

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:** MR. JUSTICE MIAN SAQIB NISAR  
MR. JUSTICE GULZAR AHMED  
MR. JUSTICE UMAR ATA BANDIAL

**CIVIL APPEAL NO.1560 OF 2008**

*(Against the judgment dated 12.8.2002 of  
the Lahore High Court, Lahore passed in  
C.R.No.353/1991)*

Muhammad Ramzan (decd) through L.Rs. etc.

...Appellant(s)

**VERSUS**

Nasreen Firdous etc.

...Respondent(s)

For the appellant(s): Mian Abdul Aziz, ASC

For respondents 1 to 8: Malik M. Tariq Rajwana, ASC

Amicus curiae: Mr. Khalid Anwar, Sr. ASC  
Mr. Makhdoom Ali Khan, Sr. ASC

Date of hearing: 21.10.2015

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**JUDGMENT**

**MIAN SAQIB NISAR, J.-** The primary question in this Appeal, with leave of the Court dated 30.9.2008, is whether the Civil Courts in Pakistan have jurisdiction to entertain and adjudicate upon a suit for administration with regards to the property situate abroad.

2. In the context of the above, the facts in brief are:- that Mst. Hafi (*now deceased*), represented by the appellants as her legal heirs (*hereinafter called the appellants*) being the mother of Muhammad Anwar Irshad (*deceased*) who died in Islamabad on 26.3.1987 filed a suit for administration of his property(ies) in the Civil Court at Lahore, claiming that the deceased had left behind him Mst. Hafi as mother, Mst. Nasreen Firdous and Abida Begum (*defendants No.1 and 2*) as his widows and the remaining defendants as his sons and daughters. It was averred that the deceased had been settled

in England and certain movable and immovable property(ies) situate in Pakistan as well as in England forms part of his estate (*detailed in Schedule A and Schedule B of the plaint*). It may be pertinent to mention here that the respondents/defendants, the legal heirs of the deceased, primarily resisted the suit in respect of the property(ies) abroad on the ground that the courts in Pakistan have no jurisdiction to entertain and adjudicate the matter, obviously meaning that they never submitted to the jurisdiction of the courts in Pakistan to the extent of the property situated abroad.

3. The learned Civil Judge seized of the matter, on the conclusion of the trial granted partial decree, in that, the suit to the extent of the property(ies) situated in Pakistan was allowed but to the extent of those abroad it was dismissed, holding that it does not have jurisdiction. The appeal filed by the appellants could not succeed and their civil revision before the learned High Court was also dismissed. Thus the judgment and decree of the Trial Court was maintained throughout.

4. Leave in this case was granted to consider the following questions:-

“(i) *Whether the courts below have fell in error in not giving effect to the mandate of Section 20 of C.P.C 1908 which, inter alia, provides that the suit could be instituted within the local limits of a place where the defendant resides at the time of the commencement of the suit?*

(ii) *Whether the question of domicile of the deceased Muhammad Anwar Irshad could be a determinative factor on the question of jurisdiction of the court in the facts and circumstances of the instant case?*

(iii) *Whether in the face of the evidence led to the effect that the parties admittedly reside permanently in Pakistan, would it not be in accord with the principle of forum non convenience for the courts in Pakistan to entertain the suit qua the administration of properties situated in England?*

(iv) *Whether the respondents-defendants having agreed to the administration of properties and their respective shares in*

*terms of the Islamic law and having not challenged the impugned judgments and decrees of the three courts below, invoking the said law, could they be allowed to raise the plea at this stage that in the administration of properties in England, the law in England would be applicable and not the Islamic law?”*

In the context of the above, two basic questions requiring resolution are as follows:-

- a) *What is the substantive law to be applied?*
- b) *Which court has jurisdiction?*

These are completely independent questions which require to be considered separately. At present, there appears to be a lot of confusion and these two independent questions appear to have been jumbled together and thus there is lack of conceptual clarity.

As regarding the question of the applicable substantive law, in order to determine the question of jurisdiction of the courts in line with the substantive municipal law of Pakistan, we will have to make recourse to sections 16 to 20 of the Civil Procedure Code, 1908 (CPC). In so far as sections 16 & 20 of the CPC are concerned, they raise complex questions leading to the need to conduct a deeper examination of related, but much broader issues of reconciliation of private international law in relation to the municipal law of Pakistan. The extent of jurisdiction of Pakistani Courts will also be determined in view of the established principles of private international law.

5. In respect of the municipal law of Pakistan, in order to address the first question as to the applicable substantive law, the provisions of Sections 16 to 20 of the CPC are relevant. It will be determined whether the appellants' suit before the Civil Judge in Lahore was competently filed under the laws of Pakistan in relation to the property situated in England.

In terms of section 16 C.P.C., such suits, in so far as they relate to immovable property, are to be instituted before the Court within whose territorial jurisdiction the property is situated. Section 16 ordains:-

*“16. Suits to be instituted where the subject matter situate. --- subject to the pecuniary or other limitations prescribed by any law, suits ---*

*(a) for the recovery of immovable property with or without rent or profits,*

*(b) for the partition of immovable property,*

*(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,*

*(d) for the determination of any other right to or interest in immovable property,*

*(e) for compensation for wrong to immovable property,*

*(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate, or in the case of suits referred to in clause (c) at the place where the cause of action has wholly or partly arisen:*

*Provided that a suit to obtain relief respecting or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or, in the case of suits referred to in clause (c) at the place where the cause of action has wholly or partly arisen or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.*

*Explanation - In this section "property" means property situate in Pakistan.” (emphasis added)*

It may be noted that the proviso contained in Section 16 prescribes that a suit may also be filed before a Court within the local limits of which the defendant resides, carries on business or works if the relief sought can be obtained entirely through his personal obedience. We may take this opportunity to dispel a commonly held perception that this proviso applies to all the categories of suits provided in subsections (a) to (f) of section 16. It is stressed that the language of the proviso is very clear and it does not apply to suits for determination of a right to, or recovery of immovable property.

Be that as it may, from the clear and unambiguous language of the explanation of Section 16, there remains absolutely no doubt that the property(ies) which falls within the purview of the section are those which are situated in Pakistan and thus the Pakistani Courts shall have the sole and exclusive territorial jurisdiction in respect thereto. In other words, as per the mandate of law, the territorial jurisdiction of Pakistani Courts has been limited, restricted and circumscribed only to such property(ies) which are situated within the territorial boundaries of Pakistan. It may be pertinent to mention here that where a word/expression has been defined in the statute, it is settled law of interpretation that such word/expression has to be given the same meaning until and unless the assignment of such meaning would be patently in conflict with the express text of the said provision or would destroy the spirit and object of the provisions of law in which such expression/word appears or shall lead to an absolute absurdity. This principle is no less true for the explanation added to a particular section which (*explanation*) in law is a guideline for the purposes of explaining the true intent, object, purpose, letter and spirit of such a provision by the legislature itself, with the obvious consequence that the legislature means and intends to leave little room and opportunity for any

misinterpretation and misapplication of the said section and would desire that the scope of the section should be construed in the manner as has been explained by the statute.<sup>1</sup> Thus, it is clear that the Pakistani Courts as per the explanation shall only have the jurisdiction with respect to the property(ies) which are subject matter of the suit and falls within the territorial domain of Pakistan.

Such interpretation of the relevant provisions of the C.P.C are duplicated in the Indian Jurisprudence as will be illustrated by briefly making reference to a few cases on the question of jurisdiction of courts to try suits pertaining to property situate outside the respective state.

In the case of **Premchand v. Hiralal (AIR 1928 Nagpur 295)** while interpreting section 16 C.P.C, the learned judge agreed with the lower court which held that it had no jurisdiction over the movable or immovable property situated at Shahdole (*outside British India*). The learned Judge stated that:-

*“It seems to me very clear that the lower Court is right. The question is concluded by S.16, Civil P.C, as regards immovable property. The explanation to that section states that the word ‘property’ used therein means property situated in British India... Our Courts are governed by the Civil Procedure Code, and they cannot deal with immovable property situated where that Code does not run.”<sup>2</sup>*

6. Having considered the provisions of Section 16, we feel it is expedient to make reference to Sections 17 to 19 of the CPC which also deal with the territorial jurisdiction of Pakistani Courts. It may be stated that Section 16, as per the interpretation given to it above, is the main and pivotal section which prescribes for the territorial jurisdiction of the courts

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<sup>1</sup> See PLD 1985 SC 92.

<sup>2</sup> See also Gopi Chand v. Khazan Chand and others (A.I.R. 1938 Lahore 226) and Debendra Nath Bhattacharjee v. Amarendra Nath Bhattacharjee (A.I.R 1955 Calcutta 159).

in Pakistan (*i.e. the courts of plenary civil jurisdiction*) and this section, as mentioned, has limited its jurisdiction only to the property(ies) which are situated in Pakistan with the obvious legal consequence that the property(ies) outside Pakistan are expressly excluded from the purview of jurisdiction of Pakistani Courts as a whole. Sections 17 to 19 when read and construed in the context of the subject matter jurisdiction are basically supplemental provisions to Section 16 and in fact and law, cater for a situation once the threshold of Section 16 vis-à-vis the jurisdiction of Pakistani Courts is crossed; it is then that if the Pakistani Courts have jurisdiction over the subject matter, that it should be settled and determined as to which court within Pakistan shall have the jurisdiction in the given circumstances of the case to try a suit of a particular nature. But for the application of these sections (*17 to 19 CPC*) it is essential that firstly the jurisdiction should vest in the Pakistani Courts in terms of Section 16. In other words, Section 16 is not only a threshold section for the conferment of jurisdiction to the Pakistani Courts but it is the portal through which the plaintiff has to enter for the purposes of entering into the city of jurisdiction of different courts in Pakistan. If, as per the mandate of law, such door is closed upon a plaintiff because the property, subject matter of a suit, is not within the limits of Pakistan, then such litigant is barred and precluded from invoking the jurisdiction of any other court of the country in terms of Sections 17 to 19. In the context of the above, if a judgment is required, reference can be made to a case reported as **Yusuf Abbas and others Vs. Mst. Ismat Mustafa and others (PLD 1968 Karachi 480)** (*see paragraph 19 thereof*).

With respect to section 18 C.P.C, it maybe added that even if the property was situate in Pakistan (*which is not the case in the present matter*), section 18 C.P.C will *ipso facto* be inapplicable for the very reason that there is no uncertainty as to the respective jurisdiction of the courts in England in the

instant case since the property in question lies within the territorial jurisdiction of England.

In a similar vein, section 19 C.P.C is applicable only to suits for compensation for wrong to the person or movable property. It further applies to torts committed within Pakistan. The instant case has no nexus with the law of tort.

7. We will now consider whether the present matter falls within the purview of section 20 CPC. Learned counsel for the appellants while relying upon Section 20 of the CPC contends that the courts below fell in error in refusing to exercise the jurisdiction with respect to the property(ies) situated in Pakistan because of the reason that the cause of action had arisen to the appellants in Pakistan as the deceased had passed away in Pakistan and in support of the contention has relied upon Yusuf Abbas's case (*supra*). Therefore, it seems expedient to consider the legal effect of the said section which reads as under:-

*“20. Other suits to be instituted where defendants reside or cause of action arises. --- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction--*

*(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or*

*(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain as aforesaid, acquiesce in such institution; or*

*(c) the cause of action, wholly or in part, arises.*



*Explanation I.--- Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.*

*Explanation II.--- A corporation shall be deemed to carry on business at its sole or principal office in Pakistan or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”*

Ordinarily, section 20 C.P.C is to be read with and subject to the limitations prescribed in section 16 C.P.C, however, since section 16 C.P.C does not apply in relation to property situated abroad, section 20 C.P.C will have to be read independently in the present case.

In terms of section 20 C.P.C, a suit may be filed in a Court within the local limits of which **(a)** all the defendants were actually and voluntarily residing, carrying on business or personally working for gain at the time of commencement of the suit, or **(b)** any of the defendants, where there are more than one, actually or voluntarily resides, or carries on business or personally works for gain provided that in such cases leave of the Court is obtained or the defendants who are not within the Court's jurisdiction acquiesce or **(c)** where the cause of action wholly or partly arises.

The record of the present case clearly illustrates at the very least that at all times, all the main contending defendants nos. 1 to 8 were residing, carrying business or working outside Pakistan. This assertion is further supported by the fact that the address provided for the defendants nos. 1 to 8 is that of England and it is nowhere suggested that the defendants have at any time been residents of Pakistan or carried on business in Pakistan, or worked in Pakistan. Therefore, section 20(a) C.P.C evidently does not apply to the facts of the given case.

Moving on to consider whether the present case falls within section

20(b) C.P.C, let it be said that if it is the case that at least one of the defendants permanently resides, carries on business or works in Pakistan, then, as necessitated by sub-section (b), leave of the court had to be obtained which was not done in the present matter. Furthermore, the defendants clearly did not acquiesce in relation to jurisdiction over the property situated in England as the jurisdiction of Pakistan in relation to the property in England is firmly disputed in the written statement of the defendants Nos. 1 to 9.

Finally, sub-section (c) does not help the case of the appellants since the question of jurisdiction of the Pakistani Courts in relation to the property in Pakistan forms part of a separate cause of action than that in relation to the property situated in England. The factum of the distinct location of the properties alone gives rise to two separate causes of action.

The aforementioned opinion is supported by a body of cases consistently decided by the learned courts of Pakistan.

To mention but a few, in the case of **Mst. Zainab Vs. Mst. Raji & others (PLD 1960 SC 229)** the Supreme Court of Pakistan stated that even if the suit was not barred by section 16, and the Pakistani Courts could not assume jurisdiction in relation to property in India, since no effective decree could be passed by the Civil Court, their jurisdiction must be held to be barred by necessary intendment.

In the case of **Nadeem Ghani v. United Bank Limited (2001 CLC 1904)**, the Karachi High Court after examining section 20 C.P.C found to have jurisdiction to try to suit only because the Principal Office of United Bank Limited (*defendant No.1*) was situated in Karachi and the defendants Nos.2 and 3 in that case resided and worked for gain with defendant No.1 in Karachi, thus falling within the purview of section 20 C.P.C. However, as noted above, a perusal of the record reveals that is in an accepted position that the deceased and the defendants were at all material times domiciled

in England and the defendants have been permanently residing there throughout.

In the case of **Heman & others v. Fazal** (PLD 1955 Lahore 280) the learned Judge was only able to find that the Court in Pakistan had jurisdiction under section 20 C.P.C since the defendants were all residing within the territorial jurisdiction of the Court.

In the case of **Dr. Abdul Ghani & others v. Ismail & others** (PLD 1958 Lahore 690 DB) there was a dispute in relation to the ownership of property abandoned in India at the time of partition. The trial court framed issues in relation to the jurisdiction and found that the civil court had jurisdiction. Thereafter, arguments were addressed on the issue of jurisdiction before the *High Court* and the case of **Heman & others v Fazal** (PLD 1955 Lah.280) was also cited. The High Court acknowledged that the facts of the case were almost identical to the facts in *Heman*. The High Court refused to follow the dictum in *Heman* and held that the courts in Pakistan are not competent to determine rights and interests in immovable property situated outside Pakistan. The High Court further held that section 20 of CPC only applied to actions of a personal or transitory nature and not to actions of real or mixed kinds, which are exclusively governed by sections 16 & 17 of C.P.C.

Going further, in the case of **Haroon Ayoob Abdul Karim v Sulleman Ahmad & others** (CLC 1983 162 SB-Karachi) shareholders of a company registered in Bombay filed a suit for accounts in Pakistan. Question arose as to whether the Pakistani courts had jurisdiction in respect of the subject-matter situated abroad. The learned single judge held that:-

*“it is not every action where mere presence of the defendants within the jurisdiction of the Court vests the Court with jurisdiction to pass a decree in respect of properties situate*

*outside the jurisdiction”.*

The learned Judge went on to hold that since the records pertaining to the company were not available with the defendants either, even by obedience of the defendants, no effective order could be passed. The suit was accordingly dismissed.

In this respect, it is notable that the presence of the defendant within the court's jurisdiction would not *ipso facto* grant jurisdiction to the court under section 20 C.P.C for the simple reason that the property in question is within the territorial jurisdiction of another country which has the sole jurisdiction as will be discussed below in detail.

Finally, in the case of **Muhammad Sohail Siddiqui v. Mst. Parveen** (MLD 2010 1433 SB-Karachi), while discussing the principles in relation to letters of administration and succession certificates the learned court stated that:-

*“succession of the immovable property is regulated by the Law of the Country in which person had his domicile at the time of his death and Succession of Immovable property in Pakistan of a person deceased is regulated by the Law of Pakistan wherever such person may have had his domicile at the time of his death.”*

It thus follows that the appellants cannot further rely on Section 20 C.P.C in addition to section 16 C.P.C to argue that the suit was or can competently be filed in relation to all property, movable and immovable, situated in England.

8. After having considered the relevant municipal law, we will now consider the case relied upon by the appellants in the context of its application to the facts of the present case.

The appellants have sought to rely on the *Yusuf Abbas* case to argue that the courts of Pakistan have jurisdiction over property in England and

that the facts of the Yusuf case are identical to the facts of their case and it is fully applicable to the present situation.

It must be pointed out that the appellants' reliance on this case is flawed for the reason that it originates from an erroneous understanding of the ratio of the case. In addition to this, the facts of that case and the facts of the present case are completely distinct as will be made clear below.

Two determinative features in the facts of the Yusuf Abbas case are not present in the present case: (i) the deceased in that case was domiciled in Pakistan hence invoking the jurisdiction of Pakistani courts; (ii) the defendants in that case were residing in Pakistan bringing the suit within the purview of section 20 C.P.C.

Since the deceased was domiciled in Pakistan, the Pakistani Court already possessed jurisdiction under private international law to generally administer the entire estate of the deceased and the only issue was in relation to immovable property abroad which was subject to the rule of *lex situs* (discussed below). On the contrary, in the present matter, the deceased was not domiciled in Pakistan, rather it is undisputed that he was domiciled in England.

As far as the *obiter dictum* in the Yusuf case is concerned, we must proceed cautiously before following the obiter. In that case the learned Judge was faced with the question of whether the Court could assume jurisdiction over immovable property abroad, and move away from the rule of *lex situs*, while administering the estate of the deceased who was domiciled in Pakistan. The learned High Court Judge discussed the English jurisprudence on this point in England at length in order to ascertain whether jurisdiction could be exercised in relation to property situated abroad. In this respect, it is pertinent to state that English law on this point is imprecise and at times inconsistent, hence the obiter in that case cannot be of assistance to the appellants in the present case.

9. The consideration of the substantive position under the municipal law of Pakistan leads us to the conclusion that the courts in Pakistan lack the jurisdiction to adjudicate upon foreign property in terms of the provisions of sections 16-20 C.P.C.

10. For the sake of being comprehensive, it may be mentioned here that the underlying basis or rationale for restricting the jurisdiction of a state within its own territory under municipal law stems from the respect for the territorial jurisdiction of another state. It is in this light that the principles of private international law must be appreciated. Let us now consider the question of jurisdiction under a parallel body of law, that is, private international law.

Recourse is made to international law as the property in dispute being within the territorial jurisdiction of England invites the application of the recognized principles of private international law.. Whilst articulating this notion, it is of benefit to quote *Ian Brownlie's Principles of Public International Law (4th edn, Oxford University Press 2004)* 299 wherein it is stated:-

*“...a state in normal circumstances maintains a system of courts empowered to decide civil cases and, in doing so, prepared to apply private international law where appropriate in cases containing a foreign element.”*

11. Bringing our attention to bear on the principles of private international law, the law governing matters of cross-border succession to property are dealt with in line with the concepts of *lex situs* and *lex domicilii*. In order to understand these two concepts, we can turn to *Cheshire*, a renowned international law jurist, (*Private International Law, Sixth End., p. 550*).

As noted by *Cheshire*, one of the cardinal rules of private

international law in matters of cross-border succession is that the movable property of the deceased person is regulated by the laws of the country in which the deceased is domiciled; in the present case, the law of England constitutes the law of the country in which the deceased was domiciled. As to immovable property, the recognized rule governing real or immovable property is that such property is subject to the laws of the place within which it is situated; again, in the present case the laws of England will be applicable since the property in dispute is situated in England. This is the principle of *lex loci rei sitae* (or more commonly referred to as *lex situs*) which governs the question of jurisdiction as far as the immovable property is concerned.

The rationale for these two principles, *lex domicilii* and *lex situs* is clearly to address and solve the problem posed by the notion of Conflict of Laws by resorting to the two stated concepts.

It is of benefit to quote Cheshire who stated:-

*“...only the Courts of Situs can make an effective decree with regard to land”.*

The courts of situs in the instant case are the courts of England by reason of the fact that the disputed property is situated in England.

Pakistan recognizes these well-settled rules of private international law as can be ascertained from a perusal of section 5 of the Succession Act, 1925 which is reproduced below:-

**“5. Law regulating succession to deceased person’s immoveable and movable property respectively: (1) Succession to the immoveable property in Pakistan of a person deceased shall be regulated by the law of Pakistan, wherever such person may have had his domicile at the time of his death.**

**(2) Succession to the moveable property of a person deceased is regulated by the law of the country in which person had his domicile at the time of his death.”**

This Section clearly acknowledges the application of international law, particularly in matters of succession.

12. In the preceding paragraphs, after considering and applying the relevant municipal law under C.P.C (*sections 16 to 20 respectively*), we concluded that the jurisdiction of the courts of Pakistan is not extended to property situated outside its territory. We have further attempted to very briefly consider the applicable principles of private international law to answer the same question of jurisdiction and there too, as has been illustrated, we found that the courts of Pakistan must not adjudicate upon property which is situated in another country as the governing principles will be those of private international law as opposed to the municipal law of Pakistan.

Viewed in this light, it is incumbent upon the courts of Pakistan to keep the principles of Conflict of Laws or Private International Law in mind whilst dealing with matters involving questions of cross-border succession. These principles are based on mutual respect for and recognition of, the judicial systems and the laws of other countries.

13. The property in dispute is undoubtedly and indisputably located inside the territorial jurisdiction of England thus barring the jurisdiction of Pakistan over the subject-matter property situated in England.

A state may extend its jurisdiction to its nationals abroad, however, in the instant case, the deceased held dual nationality being both a Pakistani and a UK national simultaneously.

In the case of Nadeem Ghani (supra) at paragraph 22 the Karachi High Court stated as follows:-



*“It is universally accepted that according to the comity of nations all legislation of a country is territorial, all exercise of jurisdiction is territorial in nature and the laws of a country apply to all its subjects, things and acts within its territory.”*

This case aptly noted the international principle of absolute nature of a state's territorial jurisdiction is not to be extended beyond its territory and within the territory of another state, since in that case, it will be interfering with the territorial jurisdiction of England.

Additionally, it may be mentioned that the courts in Pakistan should respect and give effect to *(subject to certain exceptions)*, the judicial decisions of other countries on the same subject under the principle of 'judicial comity.' While acknowledging the doctrine of judicial comity, Mark Janis, (*An Introduction to International Law* 327 2003) noted that:-

*Roughly speaking, courts, according to the doctrine of international judicial comity, should apply foreign law or limit domestic jurisdiction out of respect for foreign sovereignty.*

The doctrine of judicial comity, being recognized and applied in the courts around the globe, was correctly acknowledged by the *Lahore High Court* in the case of **Louise Anne Fairley v. Sajjad Ahmed Rana (PLD 2007 Lahore 300)**.

The view that Pakistan should respect and give effect to the judicial decisions of other countries finds further support from section 13 C.P.C which reads, in so far as it is material, as under:-

*“13. When foreign judgment not conclusive.-- A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except--*

*(a) Where it has not been pronounced by a Court of*

*competent jurisdiction;*

*(b) Where it has not been given on the merits of the case;*

*(c) Where it appears on face of the proceedings to be founded on an incorrect view of International Law or a refusal to recognize the law of Pakistan in cases in which such law is applicable;*

*(d) Where the proceedings in which the judgment was obtained are opposed to natural justice;*

*(e) Where it has been obtained by fraud;*

*(f) Where it sustains a claim founded on a breach of any law in force in Pakistan. "*

It is clear that foreign judgments are conclusive as to any matter thereby adjudicated upon and Pakistani courts must recognize and enforce the same. However, before enforcing any foreign judgment, a Pakistani court will have to ensure that it does not fall within any of the exceptions contained in section 13 C.P.C. For example, a Pakistani Court may not consider a foreign judgment to be conclusive if it has been pronounced by a Court of incompetent jurisdiction. In order to ascertain whether a judgment has been pronounced by a Court of competent jurisdiction, Pakistani courts will necessarily have to examine the principles of private and public international law to determine whether the subject matter of the foreign judgment fell within the jurisdiction of the foreign Court. If the judgment is found to have been pronounced in excess of the foreign Court's jurisdiction in view of the parallel body of law, that is, private international law, it will be deemed to have not been pronounced by a court of competent jurisdiction rendering the judgment inconclusive. When viewed in this light, it is correct to state that since the deceased and the defendants were

domiciled in England, the English courts will have jurisdiction and their verdict on the matter, in respect of property situate there should be considered final by the Pakistani Courts.

Similarly, under section 13(c) C.P.C it is expressly acknowledged that a foreign judgment will not be conclusive where it appears to have been founded on an incorrect application or understanding of private international law or a refusal to recognize the law of Pakistan where such law is applicable. These provisions, along with section 5 of the Succession Act 1925 establishes, beyond any doubt, that the courts of Pakistan recognize the principles of private international law and are bound to apply the same wherever necessary.

A corollary to the above is that if a Pakistani court passes a judgment without regard to the principles of private international law, its pronouncement may not be considered to be conclusive by foreign courts for having usurped the jurisdiction of a foreign court, even if in substance the case is rightly decided.

In light of the above we are persuaded to hold that Pakistan must refrain from exercising its jurisdiction because the property in dispute is situated within the territorial jurisdiction of England.

14. This logically leads us to the second question, as stated in the Leave Granting Order, which can be answered in the affirmative. The very nature of the present case invites the operation of private international law; as such the domicile of the deceased will be a determinative factor to the extent of the movable property of the deceased abroad. The movable property abroad will be subject to rule of *lex domicilii*. Such a rule finds further support in the present case because not only was the deceased domiciled in England; he was also a British national in addition to holding a Pakistani nationality.

The appellants have further tried to argue that the deceased's

domicile continued to be of Pakistan in terms of section 7 of the Succession Act 1925. However, this argument is not sustainable in view of section 9 and 10 of the Succession Act 1925. Section 9 of the Succession Act 1925 states that the domicile of origin only prevails until a new domicile is acquired. Section 10 of the same act states that a man acquires a new domicile by taking up his fixed habitation in a country other than the country of his origin. The determination of the question of domicile can be slightly difficult at times since it involves an element of subjectivity. However, in the present case it is an admitted position that the deceased had taken up permanent residence in England and acquired a new domicile which will prevail over his domicile of origin. Reference can be made to the mentioned sections below:

*“7. Domicile of origin of person of legitimate birth. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth, his father was domiciled, or, if he is a posthumous child, in the country in which his father was domiciled; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.*

.....

*9. Continuance of domicile of origin. The domicile of origin prevails until a new domicile has been acquired.*

*10. Acquisition of new domicile. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.”*

In this regard reference may be made to **1975 SCMR 265, Ms Amtul Naseer Sami vs. Secretary Health, Govt of Baluchistan** wherein at p.267 this court held that the “residence must answer on qualitative and quantitative test, and that the courts have regarded naturalization,

purchase of house or burial ground, exercise of political rights, financial expectations, establishment of children in business, place where a man's wife and family reside as indicia of his intention in regard to residence." In light of the above, it is clear that the newly acquired domicile of the deceased (*domicile of England*) will prevail in the present situation.

15. As regarding question **(iii)**, this issue has been framed due to the incorrect appreciation of facts by the learned counsel for the petitioner. This, as it appears from question **(i)** and **(iii)** in the Leave Granting Order, has erroneously led the Supreme Court to believe that all the parties in the case are admittedly residing in Pakistan. This proposition is incorrect in light of the record available from which it is immediately discernible that the deceased and the material defendants have been permanently residing in England. As noted earlier, this is evidenced by the fact that in all the pleadings filed by the appellants themselves, the address of the respondents provided is that of England alone. Therefore, on the correct appreciation of facts, it is maintained that the courts in Pakistan lack jurisdiction in so far as it is rightly discovered that the defendants did not reside permanently in Pakistan.

16. As regarding the final question (iv), suffice it to say that this point has not been pressed by the learned counsels for the parties.

17. It light of the entire discussion undertaken, it may be stated that even if the rules of private international law are disregarded, the suit of the appellants in relation to the property situated abroad could only be entertained if it was brought within the purview of section 20 C.P.C., as is clearly laid down in paragraph 21 of the judgment in the Yusuf Abbas case. But for the reasons stated above and from the given facts of the case, the present matter does not fall within the purview of section 20 C.P.C. Hence, Jurisdiction in relation to the property situated in England will necessarily have to be determined with regard to the relevant principles of private

international law. The courts of Pakistan could only take cognizance in relation to the immovable property situated in Pakistan subject to the limitations prescribed in section 16 of the C.P.C. It may be contended that they should not even have determined the rights to the movable property in Pakistan inter se the parties in derogation of the rule of *lex domicilii* in private international law. However, this element may have become irrelevant since the defendants submitted to the jurisdiction of Pakistani courts in relation to the movable property in Pakistan and therefore the Pakistani courts were competent to determine the rights of the parties in relation to the same. But there is no legal justification for the courts in Pakistan to assume jurisdiction over any property, movable or immovable, situated in England.

**Conclusion:** As can be discerned from the preceding discussion, cross-border succession gives rise to the most important question of jurisdiction of the courts. It must be understood that the question of jurisdiction is separate from the issue of the applicable law. It is correct to state that the English courts may apply Muslim law in such a case, hence the question to be addressed never revolved around the law applicable, rather the question was ultimately whether the courts in Pakistan had the jurisdiction as under sections 16 to 20 C.P.C to entertain the suit in question and adjudicate upon the disputed property in England. Based on the reasons detailed above, this Court has answered the question in the negative, affirming the concurrent findings and conclusion of the courts below. The plain application of the relevant sections of C.P.C provides that the courts in Pakistan will have jurisdiction in respect to property situated in Pakistan. The said sections do not envisage an extra-territorial exercise of jurisdiction, neither is such an extra-territorial exercise of jurisdiction desirable in clear violation of sections 16-20 C.P.C and also in line with the established and recognized principles of private international law.

In view of private international law this Court finds that the international responsibility of Pakistan to respect the territorial jurisdiction of England cannot be ignored. It has never been disputed that the property in dispute is situated outside Pakistan. As far as the Pakistani courts possessed jurisdiction over to the property situated in Pakistan, the decision was given in favor of the plaintiff Mst. Hafi (*now deceased*).

18. In light of the foregoing, the discussion of the applicable law and the reasons given thereafter led to the conclusion that this appeal fails and is accordingly dismissed.

JUDGE

JUDGE

JUDGE

Announced in open Court  
on **16.12.2015** at **Islamabad**  
Approved For Reporting  
Waqas Naseer/\*