impleaded as a defendant in the suit, contends that Muhammad Ramzan is also entitled to the share in the estate left behind by late Fateh Din as a collateral. We are afraid, the question whether Muhammad Ramzan is also entitled to a share in the estate left behind by late Fateh Din as a collateral, cannot be gone into by this Court as his right to inherit as a collateral of Fateh Din has not been determined at any stage so far. It is, however, open to Muhammad Ramzan or his legal heirs to have their entitlement determined in accordance with the law before claiming any share in the estate of the deceased Fateh Din. Since only one person, Muhammad Anwar who is one of the 4 children left by Mst. Thari, daughter of Mehran, has come to the Court for determination of his share, therefore, we have only determined his share in the present proceedings which comes to 4/195. We, accordingly, modify the judgment of the High Court to the extent that the appellants are held entitled to 3/13 share in the estate left by Fateh Din while plaintiff/respondent No.1 is held entitled to the share of 4/195. The appeal stands disposed of accordingly with no order as to costs."

6. Later correction of mutation No. 379 relating to inheritance of Fateh Din was made to give effect to the decision of the Supreme Court, mutation was entered in the name of Mst. Roshnai (sister of Fateh Din), LRs of Mst. Baigan (widow of Fateh Din) and Muhammad Anwar one of the LRs of Mst. Mehran. The names of rest of the LRs were left out to be determined by the court of law as per the order of Supreme Court of Pakistan. It appears that an appeal was filed before the Collector and thereafter a Revision before the Executive District Officer (Revenue) was filed which were decided vide order dated 26.5.2000 and 06.7.2002 respectively. The aggrieved persons

went to the Board of Revenue by filing ROR No. 1973 of 2002. The Member Board of Revenue accepted the revision petition vide order dated 24.1.2005 and set aside the impugned order of Collector and Executive District Officer (Revenue) and remanded the case to the Tehsildar/AC-1, Depalpur to decide the matter of inheritance in the presence of parties.

7. Muhammad Anwar filed W.P. No. 4451 of 2005 titled Dost Muhammad, etc. v. Muhammad Sarwar and others against the order dated 24.1.2005 of Member Board of Revenue which was allowed vide order dated 08.12.2015 wherein the order of Member Board of Revenue dated 24.1.2005 was set aside. Review application No. 3 of 2016 in W.P. No. 4451 of 2005 was filed before this Court which was decided by a Division Bench vide Order dated 13.12.2017 against which Order, C.P. No. 97 of 2018 titled Dost Muhammad etc. v. Muhammad Sarwar, etc. was filed which was allowed vide Order dated 03.11.2020 by the Supreme Court, in result, the petition was converted into an appeal and was allowed and the impugned order of the Division Bench of this Court dated 13.12.2017 in Review was set aside. The operative part of Order dated 03.11.2020 of Supreme Court reads as follows:

'Civil Petition No.97 of 2018

In a previous round of litigation this Court vide its judgment dated 22.02.1999 passed in Civil Appeal No. 85 of 1994 titled as Mst. Baigan, etc. v. Mohammad Anwar, etc. (Civil Appeal No. 85 of 1994) held as follows:

"Since only one person, Muhammad Anwar who is one of the 4 children left by Mst. Thari, daughter of Mehran, has come to the Court for determination of his share, therefore, we have only determined his share in the present proceedings which comes to 4/195. We, accordingly, modify the judgment of the High Court to the extent that the appellants are held entitled to 3/13 share in the estate left by Fateh Din while plaintiff/respondent No. 1 is held entitled to the share of 4/195. The appeal stands disposed of accordingly with no order as to costs."

Pursuant to the said judgment the share of Muhammad Anwar was calculated and duly mutated by the revenue authorities. The respondents claim also to be the legal heirs of Mst. Mehran. The right of the respondents has not been determined in the judgment of the Supreme Court. Consequently, the revenue authorities namely the Revenue Officer, A.C. and EDO(R) have referred the determination of the respondents' entitlement to a share in the legacy of Fateh Din deceased to the Civil Court. The learned Member Board of Revenue set aside that direction and referred the matter back to the Revenue Officer to determine the question himself.

2. The learned Single Bench in its judgment dated 08.12.2015 made reference to a plethora of case law and held that the matter involved the adjudication of long standing entries in the Revenue Record and of complicated question of inheritance in favour of legal heirs going down the family tree by at least two generations. The review application filed by the respondents was not heard by the learned author Judge. In his absence it was heard by a learned Division Bench. Through the impugned judgment dated 13.12.2017 a direction has been issued for the respondents to be given their shares in the legacy of Fateh Din deceased. By doing so the main question in issue namely the determination of their shares has not been touched at all. We do not find merit in the impugned judgment delivered the learned review Bench."

8. In light of the aforesaid orders the respondents/plaintiffs filed the present suit for declaration for determination of legal heirs of late Fateh Din and Mst. Mehran and for

determination of their shares in accordance with Islamic Law. They claimed their relationship with Mst. Mehran sister of Fateh Din through her daughter Mst. Thari, which suit was contested. An application under Order XL, Rule 1, C.P.C. was filed in the suit with the allegations that determination of share of Muhammad Anwar was only made while the Islamic shares of other legal heirs of Mst. Thari was left for determination and the petitioners/defendants were receiving benefits of the entire land which was not legally permissible. It was the case of the respondents that Mst. Mehran was sister of late Fateh Din and Mst. Thari was daughter of Mst. Mehran and that Mst. Thari had two sons namely Muhammad Anwar and Muhammad Sarwar and two daughters Mst. Sughran and Mst. Sakina and that Muhammad Anwar had been declared as LR with specific share in the suit property i.e. 4/195 share by the Supreme Court, the respondents were also entitled as being legal heirs and being brother and sisters of Muhammad Anwar but that the petitioners had been enjoying the whole property instead of their share as declared by the Supreme Court, and that it will be just and convenient for the parties to appoint a Receiver to preserve the property and the benefits drawn there-from for all concerned.

9. Perusal of the judgment dated 22.2.1999 of the Supreme Court referred supra in Civil Appeal No.85 of 1994 titled Mst. Baigan widow of Fateh Din deceased through L.Rs and others v. Muhammad Anwar, Muhammad Sarwar and

others shows that it was declared that at the time of death of Fateh Din he was survived by mother Mst. Shahadat Bibi, widow Mst. Baigan and sisters Mst. Roshnai and Mst. Mehran. The share of inheritance of Mst. Shahadat Bibi was 2/13, Mst. Baigan as 3/13 and sisters Mst. Roshnai and Mst. Mehran as 8/13 while the plaintiff therein i.e. Muhammad Anwar in the said proceedings had the share in the estate of Fateh Din to the extent of 4/195 as Mst. Thari who was daughter of Mst. Mehran had two daughters namely Mst. Sughran and Mst. Sakina and two sons Muhammad Anwar and Muhammad Sarwar. It was observed that only one person Muhammad Anwar who was one of the four children left by Mst. Thari daughter of Mst. Mehran had come to the Court for determination of his share, therefore, the Court determined his share in those proceedings which comes to 4/195 share while the appellant Mst. Baigan, etc. therein were entitled to 3/13 shares in the estate of Fateh Din. In regard to the other claimants as shareholders, the matter was left for *determination* by the court of competent jurisdiction.

10. In this backdrop respondents' case in the present suit is that Muhammad Anwar having been declared as one of the grandchildren of Mst. Mehran through Mst. Thari (Mehran's daughter), the respondents/plaintiffs who were claiming same status as brothers and sisters of Muhammad Anwar from Mst. Thari, had the same right in the property and are entitled to their share in the property of Fateh Din for which a *determination*

was solicited in the suit through the court. It was plaintiffs/respondents' grievance that Muhammad Anwar now represented by legal heirs and other defendants were in occupation of the property in entirety beyond their share in the property while the plaintiffs/respondents were being deprived of the benefits thereof. In this background the appointment of Receiver was solicited. As against the stance of the respondents the plea of the petitioners/defendants throughout had been that their share of entitlement in the estate having been determined by the Court of final jurisdiction, they could not be deprived of the possession of the property at the instance of respondents/plaintiffs, whose claim was only to the extent of a fractional part of property. It was added that the respondents/plaintiffs were yet to prove their right in the property, being so, they could not be given any preference against the rightful owner declared by the Supreme Court and that the order of appointment of Receiver was wholly unjust and contrary to the rule of law.

11. Main reason that prevailed with the learned Civil Judge for accepting the application to appoint a Receiver was that the parties in the suit were in litigation since more than a century and that the court also deemed it appropriate to appoint Receiver with the reason that it will develop more interest of the parties to get decided their case at the earliest rather to prolong it for another century and that Order XL, Rule 1, C.P.C. empowers the court to appoint a Receiver, where it appears to be just and convenient to

preserve the property pending judicial determination of the rights of the parties. In appeal the order was affirmed by the learned Addl. District Judge observing that being one of the progeny of Mst. Thari daughter of Mst.Mehran sister of Fateh Din, the entitlement of Muhammad Anwar as 4/195 share in the estate left by Fateh Din, which was determined while Mst. Baigan, etc., appellants in appeal before the Supreme Court, were held entitled to 3/13 share in the estate of Fateh Din, it was within the discretion of the court to appoint Receiver before or after passing of decree and that the question regarding legal rights of heirship was raised and that the court was empowered to appoint a Receiver.

12. The question in this case is as to whether the order of appointment of Receiver by the trial court and affirmation thereof by the appellate court are not contrary to the principles as laid by the superior courts in the matter of appointment of Receiver or that the reasons are perfunctory and whether the discretion in this case was exercised arbitrarily or in a mechanical manner. Rule 1 of Order XL, C.P.C. provides that where it appears to the court that it is just and convenient to appoint a Receiver for preservation of property, the court can appoint a Receiver. It is a settled rule that order of appointment of Receiver being harsh and onerous, which shall be passed with care and caution. In the case of Sardar Wali Muhammad v. Sardar Muhammad Iqbal Khan Mokal and 7 others (PLD 1975 Lah.

492) it was observed that appointment of Receiver was not a matter of course and that such discretion was to be exercised in accordance with principles enunciated by the superior courts which included the consideration that this power should be sparingly used, to safeguard the interest of all the parties as well as the property which is subject matter of the litigation and that possession of persons in bona fide occupation of the property should not be disturbed unless there are allegations of wastage or dissipation of property or apprehension of irreparable loss and injury. In Muhammad Usman v. Muhammad Shahbaz and 7 others (2007 MLD 1121) it was observed that remedy provided in terms of Order XL, Rule 1, C.P.C. by its very nature is harsh and that powers under the said provision of law are to be exercised sparingly and with utmost caution. In Mst. Ghulam Sughran alias Sughra Naz v. Muhammad Ayyub Dar (1989 CLC 2493) it was observed in the context of plea for appointment of Receiver that parties being co-sharers, it was well-settled that a co-sharer in possession of a joint property was not liable to be ousted therefrom, except on partition by metes and bounds. In Mst. Mariyam v. Mst. Khtoon Bai and others (2005 YLR 3265) also principles to be kept in view while considering the plea for appointment of Receiver were reiterated including the existence of emergency or danger or loss demanding immediate action while the right of the applicant must be reasonably clear and free from doubt. In (Shahzadi) Sharif Sultana

v. (Brig. Shahzada) Sher Muhammad Jan and another [PLD 1958 (W.P.) Lah. 288] it was observed one of the principles to be kept in view while considering the application for appointment of Receiver was that bona fide occupant of property cannot be disturbed in the garb of appointment of Receiver and that co-sharer in undivided property is entitled to retain the possession till such time the property is partitioned and specific share is allocated.

13. Considering the facts in the instant case, the share of Mst. Baigan, etc. and Mst. Shahadat Bibi, as mother and widow of deceased Fateh Din, have been determined up to the Supreme Court and they were held entitled to receive 3/13 and 2/13 share in the estate of Fateh Din while Mst. Roshnai and Mst. Mehran, sisters of Fateh Din, were declared to be entitled as 8/13 share. Similarly, Muhammad Anwar's share as one of the sons of Mst. Thari daughter of Mst. Mehran was declared as 4/195 share and the status of other claimants of Mst. Thari was left to be determined by the court of competent jurisdiction. In these circumstances there was substance in the submission of petitioners' learned counsel that their shares having been determined in the property while the share of plaintiffs/respondents as heirs of Mst. Thari was yet to be determined, therefore, the petitioners could not be deprived of the possession of property, as a co-sharer to the extent of their share particularly when no relief of possession was claimed in the plaint and the order of learned

courts below for appointment of Receiver could not be held as just and convenient or in accord with settled principle of law. Mere fact that the parties were fighting for their rights of inheritance since long would not be a ground to appoint a Receiver or to deprive the persons who were declared to be co-sharers to a specific extent by the Supreme Court.

14. For the reasons supra instant constitutional petition is allowed and orders dated 06.6.2024 and 22.7.2024 of the courts below are declared to be illegal and without jurisdiction and accordingly set aside. The application for appointment of Receiver, as a result, shall be deemed to have been declined. The learned Civil Judge seized of the matter shall ensure final decision of the suit within four months by fixing shortest dates and ensuring that unnecessary adjournments are avoided.

(RASAAL HASAN SYED)
JUDGE

Announced in open Court on 24.12.2024.

JUDGE

Approved for reporting

JUDGE