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JUDGMENT SHEET

LAHORE HIGH COURT

MULTAN BENCH MULTAN

JUDICIAL DEPARTMENT

Civil Revision No.350 of 2019

Mst. Kubra Bibi Vs. Public at Large, etc.

J U D G M E N T

Dates of Hearing:	12.09.2024 and 16.09.2024
Petitioner by:	Rana Muhammad Shakeel, Advocate.
Respondent No.2 by:	Ch. Khalid Mehmood Arain, Advocate. Mr. Khalid Masood Ghani, Assistant Advocate General.
Respondents No.3 to 7 by:	Proceeded against <i>ex-parte</i> on 14.12.2021.

Anwaar Hussain, J. Through the present Civil Revision, the petitioner, namely, Mst. Kubra Bibi has laid challenge to order dated 04.07.2018 passed by the learned Trial Court as also order dated 26.01.2019 passed by the learned Appellate Court below. Through the former order, the learned Senior Civil Judge, Muzaffargarh issued succession certificate in the application filed by respondent No.3 (“**respondent**”) titled “*Mehboob Akhtar, etc. v. Public at Large, etc.*” in which the petitioner was arrayed as respondent No.7 whereas through the latter order, the appeal preferred by the petitioner was dismissed.

2. By way of factual background, it has been noted that the respondent, being one of the legal heirs of deceased Muhammad Bukhsh, applied for grant of succession certificate regarding amount

of Rs.1,150,926/- lying in Account bearing No.10400100029401, maintained with Punjab Cooperative Bank, Muzaffargarh in the name of deceased Muhammad Bakhsh. The present petitioner, who was respondent No.7 in the application filed contesting written statement with the averments that the said account was joint in nature in which she made her father as a joint account holder and the whole amount available in the account was deposited by the petitioner, which she earned from teaching in a private school. On the other hand, the respondent took stance that the disputed account was to devolved upon both account holders. Issues were framed and evidence was led and recorded whereafter through order dated 04.07.2018, the application for grant of succession certificate was allowed and appeal preferred by the petitioner was dismissed *vide* order dated 26.01.2019.

3. Learned counsel for the petitioner contends that the findings of the Courts below on issues No.1 and 2 are the result of misreading of evidence as well as misconstruction of the applicable law. Adds that although findings are concurrent but the same proceeded on illegality, which merits interference by this Court in terms of powers conferred under Section 115 of the Code of Civil Procedure, 1908. Further adds that the respondent-Bank has failed to produce the Account Opening Form wherein it was categorically recorded that the account was to be operated by “either or survivor” and after the death of predecessor-in-interest of the parties, it was the petitioner who was entitled to the proceeds lying in the said account.

4. Conversely, learned counsel for the respondent-Bank submits the Account Opening Form was not available with the respondent-Bank, however, while relying on the Bank’s policy, which was brought on record as Exh.C-1, the application of the respondent was

allowed as the said policy clearly depicted that the account was to be operated by anyone. Despite service, no one on behalf of the respondents No. 3 to 7 have not appeared and hence, they were proceeded against *ex-parte* 14.12.2021.

5. Arguments heard. Record perused.

6. The nub of the matter is to examine the scope of instructions, i.e., “either or survivor” given by the joint account holders to a bank where they maintained their joint account *qua* rights of the legal heirs of one of the joint holders, upon the death of the latter.

7. Generally, in banking operations, if the account is in the name of two individuals, the amount lying therein is payable to either of the joint holders, on demand and/or date of maturity or to the survivor on death of any of the account holders. The legal question involved has been subject matter of number of cases before this Court as also before the other Coordinate High Courts in Pakistan. In case reported as “Syed Shah Pr Mian Kazmi v. Mst. Nelofer (widow) and others” (PLD 2012 Peshawar 101), it was held that, under the Islamic Law of Inheritance, no legal heir of a deceased bank account holder could be deprived from receiving his/her share from the bank account of the deceased even if there is nomination in favour of some other person or there are instructions on record such as “either or survivor”. This Court in case of “Dubai Islamic Bank Pakistan, etc. v. Mst. Saima Yasin etc.” bearing Civil Revision No. 55-D of 2020 also held that with death of an account holder of joint account any authorization/authority given by the deceased stood automatically revoked and even a validly authorized person is denuded of such power after death of the principal as all assets of deceased by operation of law stood vested in the ownership of legal heirs of the deceased and the bank or the joint account holder are not empowered to unilaterally operate the account or withdraw any

amount until and unless as per law a declaration of the rendition of account is obtained and succession certificate or letter of administration or probate is issued by the court of competent jurisdiction.

8. Having above elucidation on the legal question in sight, this Court is of the opinion that the said guidelines or stipulations contained in a Bank Account Opening Form are mere operating instructions. The said operating instructions cannot be given precedence over the law of inheritance. These instructions are meant to safeguard the banks in situations where one of the joint account holders dies and it does not come to the knowledge of the banks and/or any claim by the legal heirs of the deceased joint account holders is not intimated to the bank and the bank in good faith pays the amount, lying with it, to the surviving account holder(s). In such situation, the bank may be absolved from any liability keeping in view the facts of a particular case. The legal heirs of the deceased account holder can claim the recovery from the surviving joint holders; however, it does not give unfettered power to the bank to unilaterally facilitate the surviving joint holder(s) to withdraw all the money.

9. Moreover, the evidentiary resume of the case reveals that though Account Opening Form was not brought on record by either of the parties, however, specimen signature card was got exhibited as Exh.R.01, which indicates that account was joint and to be operated by any one and was not treated as “either or survivor” as claimed by the petitioner. During the course of arguments before this Court, learned counsel for the petitioner did acknowledge that the father of the petitioner was joint account holder who had valuable land and used to receive the lease money. The claim of the petitioner that the entire amount lying in the bank account was owned by the

petitioner, which she avers to have received on account of salary as a private teacher, is also belied by this fact. In fact, the petitioner has failed to prove her source of income, which also persuaded the Courts below to decide against her.

10. There are concurrent findings of law and facts against the petitioner, which are immune from interference by this Court in its revisional jurisdiction unless there is some gross illegality, irregularity, jurisdictional defect, misreading or non-reading of evidence therein. Learned counsel for the petitioner has failed to point out any such defect in the impugned findings.

11. In view of what has been discussed above, the instant civil revision is **dismissed** being devoid of merits. No order as to costs.

(ANWAAR HUSSAIN)
JUDGE

Announced in open Court on 27.09.2024.

Judge

Approved for reporting

Judge

Maqsood