

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Umar Ata Bandial
Mr. Justice Mazhar Alam Khan Miankhe

Civil Appeal No. 288 of 2013.

(On appeal from the judgment dated 28.12.2012 passed by the High Court of Balochistan in CMA No. 01/2011.).

Zohra Bibi and another

...Appellant (s)

Versus

Haji Sultan Mahmood and others

...Respondent (s)

For the Appellant (s):

Raja Saif ur Rehman, ASC.

Mr. Ahmad Nawaz Ch. AOR (Absent)

For the Respondent (s):

Mr. Shafqat Jan, ASC (for respondent No.1)

Mr. Tariq Aziz, ASC/AOR

(for respondents No.2-4)

Respondents No.5&6

Ex-parte

Date of Hearing:

06.12.2017

Judgment

Mazhar Alam Khan Miankhel, J.- This appeal has arisen out of judgment dated 28.12.2012 of Balochistan High Court whereby appeal of Respondent No. 1 against the judgment/order dated 28.02.2011 of the Senior Civil Judge-II, Quetta was allowed and revocation of succession certificate dated 13.11.2006 was set aside by holding that the application for revocation of succession certificate was incompetently filed by present Appellants.

2. Brief facts of the case emerging out of the record would reveal that after the demise of propositus of the parties Haji Gul Hassan Sheikh, his son Haji Sultan Mehmood, Respondent No.1, herein, was successful in getting a succession certificate dated 13.11.2006 in his name by claiming himself to be the sole legal heir of the deceased propositus. After culmination of the proceedings in his favour, he alongwith his son Hassan Mehmood as guarantor also submitted an undertaking in the Court for submission of details of accounts and also held themselves jointly and individually liable/ responsible to satisfy the claim of any other legal heir of the deceased if any, in case someone comes forward. On getting knowledge of the said fraudulent act of Respondent No. 1, present Appellants moved an application under Section 383 of the Succession Act, 1925 for revocation of said succession certificate bearing No. 35/2006 dated 13.11.2006, the same was ultimately allowed by the trial Court vide its judgment/ order dated 28.02.2011. The Respondent No. 1 herein, feeling himself aggrieved of the order of revocation, questioned the same by way of an appeal before the High Court which was accepted and order of revocation of succession certificate dated 28.02.2011 of the trial Court was set aside, hence, the present appeal.

3. Learned counsels for the parties were heard and the record of the case was perused.

4. Perusal of the record would reveal that the fact that the deceased propositus of the parties had two wives, has never been disputed by any one. Present Appellants, the two daughters were from Mst. Noor Bibi and Respondents No. 1 to 4 herein, were from his other wife namely

Mst. Hussain Bibi (both the widows died during the pendency of application for revocation of succession certificate).

Status and relationship of the parties intrse before the Court was never disputed even by the Respondent No. 1 rather he alleged in his reply that according to a family settlement, all the legal heirs had received their share of inheritance and for that reason they were deliberately not joined as party in the application for grant of succession certificate. When status and relationship of the parties with the predecessors in interest is not denied then every legal heir is entitled to get/ receive his/ her *Shari* share to the extent of his/ her entitlement in the property moveable/ immovable left by the predecessor. So, all the legal heirs of deceased Haji Gul Hassan have the right to get to the extent of their respective shares. Before proceeding further we may observe that Respondent No.1 in his reply alleged that every legal heir was paid his/her due share. So it was for the Respondent No.1 to have proved his stance of payment of respective shares to all the legal heirs but he has miserably failed to do so. Mere allegations in the pleadings would never be sufficient to establish the fact alleged in the pleadings. So, we without any hesitation observe that all the legal heirs are entitled to get the respective share in the legacy of propositus.

We at present are only concerned with the amounts shown in the application for succession certificate (original and amended). Under the law, the Appellants herein are entitled to get their *Shari* shares as per their entitlement and the trial Court while revoking the original certificate of succession has very rightly held as under:

“ I heard arguments advanced by the parties in support and against the application and I also went through the record of succession certificate No. 35/2006 alongwith present application. The objection raised by the contesting respondents were just about time limitation of filing of this application. Other objections were about affidavit of applicant that same are not genuine and further allegation raised that the applicants both female having no knowledge and this application has been filed in connivance of husband of one of the applicants. It is alleged that name of deceased has not been mentioned correctly. The whole objections raised having no weight to discard the legal entitlement of the applicants as legal heirs or protect the wrongful act of respondent No. 1. The respondent badly failed to show that on what account he obtained cash amount of deceased without giving the share of other legal heirs. The question relating whether this application is time barred in this regard it is settled principle of law that no time limit will be counted if the action found to be result of fraud of misrepresentation and in such situation or case it is held by the honorable apex courts that time runs from the date of knowledge. So objection about time limitation is discarded. Previous record fully shows that respondent No. 1 Sultan Mahmood committed fraud by concealment of fact not mentioned in his application and in ex-parte evidence that the deceased has also other legal heirs. As sufficient evidence available on record that all legal heirs of deceased Haji Gul Hassan Sheikh are entitled for their shares according to Muhammadan law and Islamic Sharia so I have no hesitation to accept this application for revocation of succession certificate. From the record it is also revealed that surety namely Hassan Mahmood s/o Sultan Mahmood and Muhammad Ismail s/o Ghulam Dastagir have also taken back (release) their surety after completion of three years still according to their affidavit filed at the time of filing surety they have taken fully responsibility that in case of fraud and misrepresentation they are liable to pay the amount for which they stood surety and on the basis of same undertaking that are under obligation to pay the amount in case the respondent No. 1 failed to pay the amount to the all legal heirs surviving according to Sharia Fithwa. Murasallah be sent to revenue authority/ Tehsildar Quetta for report within four-days alongwith copy of Fard and affidavit of surety available on the record for attachment of property of sureties till recovery of amount or otherwise for recovery of process of sale of attached property according to law. The applicants further directed to file Sharia Fithwa the same must be verified and appear in person while applying for succession certificate. Application disposed off in this manner”.

5. Perusal of the impugned judgment would reflect that the same instead of dealing with the substantial question of law, is based on mere technicalities. The facts which prevailed with the High Court were (i) the affidavits of Respondent No. 1 and his witnesses, (ii) no response by the Appellants for more than a period of 3 ½ years inspite of publication in a newspaper of wide circulation (iii) the amount in question was withdrawn by the Respondent No. 1 long before and fourthly the liability of the sureties was also discharged after a lapse of three years and for the above reasons asked the Appellants to approach the civil Court for redressal of their grievances, if any.

The cardinal principle of Mohammadan law is that the inheritance of a person opens the moment he dies and all the legal heirs become owners to the extent of their respective shares there and then by the dint of settled law. Sanction of inheritance mutation, issuance of succession certificate etc. are the procedural matters regulated by the procedural laws just to make the records in order and also for fiscal purposes. Similarly law of limitation provides a specific period to avail a remedy provided under the law by way of filing suit, preferring appeal and making any application and if the same is filed/preferred or made beyond the prescribed period of time as provided in the schedule, subject to certain provisions of law, has to be dismissed but said dismissal cannot take away the right of that person as was held by this Court in the case of **Pervaiz Akhtar and another versus The Additional District Judge, Rawalpindi and four others** (1990 PSC 1109). It is also settled law of the land that technicalities should not hamper the administration and dispensation of justice. Whenever it is possible to grant relief under the law, then

technicalities in the way of administration of justice should be avoided to the possible extent by remaining within the domain of law. When we look into the facts and circumstances of the present case before us, it becomes clear that no statutory period of limitation is provided for grant of any succession certificate under Section 372 or its revocation under Section 383 of the Succession Act, 1925. When no further intricate question of law of inheritance was there to be resolved by any competent Court of law, proceedings under the Succession Act, 1925 were very much competent irrespective of efflux of time.

It is established on the record that the original certificate was obtained by Respondent No. 1 by practicing fraud with the Court and the Appellants on 13.11.2006 and the Appellants asked for revocation of said certificate after a period of more than 3 ½ years when they got knowledge of the same. As discussed above that no statutory time frame has been provided under Limitation Act, 1908 for asking for issuance of or revocation of succession certificate but even then it has to be availed within a reasonable time. If at all we put any embargo/ clog of limitation then at the most that can be dealt with under Article 181 of Limitation Act, 1908 which provides a period of three years to ask for any such relief. Settled law of the land in such like situations is that the period of limitation would start running from the date of knowledge. While looking in this perspective, in absence of any evidence to the contrary, the presumption would be that the Appellants being poor illiterate ladies had no knowledge of the original succession certificate and after getting knowledge of the same filed application for revocation of succession certificate.

6. The application so filed by the Appellants for revocation of the succession certificate was also held to have been incompetently filed as the application was only signed by the counsel and the counsel was also authorized by Appellant No. 1 i.e. Mst. Zohra Bibi only and Mst. Samina Bibi had not signed the power of attorney of the counsel. Again this view of the High Court is based on hyper technicality especially in the facts and circumstances of the case in hand. The established law is that Advocate/ Pleader can sign the pleadings on behalf of the party and he is normally authorized by the party while signing the power of attorney in this behalf and the provisions of Order III of the CPC in this regard are very much clear. The record of the proceedings clarifies the fact that the Appellant No. 1 was properly represented as she had signed the power of attorney of the counsel and let's presume for a while that Respondent No. 2 was not properly represented, whether this alone would disentitle her to get her share in the legacy left by her father. Answer to this question would be a simple "No". Under the law it is not necessary that each and every legal heir should be properly represented and appear before the Court to get a succession certificate. The Court on receiving such application has to issue/ grant succession certificate in favor of all the legal heirs by considering and determining their respective shares by complying with the procedural requirements of law in this regard. So, the decision of High Court in this regard is sheer violation of the law and cannot be maintained.

7. Yet another aspect of the case, as was held by the High Court, would also require our attention that after the lapse of such a long time the better course for the Appellants was to approach the Civil Court. Yes; this approach of the High Court would have been a valid one if there

had some dispute regarding status and relationship of the parties inter-se. But in this case, there is no such dispute. There are two distinct groups of the legal heirs of the deceased. Appellants being the legal heirs from one wife and the Respondents from the other wife. Their complicity can be adjudged from the fact that Respondents No. 2 to 4 the real sisters of Respondent No. 1 have joined hands with Respondent No. 1 by alleging to have received their share by supporting the appeal of Respondent No. 1 before the High Court and the two poor ladies from the other wife of propositus i.e. the Appellants were left without any relief who also happen to be their step sisters. (By keeping in mind the conduct of Respondent No. 1, we also doubt the satisfaction of claim of Respondent No. 2 to 4). So, we in the peculiar circumstances of the case cannot send the parties especially the two Appellants for yet another round of litigation for a matter which require no further adjudication except the discharge of liability by Respondent No. 1 as he alongwith his son had given an undertaking to satisfy the claims of any other legal heir, if came forward. So, we endorse the procedure adopted by the trial court for the recovery of said amount with the direction that the needful be done within a period of two months positively after the receipt of this judgment and a compliance report be also forwarded to the Additional Registrar (Judicial) of this Court.

8. Since it has been established on the record that Respondent No. 1 had verified a false statement, rather concealed the true facts before the Court regarding actual legal heirs of the deceased propositus and thus apparently has committed fraud with the Court and the parties so we cannot shut our eyes to this very fact and we, therefore, direct the trial

Court to proceed against the Respondent No. 1 under Section 198 PPC as required by Section 372 (2) of the Succession Act, 1925.

9. In view of the above discussion this appeal is allowed in above terms with costs to be borne by Respondent No. 1 of the entire litigation for the reasons mentioned above.

Judge

Judge

Bench-III
Islamabad
6th December, 2017
Zia*

Approved for Reporting.