

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.7073 of 2022

Dr. Asma Nighat Zaidi & others

Versus

Syeda Safoora Begum & others

J U D G M E N T

Date of hearing: 09.05.2023.

Petitioners by: Raja Muhammad Riaz Satti, Advocate.

Respondents by: Syed Ali Abbas Sherazi, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.: Through instant petition, petitioners have called into question vires of order dated 16.06.2021 and judgment dated 12.11.2021, passed by learned Civil Judge and Additional District Judge, Lahore, respectively, whereby petitioner No.1's application under Section 476 Cr.P.C. for initiation of criminal proceedings against respondent No.1 regarding concealment of facts while obtaining succession certificate was allowed with certain directions concurrently.

2. Brief facts of the case are that respondent No.1 applied for issuance of succession certificate regarding amount available in the bank accounts of deceased Munir Hussain Qureshi. Initially, succession certificate dated 03.04.2007 was issued by determining shares of petitioners and respondents. Petitioner No.1 filed application under Section 476 Cr.P.C., and during proceedings learned counsel for the parties orally agreed to surrender the shares withdrawn from the bank in pursuance to aforesaid succession certificate. In the first instance, the Court directed petitioner No.1 to submit record of the amount withdrawn by her from the bank and

deposit the same in Court, vide order dated 16.02.2017. Feeling aggrieved, petitioner No.1 assailed said order before learned Additional Sessions Judge, which remained intact and Writ Petition No.81926 of 2017 was also dismissed vide order judgment dated 04.10.2017. The Hon'ble Supreme Court, vide order dated 07.05.2019 passed in Civil Petition No.2955-L of 2017, also declined to interfere in the matter and learned Trial Court was allowed to proceed as per agreed arrangement between the parties. Learned Trial Court, after framing issues, recording evidence and hearing arguments from both sides, re-determined the shares by including names of other three sisters of the deceased and directed the shareholders who received the amounts to return the amount or settle amongst all legal heirs according to their shares. Petitioner No.1 was also directed to submit double local surety bonds according to her respective legal share, vide order dated 16.06.2021. Feeling aggrieved, petitioners assailed said order in Revision Petition before learned Additional District Judge, which was dismissed vide judgment dated 12.11.2021. Hence, instant petition.

3. Learned counsel for petitioners submits that it was clearly mentioned in the account opening application that in the event of death of either of the account holders, the survivor shall be entitled to have the full amount available in the joint account. He contends that petitioner No.1 was contributing in the joint account from her salary as she was working as Lady Doctor. He further submits that learned Courts below have failed to appreciate that respondents No.2 to 5 were residuaries and they received amounts much excess to their entitlement and petitioners (widow & daughters) have been deprived of their lawful shares. He argues that respondents are obliged to pay back the amount they had received in excess to their entitlement and to deposit the amount received by them in Court as agreed between the parties but learned Courts have failed to advert

to this important aspect of the matter, hence, impugned decisions are unsustainable in the eye of law.

4. Conversely, learned counsel for respondents defends the impugned decisions.

5. Arguments heard. Available record perused.

6. The matter relates to distribution of shares amongst legal heirs out of the amount available in the bank accounts of deceased Munir Hussain Qureshi i.e. PLS Saving Joint Account No.01-100-3208-1 (jointly opened with petitioner No.1), in Allied Bank Limited, Johar Town, Akbar Chowk, Lahore and a Foreign Currency Saving Account No.02-088-0190-5 in the same branch of the bank. Petitioner No.1 (widow), petitioners No.2 & 3 (daughters), respondent No.1 (mother), respondents No.2 to 4 (brothers), respondent No.5 (sister) and Shaida Sajjad, Saima Qamar Aftab & Shaista Ijaz (sisters) are legal heirs of deceased Munir Hussain Qureshi. The relationship between the parties is not in dispute.

7. All moveable and immoveable properties owned and possessed by the deceased at the time of death and includes a property which is due to the deceased from any other person (though not received by the deceased during his life time, but the deceased was legally entitled to raise a claim in respect of the same in his life time) and distributable among his legal heirs as per their respective shares is called *Tarka*. It is a settled law that the succession to the estate of a Muslim under the *Muhammadan Law* shall open the moment a person departs from this world and rest of the proceedings are mere formalities. It is his legal heirs, as per the *Shariah*, who are alive at that time, shall be entitled to inherit his estate.

8. The fact that account opening application / form is bearing characteristic of “either or survivor” neither gives any authority to the Bank to disburse the available amount to the survivor of the joint account holder nor makes the survivor sole owner of the

amount available in joint account. This arrangement also does not lend support from Muhammadan Law, especially when the Courts below after appreciating the evidence brought on record have concurrently observed that it was not established that petitioner had any own source of income rather she was dependent upon her husband and the joint account was opened in the air of confidence for sake of domestic liabilities. Moreover, it was not stipulated in the application / form that the survivor was unconditionally entitled to withdraw any amount from the said account after the death of co-account holder without adopting the due process of law. Admittedly, the amount available in the joint account was not gifted to petitioner No.1, thus, she retains no title over the same. Even otherwise, under the law with the death of one of the account holders of a joint account any authorization/authority given by the deceased co-account holder stood automatically revoked and even a validly authorized person is denuded of such power after death of the principal as all assets of the 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 regarding succession or letter of administration or probate is issued by the Court of competent jurisdiction.

In outlines of Muhammadan Law by Fyzee (1964 Edition) the following commentary exists at page 218 :-

"Advancement, Joint account.-Where a Muslim died leaving deposits in the joint names of himself and his daughter, payable to either or survivor, such deposits did not constitute a gift in the nature of advancement to the daughter in the absence of proof of specific intention...."

Even in nomination cases, nominee is not entitled to receive the entire amount of deceased. Such nomination would neither be a will nor a gift nor a trust. It would merely be a mandate, the validity of which would expire with death and the amount available in the account would be undisposed estate of the deceased. Such

nomination cannot override the provisions of Islamic Law of Inheritance, therefore, no legal heir could be deprived from receiving their respective share. Reference can be made to Ch. Habibullah v. Sheikhpura Central Cooperative Bank Ltd. (PLD 1987 Supreme Court 53), Malik Safdar Ali Khan and another v. Public-at-Large and others (2004 SCMR 1219), Syed Shah Pir Mian Kazmi v. Mst. Nelofer (Widow) and others (2012 CLD 850) and Dubai Islamic Bank Pakistan and others v. Mst. Saima Yasin and others (2020 CLD 518).

9. Learned Courts below have rightly appreciated the legal perspective of the matter and impugned decisions are supported by valid lawful reasons. Learned counsel for petitioners has failed to point out any illegality or legal infirmity in the concurrent findings of Courts below, hence no interference is warranted in exercise of constitutional jurisdiction.

10. In view of the above, instant petition, being devoid of any merit, is hereby dismissed.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge