

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

C.R.No.60420/2021

Gulzar Ahmad (deceased) **VS.** Rab Nawaz etc.
through his legal heirs

Date of hearing	07.11.2023
Petitioner by	Mr. Qasim Hassan Buttar and Sohail Altaf Joiya, Advocates
Respondents No.1 to 6 by	Syed Ejaz Qutab, Advocate
Respondents No.15 & 16 by	Mr. Muhammad Shafique Baloch and Raja Abdul Qadeer, Advocates

Ch. Muhammad Iqbal, J:- Through this single judgment I intend to decide the titled Civil Revision [No.60420/2021] as well as Civil Revision No.58628/2021 as both these cases have arisen out of the same judgments & decrees.

2. Through these civil revisions the petitioners have challenged the validity of the judgment & decree dated 26.03.2019 passed by the learned Civil Judge, Khushab who decreed the suit for declaration filed by the respondents No.1 to 6 and also assailed the judgment & decree dated 25.06.2021 passed by the learned Additional District Judge, Khushab who dismissed the appeal of the petitioners.

3. Brief facts of the case are that the respondents No.1 to 6/ plaintiffs filed a suit for declaration against the petitioners and respondents No.7 to 17/defendants and contended that Fateh

Khan was the original owner of the suit land measuring 277 Kanal 19 Marla comprising Khewat No.66, 67 situated in Moza Ballawal Tehsil & District Khushab. Said Fateh Khan passed away in 1937 leaving behind Mst. Fazlan (widow), Roshna, Jhallan, Sahibzadi and Bivi (daughters) as his legal heirs and his inheritance mutation No.145 dated 24.05.1937 was incorporated in favour of Mst. Fazlan (widow) as limited owner. Thereafter, Muslims Shariat Application Act was promulgated and succession of Fateh Khan was re-opened and mutation No.335 dated 08.04.1969 was incorporated in favour of Mst. Fazlan (widow) and Mst. Sahibzadi (daughter), Ghulam Jillani and Munawar Khan (nephews). The respondents/plaintiffs contended that at the time of death, Fateh Khan had four daughters and one widow but while incorporating mutation No.335, three daughters namely Roshna, Jallan and Bivi were deprived from the inheritance. Mst. Bivi passed away in 1961 and her husband/Sher Muhammad (respondent No.6) challenged the validity of mutation No.335 before the Collector Joharabad, who vide order dated 28.07.1969 remanded the matter for correction of said mutation after incorporation of all legal heirs of Fateh Khan deceased. In the post remand proceedings mutation No.14 dated 30.01.1982 was incorporated but in the said mutation, names of other three daughters of Fateh Khan namely Roshnai, Jallan and Mst. Bivi were again not incorporated as per Shariah. The respondents/plaintiffs filed application for correction of the revenue entries before the District Collector Khushab who vide order dated 11.11.2013 advised the respondents/plaintiffs to approach Civil Court for redressal of their grievance. Hence, the suit was filed.

The petitioners/defendants filed contesting written statement whereas the other defendants were proceeded against

ex-parte. Out of the divergent pleadings of the parties, the trial Court framed following issues:-

1. Whether the Fateh Khan s/o Wali Muhammad was succeeded by Fazlan as wife, Roshana, Jalan, Sahab Zadi and Bevi as daughters? OPP
2. Whether plaintiff/predecessor plaintiffs are entitled to succeed inheritance of Fateh Khan s / o Wali Muhammad? OPP
3. Whether mutation No.335 dated 08.01.1961 and subsequent mutation No.14 dated 30.01.1982 were sanctioned fraudulently by depriving all the legal heirs of Fateh Khan including Bevi and Jalan and above said mutations are liable to be set aside qua rights plaintiffs? OPP
4. Whether plaintiffs are entitled to get decree of declaration as prayed for? OPP
5. Whether Sahab Zadi was the only daughter of Fateh Khan out of his wedlock with Fazlan? OPD
6. Whether predecessor of plaintiffs were not legal heirs of Fateh Khan? OPD
7. Whether plaintiffs were estopped by their own words and conduct to file this suit? OPD
8. Whether this court lacks jurisdiction to entertain this suit as mutation was sanctioned during consolidation proceedings? OPD
9. Whether impugned mutations were sanctioned in accordance with law? OPD
10. Whether this suit is liable to be dismissed with cost? OPD
11. Relief.

And recorded pro and contra evidence of the parties and finally decreed the suit vide judgment & decree dated 26.03.2019. Being aggrieved, the petitioners filed appeal which was dismissed by the appellate Court vide judgment & decree dated 25.06.2021. Hence, these civil revisions.

4. I have heard learned counsels for the parties and have gone through the record.

5. To prove the assertions made in the plaint and to dislodge the onus of issues No.1 to 4, respondent/Rab Nawaz appeared as P.W.1 and deposed that the suit property was owned by Fateh

Khan s/o Wali; that Fateh Khan passed away in the year 1937 leaving behind a widow Fazlan as well as four daughters namely Roshnai, Jallan, Bivi and Sahibzadi; that after the death of Fateh Khan, mutation of inheritance No.145 dated 24.05.1937 was entered in favour of Fazlan as limited owner; that after promulgation of Shariat Act, the limited ownership was abolished upon which revenue officials incorporated mutation No.335 whereby Fazlan (widow) got 1/8 share and Sahibzadi (daughter) got 1/2 share whereas the names of other three daughters were omitted at the time of recording of said inheritance mutation; that the daughters were alive at the time of death of Fateh Khan; that husband of Mst. Bivi namely Sher Muhammad filed an application against mutation No.335; that Mst. Bivi died in 1961; that the death certificate was produced before the District Collector who remanded the matter with the direction that if at the time of death of Fateh Khan, Mst. Bivi, Jallan and Roshnai were alive, their respective shares may be given to them; that in remand the Revenue Officer did not send any notice to the plaintiffs nor summoned them; that Sher Muhammad filed an application for compliance of remand order upon which it revealed that a fresh mutation No.14 was incorporated in 1982 in the revenue record; that they filed an application for correction of the said mutation; that Ghulam Farooq defendant got recorded his statement that if the plaintiffs are entitled for share as per Shariah, they would have no objection on correction of mutations; that the District Collector observed that the matter is complicated one as such the plaintiffs should approach Civil Court. Sher Muhammad (P.W.2) also fully supported the stance of the respondents/plaintiffs. Despite lengthy cross examination, the witnesses remained firm on their stance.

6. Conversely, the petitioners/defendants produced sole witness namely, Ghulam Farooq (D.W.1) who deposed that:

"فتح خان 1937 میں فوت ہوا تھا۔ فتح خان کی زینہ اولاد نہ تھی۔ جب فتح خان فوت ہوا اس وقت اس کی وراثت رواج عام کے مطابق منتقل ہوئی تھی۔ متذکرہ قانون کی وجہ سے فتح خان کی وراثت اس کی بیوہ فضلاں بی بی کے نام منتقل ہوئی تھی۔ فضلاں بی بی کو مشروط مالکہ قرار دیا گیا تھا۔ شریعت ایکٹ کے نفاذ کے بعد انتقال متدعو یہ درج و تصدیق ہوا تھا۔ متذکرہ انتقال درست تصدیق ہوا تھا۔ انتقال نمبر 335 فضلاں اور اس کی دختر صاحبزادی کے نام منتقل ہوا تھا۔ جب متذکرہ انتقال تصدیق ہوا اس وقت فتح خان کی بیٹیاں روشنائی، بیوی اور جلاں وفات پا چکی تھیں۔ متذکرہ انتقال کے اندراج کے خلاف شیر محمد مدعی نمبر 6 نے اپیل دائر کی تھی اور انتقال ریمانڈ ہوا تھا۔ شیر محمد، بیوی کا خاوند ہے۔"

He deposed during cross examination that:

"یہ درست ہے کہ اراضی متدعو یہ کا اصل مالک فتح خان ولد ولی ذات کھوکھر تھا۔ فتح خان کل 10-1427 کا مالک تھا۔ یہ درست ہے کہ فضلاں فتح خان کی بیوہ تھی۔ فتح خان 1937 میں فوت ہوا تھا۔ فتح خان اور فضلاں کی چار بیٹیاں تھیں۔ روشنائی، جلاں، صاحبزادی اور بیوی تھیں۔ یہ درست ہے کہ جب فتح خان فوت ہوا اس وقت فتح خان کی چاروں بیٹیاں زندہ تھیں۔ یہ درست ہے کہ فتح خان کی کل اراضی بطور مشروط مالکہ فضلاں کے نام منتقل ہوئی تھی۔ یہ درست ہے کہ روشنائی کی شادی منور خان کے ساتھ ہوئی تھی۔ یہ درست ہے کہ روشنائی 06.09.1949 کو بے اولاد فوت ہوئی تھی۔ یہ درست ہے کہ جب روشنائی فوت ہوئی اس وقت اس کی تینوں بہنیں زندہ تھیں، اس کا خاوند بھی زندہ تھا۔ جلاں کی شادی اللہ بخش کے ساتھ ہوئی تھی۔ یہ درست ہے کہ 23.09.1951 کو جلاں بھی بے اولاد فوت ہو گئی تھی۔ جب جلاں فوت ہوئی اس وقت اس کی دو بہنیں اور اس کا خاوند اللہ بخش زندہ تھا۔۔۔ صاحبزادی 01.08.1982 کو فوت ہو گئی تھی۔۔۔ یہ درست ہے کہ شجرہ نسب میں بیوہ اور چاروں بیٹیوں کو ظاہر کیا گیا ہے۔ یہ درست ہے کہ فتح خان کی وراثت کو چاروں بیٹیوں میں تقسیم ہونا تھا۔ یہ درست ہے کہ انتقال وراثت چاروں بیٹیوں کی بجائے صرف صاحبزادی کے حق میں درج و تصدیق ہوا۔ یہ درست ہے کہ روشنائی، بیوی اور جلاں کو بمطابق انتقال وراثت فتح خان کی وراثت میں حصہ نہ ملا تھا۔۔۔ اگر مدعیان شرعاً و قانوناً حصہ کے حق دار ہیں تو ہمیں اس پر کوئی اعتراض نہ ہے۔"

7. Admittedly, Fateh Khan, owner of the suit land, died in 1937 leaving behind one widow (Mst. Fazlan) and four daughters (Mst. Roshna, Jallan, Bivi and Sahibzadi) as his legal heirs but his inheritance mutation was entered in favour of his widow as limited owner. After promulgation of West Pakistan Muslim Personal Law (Shariat) Application Act, 1948 the inheritance mutation of Fateh Khan was reviewed but again his three daughters i.e. Mst. Roshna, Jallan and Bivi were excluded from

his inheritance. The relationship of respondents/plaintiffs with Fateh Khan as daughter as well as depriving them from the legacy of their deceased predecessor are admitted by the respondents/defendants, thus admitted facts need not to be proved. Reliance is placed on the cases of Mst. Nur Jehan Begum through LRs v. Syed Mujtaba Ali Naqvi (1991 SCMR 2300) and Mst. Rehmat and others Vs. Mst. Zubaida Begum and others (2021 SCMR 1534).

8. Admittedly, deceased Fateh Muhammad Khan as well as the parties to lis are Muslims by faith and followers of Quran and Sunnah. Even as per Article 227 of the Constitution of the Islamic Republic of Pakistan, 1973, the principles of Quran and Sunnah are admitted as supreme law of this country and all provisions, rules, regulations are to be legislated and framed within the precincts of Islamic principles. For reference, Article 227 of the Constitution of Islamic Republic of Pakistan, 1973 is reproduced as under:-

227. Provisions relating to the Holy Quran and Sunnah.-

(1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such injunctions.

Explanation.-In the application of this clause to the personal law of any Muslim sect, the expression “Quran and Sunnah” shall mean the Quran and Sunnah as interpreted by that sect.

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.

(3) Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.

As the predecessor-in-interest of the parties of the lis as well as the parties themselves are Muslims and principles of Quran and Sunnah are mandatorily and manifestly applicable upon them as well. The shares of each and every Muslim inheritor have

conclusively been prescribed in Holy Quran. Allah Almighty has ordained the Muslims to decide their disputes as per the principles of the Holy Quran as described in following verses:

اور جو فیصلہ نہ کرے اس (کتاب) کے مطابق جسے نازل فرمایا اللہ نے تو وہی لوگ کافر ہیں۔ ﴿سورة المائدة: آیت نمبر ۴۴﴾
 اور جو فیصلہ نہ کرے اس (کتاب) کے مطابق جسے اتارا اللہ نے تو وہی لوگ ظالم ہیں۔ ﴿سورة المائدة: آیت نمبر ۴۵﴾
 اور جو فیصلہ نہ کریں اس کے مطابق جسے اللہ تعالیٰ نے اتارا ہے تو وہی لوگ فاسق ہیں۔ ﴿سورة المائدة: آیت نمبر ۴۷﴾
 (ترجمہ: جناب مولانا فتح محمد جالندھری)

The rights or shares of each and every Muslim heirs in the estate of his/her deceased propositus is absolutely, conclusively and finally described/determined in the Holy Quran, which shares are definite in nature. In this regard, it is expedient to take guidance from the Holy Quran, particularly from Surah tul Nisa Ayat Nos.7 to 11 (English translation whereof by **Marmaduke Pickthall** and Urdu translation by **Molana Fateh Muhammad Jalandari**) are reproduced as under:-

7. Unto the men (of a family) belongeth a share of that which parents and near kindred leave, and unto the women a share of that which parents and near kindred leave, whether it be little or much. A legal share.
8. And when kinsfolk and orphans and the needy are present at the division (of the heritage), bestow on them therefrom and speak kindly unto them.
9. And let those fear (in their behaviour toward orphans) who if they left behind them weak offspring would be afraid for them. So let them mind their duty to Allah, and speak justly.
10. Lo! Those who devour the wealth of orphans wrongfully, they do but swallow fire into their bellies. And they will be exposed to burning flame.
11. Allah commands you concerning (the provision for) your children; to the male the equivalent of the portion of two females, and if there be only women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then for her is the half. And to each of his parents a sixth of the inheritance, if he have a son; and if he have no son and his parents are his heirs, then to his mother appertaineth the third; but if he have brethren, then to his mother appertaineth the sixth, after any legacy he may have bequeathed, or debt (hath been paid). Your parents and your children: Ye know not which of them is nearer unto you in usefulness. It is an injunction from Allah. Lo! Allah is knower, Wise.

جو مال ماں باپ اور رشتہ دار چھوڑ مرے تھوڑا ہو یا بہت اس میں مردوں کا بھی حصہ ہے۔ اور عورتوں کا بھی۔ یہ حصے (اللہ کے) مقرر کیے ہوئے ہیں۔ اور جب میراث کی تقسیم کے وقت (غیر وارث) رشتہ دار اور یتیم اور محتاج آجائیں تو ان کو بھی اس میں سے کچھ دے دیا کرو۔ اور شیریں کلامی سے پیش آیا کرو اور ایسے لوگوں کو ڈرنا چاہیے جو (ایسی حالت میں ہوں کہ) اپنے بعد ننھے ننھے بچے چھوڑ جائیں اور انکو انکی نسبت خوف ہو (کہ ان کے مرنے کے بعد ان بچہ داروں کا کیا حال ہو گا) پس چاہیے کہ یہ لوگ اللہ سے ڈریں اور معقول بات کہیں۔ جو لوگ یتیموں کا مال ناجائز طور پر کھاتے ہیں وہ اپنے پیٹ میں آگ بھرتے ہیں۔ اور دوزخ میں ڈالے جائیں گے۔ اللہ تمہاری اولاد کے بارے میں تم کو ارشاد فرماتا ہے کہ ایک لڑکے کا حصہ دو لڑکیوں کے حصے کے برابر ہے۔ اور اگر اولاد میت صرف لڑکیاں ہی ہوں (یعنی دویا) دو سے زیادہ تو کل ترکے میں ان کا دو تہائی۔ اور اگر صرف ایک لڑکی ہو تو اس کا حصہ نصف۔ اور میت کے ماں باپ کا یعنی دونوں میں سے ہر ایک کا ترکے میں چھٹا حصہ بشرطیکہ میت کے اولاد نہ ہو۔ اور اگر اولاد نہ ہو اور صرف ماں باپ ہی اسکے وارث ہوں تو ایک تہائی ماں کا حصہ اور اگر میت کے بھائی بھی ہوں تو ماں کا چھٹا حصہ (اور یہ تقسیم ترکہ میت کی وصیت کی تعمیل) کے بعد جو اس نے کی ہو یا قرض کے (ادا ہونے کے بعد جو اسی کے ذمے ہو عمل میں آئے گی) تم کو معلوم نہیں کہ تمہارے باپ دادوں اور بیٹوں پوتوں میں سے فائدہ کے لحاظ سے کون تم سے زیادہ قریب ہے یہ حصے اللہ کے مقرر کیے ہوئے ہیں۔ بے شک اللہ سب کچھ جاننے والا (اور) حکمت والا ہے۔ (ترجمہ: جناب مولانا فتح محمد جالندھری)

Further in Surah tul Nisa, Ayat No.33 as well as 176, it has been ordered as under:-

اور جو مال ماں باپ اور رشتہ دار چھوڑ مرے تو (حق داروں میں تقسیم کر دو کہ) ہم نے ہر ایک کے حقدار مقرر کر دیئے ہیں اور جن لوگوں سے تم عہد کر چکے ہو ان کو بھی ان کا حصہ دو بے شک خدا ہر چیز کے سامنے ہے۔ ﴿آیت نمبر 33﴾

(اے پیغمبر) لوگ تم سے (کالاہ کے بارے میں) حکم (خدا) دریافت کرتے ہیں کہہ دو کہ خدا کالاہ کے بارے میں یہ حکم دیتا ہے کہ اگر کوئی ایسا مرد مر جائے جس کے اولاد نہ ہو (اور نہ ماں باپ) اور اس کے بہن ہو تو اس کو بھائی کے ترکے میں سے آدھا حصہ ملے گا۔ اور اگر بہن مر جائے اور اس کے اولاد نہ ہو تو اس کے تمام مال کا وارث بھائی ہو گا اور اگر (مرنے والے بھائی کی) دو بہنیں ہوں تو دونوں کو بھائی کے ترکے میں سے دو تہائی۔ اور اگر بھائی اور بہن یعنی مرد اور عورتیں ملے جملے وارث ہوں تو مرد کا حصہ دو عورتوں کے برابر ہے۔ (یہ احکام) خدا تم سے اس لئے بیان فرماتا ہے کہ بھٹکتے نہ پھرو۔ اور خدا ہر چیز سے واقف ہے ﴿آیت نمبر 176﴾

Further in the most authenticated book of Hadith (Sahi Bukhari Sharif Vol.III, relevant at Page No.606 Chapter No.922) the shares of the legal heirs of a deceased have also been described as under:-

باپ اور ماں کی طرف سے اولاد کی میراث اور زید بن ثابت نے کہا، کہ اگر کوئی مرد یا عورت بیٹی چھوڑے تو اس کو نصف ملے گا اور اگر دو بہنیں یا زیادہ ہوں تو ان کو دو تہائی ملے گا، اور اگر ان کے ساتھ کوئی بیٹا بھی ہو تو پہلے اور شر کا کو دے کر باقی سے مرد کو دو حصہ اور عورت کو ایک حصہ دیا جائے گا۔ (صحیح بخاری شریف)

Moreover, according to Section 2 of the Muslim Personal Shariat Application Act, 1937, the Shariat Laws were made applicable where the parties are/were Muslims. Section 2 of the Act *ibid* is reproduced as under:

2.Application of Personal Law to Muslim.-
Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubarat maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs other than charities and charitable institutions and charitable and religious endowments the rule of decisions in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)

Section of 3 of the West Pakistan Muslim Personal Law (Shariat) Application Act, 1948 in this regard is also reproduced as under:

“3. *In respect of immovable property held by a Muslim female as a limited owner under the Customary Law, succession shall be deemed to open out on the termination of her limited interest to all persons who would have been entitled to inherit the property at the time of the death of the last full owner had the Muslim Personal Law (Shariat) been applicable at the time of such death, and in the event of the death of any such person before the termination of the limited interest mentioned above, succession shall devolve on his heirs and successors existing at the time of the termination of the limited interest of the female as if the aforesaid such person had died at the termination of the limited interest of the female and had been governed by the Muslim Personal Law (Shariat);*

Provided that the share, which the female limited owner would have inherited had the Muslim Personal Law (Shariat) been applicable at the time of the death of the last 41 owner, shall devolve on her if she loses her limited interest in the property on account of her marriage or re-marriage and on her heirs under the Muslim Personal Law (Shariat) if her limited interest terminates because of death.”

The West Pakistan Muslim Personal Law (Shariat) Act, 1962 was also promulgated in this regard, Section 2 whereof is reproduced as under:

2. *Application of the Muslim Personal Law.—*
Notwithstanding any custom or usage, in all questions

regarding succession (whether testate or intestate), special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, legitimacy or bastardy, family relations, wills, legacies, gifts, religious usages or institutions, including waqfs, trusts and trust properties, the rule of decision, subject to the provisions of any enactment for the time being in force, shall be the Muslim Personal Law (Shariat) in case where the parties are Muslims.”

Reliance in this regard is placed on cases titled as The Federation of Pakistan through Secretary, Law & Parliamentary Affairs, Islamabad vs. Muhammad Ishaq and another (PLD 1983 SC 273), Abdul Ghafoor and others Vs. Muhammad Shafi and others (PLD 1985 SC 407), Mst. Fazal Jan Vs. Roshan Din and others (PLD 1990 SC 661), Ismail and another Vs. Ghulam Qadir and others (1990 SCMR 1667), Sardar Vs. Mst. Nehmat Bi and 8 others (1992 SCMR 82), Muhammad Yousaf through Legal Heirs and 2 others Vs. Mst. Karam Khatoon through Legal Heirs and 2 others (2003 SCMR 1535), Ghulam Haider and others Vs. Murad through Legal Representatives and others (PLD 2012 SC 501), Fayyaz Hussain and others Vs. Haji Jan Muhammad and others (2018 SCMR 698), Ghulam Qasim and others Vs. Mst. Razia Begum and others (PLD 2021 SC 812), Abdul Khaliq (deceased) through LRs. Vs. Fazalur Rehman and others (2022 SCMR 1665) and Manzoor Hussain (deceased) through Legal Heirs and others Vs. Muhammad Rafique and others (2020 CLC 400).

9. As regard the objection of the petitioners/defendants that the suit is time barred. Admittedly, the moment Fateh Khan closed his eyes, all his legal heirs according to the principles of Quran and Shariah became absolute owner to the extent of their respective shares in estate of the deceased and without resorting to the legal course of independent transaction, the said ownership cannot be taken away by means of any unauthorized entry in the revenue record and if any entry is made in clandestine manner

with collusiveness of the revenue staff, such entry is devoid of any legality and creating any valid right. The main object of registration and sanctioning of mutation of inheritance is mere formality to update the official record whereas all legal heirs of a deceased become absolute owners of the property to the extent of their respective share until and unless they themselves voluntarily and legally further alienate their said share/right and the said legal heirs by operation of law become joint owners in the estate having constructive possession over their share and no limitation runs against the inheritance matters as well as against any patently void order entry. Reliance is placed on a latest judgment cited as Ghulam Qasim and others Vs. Mst. Razia Begum and others (PLD 2021 SC 812) wherein the Supreme Court of Pakistan has held as under:

“4. Immediately on the death of a person, his/her legal heirs become owner of his estate under Muslim law. In the case of Ghulam Ali v. Mst. Ghulam Sarwar Naqvi it was held that:

The main points of the controversy in this behalf get resolved on the touchstone of Islamic law of inheritance. As soon as an owner dies, succession to his property opens. There is no State intervention or clergy’s intervention needed for the passing of the title immediately, to the heirs. Thus, it is obvious that a Muslim’s estate legally and juridically vests immediately on his death in his or her heirs and their rights respectively come into separate existence forthwith. The theory of representation of the estate by an intermediary is unknown to Islamic Law of inheritance as compared to other systems. Thus there being no vesting of the estate of the deceased for an interregnum in any one like an executor or administrator, it devolves on the heirs automatically, and immediately in definite shares and fraction.

The above-noted principle has been continuously affirmed, including in the cases of Mst. Reshman Bibi v Amir, Mirza Abid Baig v Zahid Sabir, and Farhan Aslam v Mst. Nuzba Shaheen.

Another reliance is placed on the cases titled as Ghulam Ali and 2 others Vs. Mst. Ghulam Sarwar Naqvi (PLD 1990 SC 1), Khan Muhammad through L.Rs. and others Vs. Mst. Khatoon Bibi and others (2017 SCMR 1476) and Bashir Ahmad Anjum Vs. Muhammad Raffique and others (2021 SCMR 772). Thus, the argument of learned counsel for the petitioners/defendants is hereby repelled.

10. Learned counsel for the petitioners has not pointed out any illegality or material irregularity, mis-reading and non-reading of evidence in the impugned judgments and decrees passed by the learned Courts below and has also not identified any jurisdictional defect. The concurrent findings of fact are against the petitioners which do not call for any interference by this Court in exercise of its revisional jurisdiction in absence of any illegality or any other error of jurisdiction. Reliance is placed on the case titled as Mst. Zaitoon Begum v. Nazar Hussain and another (2014 SCMR 1469).

11. In view of above, both these civil revisions being devoid of any merit are dismissed. No order as to costs.

(Ch. Muhammad Iqbal)
Judge

Approved for reporting.

Judge