IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE ANWAR ZAHEER JAMALI, CJ
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE IQBAL HAMEEDUR RAHMAN
MR. JUSTICE KHILJI ARIF HUSSAIN

CIVIL APPEAL NO. 2133 OF 2006
(on appeal from the judgment of the Lahore High Court, Lahore dated 24.10.2001 passed in CR No.2239/2000)

Mst. Noor Bibi and another **...Appellants**

VERSUS

Ghulam Qamar and another **...Respondents**

For the Appellants: Mr. Iftikhar Hussain Shah, ASC.
Mr. Salim Khan Chechi, ASC.

For the Respondents: Nemo.

Date of Hearing: 17.03.2016

JUDGMENT

Anwar Zaheer Jamali, CJ.— This appeal by leave of the Court arises out of the judgment dated 24.10.2001 in Civil Revision No.2239/2000, passed by learned single Judge in chambers of the Lahore High Court, Lahore, whereby the said Civil Revision was allowed, concurrent findings of the two Courts below, challenged therein were set aside, and accordingly the suit for declaration and change of mutation filed by the respondents was decreed.

2. Briefly stated, relevant facts of the case are that on 24.07.1995, Respondent Nos. 1 and 2, being son and daughter of late Nasir Hussain, instituted a declaratory suit against their real mother, Mst. Noor Bibi (Appellant No.1), and their brother, Zulfiqar Ali (Appellant No.2), in respect of agricultural land measuring 45 Kanal 14

Marla, out of total land measuring 76 Kanal 4 Marla, bearing Khasra Nos. 92, 124, 125, 126, 127, 621/128, 134, 135, 193, 194, 195, 634/280, 307, 308 and 309, Khewit No.13, Khatooni No.14 according to Jamabandi for the year 1992-93, situated at village Gurri, Bhoora, Tehsil and District Sialkot. Their claim was based on the assertions that their father, Nasir Hussain, had died five years ago, whereafter Inheritance Mutation No.181 dated 24.01.1994 was attested in favour of his legal heirs according to which, Mst. Noor Bibi, widow of deceased, got 1/8 share, Ghulam Qamar and Zulfiqar Ali, sons, got 4/5 and Mst. Razia Bibi, daughter, got 1/5 out of 7/8. Late Nasir Hussain belonged to *Shia* faith, wherein a widow is not entitled to any share in the immovable property (lands) owned by her deceased husband. Further, according to *Shia* law of inheritance, Ghulam Qamar and Zulfiqar Ali, sons should have been given 4/5 share each and Mst. Razia Bibi, daughter should have been given 1/5 share, whereas the widow of Nasir Hussain (deceased) was not entitled to 1/8 share.

3. The suit was contested by the parties, issues were framed, evidence was recorded, and vide judgment dated 15.11.1997, it was dismissed with the observation that the widow, as per *Shia* law of inheritance, being mother of two sons and a daughter, not being a childless widow, was entitled to inherit legal share from the legacy of her deceased husband, Nasir Hussain.

4. The appeal under Section 96 of the Code of Civil Procedure, 1908, filed by respondents against the judgment of the Trial Court of learned Senior Civil Judge, Sialkot, before the Court of Additional District Judge, Sialkot on 12.12.1996, was dismissed vide judgment dated 01.03.2000, with the conclusion that the findings of the Civil Court, that the widow of deceased Nasir Hussain, being mother of two

sons and a daughter, was not a childless widow and thus entitled to her legal share under *Shia* law of inheritance, were unexceptionable.

5. Against these concurrent findings of the two Courts below, the respondents then preferred Civil Revision under Section 115 C.P.C. before the Lahore High Court, Lahore, on 13.06.2000, which was heard and allowed vide impugned judgment dated 24.10.2001 with reference to the application of ratio of judgment in the case of *Syed Muhammad Munir v. Abu Nasar, Member (Judicial) Board of Revenue, Punjab Lahore and 7 others* **(PLD 1972 SC 346)**.

6. We have heard arguments of the learned ASC for the appellants, while respondents have chosen to remain absent.

7. In his submissions, the learned ASC for the appellants briefly stated admitted facts of the case that Appellant No.1 is widow of late Nasir Hussain and real mother of Zulfiqar Ali (Appellant No.2), Ghulam Qamar (Respondent No.1) and Mst. Razia Bibi (Respondent No.2). Nasir Hussain had expired five years prior to the filing of suit, leaving behind amongst others some agricultural lands as detailed in Paragraph No.1 of the plaint. Therefore, keeping in view that parties were governed by *Shia* law of inheritance, the two Courts below have rightly held the Appellant No.1 entitled to her share from the estate (lands) of late Nasir Hussain as in her capacity as widow, but the High Court misinterpreted and wrongly applied the ratio of judgment in *Syed Muhammad Munir's* case (*supra*), while equating the claim of Appellant No.1 to that of a childless widow, which is admittedly not the position in the present case.

8. Since the whole case of the respondents is based on the ratio of the judgment in *Syed Muhammad Munir's* case (*ibid*), it will be useful to discuss the said case in some detail:

9. In this case, the only issue involved was regarding the exact connotation of *'childless widow'* so as to decide whether it meant a

widow from whose womb no issue had been born to the deceased or a widow who might have had an issue from her womb to the deceased which died before the opening of inheritance of her deceased husband. It was in this background that not only detailed discussion of various authoritative books of scholars and jurists of the subcontinent on this limited subject was made, but Quranic verses and relevant Hadiths were also taken into consideration to record the conclusion as follows:

> *"The Shias claim that the difference between Shias and Sunnis arise as a result of their different interpretations of some of the Quranic texts. The Sunnis, it is said, accept the interpretations given by the four Imams, namely; Imam Abu Hanifa, Imam Malek, Imam Ahmad and Imam Shafi'e whereas the Shias rely on the interpretations of the Holy Qur'an given by only the Ahl-e-Bait (Members of the Household of the Holy Prophet) beginning with Hazrat Ali and ending with the last Imam and, as such, they claim that their interpretation is likely to be more correct. No one, they maintain, could have known the Holy Qur'an better than Hazrat Ali himself who in his Book had recorded these interpretations according to the instructions of the Holy Prophet himself.*
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> *In view of this difference in the interpretation of the Qranic text itself, we feel that it would not be proper on our part at this stage to attempt to put our own construction in opposition to the express ruling of commentators of such great antiquity and high authority. To depart from a rule of succession which the Shia community has universally been following ever since the days of Imam Jafar Sadek, as evidenced by the unanimous opinions of the Shia jurists on this point, would be wrong. It is not open to us to change a settled rule of succession, having the force of Ijma behind it at this late stage. If a change is desired to be made this work should be undertaken by the Legislature itself after consulting the Shia Community. We can only point out that the Urdu translation given by Allama Mufti Syed Tyeb Agha Musavi Jazairi does not tally with the English translation given by S.V. Mir Ahmed Ali, another eminent Shia scholar.*
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> *This rule has, it appears, also been consistently followed by the Court in this subcontinent since the decision of the Calcutta High Court in Mst. Asloo V. Mst. Umdutoonnissa. It was affirmed by the Privy Council in 1897 in the case of Aga Mohamed Jaffer Bindaneem v. Koolsom Bee Bee. The Allahabad, Madras and Patna High Courts have also followed it in Umardaraz Ali Khan v. Wilayat Ali (1), Durga Das v. Nawab Ali (2), Mir Ali Hussain v. Sajuda Begum (3) and Syed Ali Zamin the contrary has been brought to our notice.*

> *We would, therefore, allow this appeal, set aside the order of the High Court and declare that on the death of Mst. Fatima, childless widow, her life estate terminated and the bequest made by her in favour of Mst. Hassan Zamani in respect of the Nizampur lands came to an end. According to the Shia Law, even after the termination of her limited estate under custom, she acquired no share in the landed properties obtained by her in lieu of her husband's estate left behind in India, according to the Shia Law."*

10. From the above, it will be seen that at no stage of the proceedings any issue had cropped up with reference to the status of a widow with children under the *Shia* law of inheritance, rather the issue dilated upon was in respect of a childless widow, being governed by *Shia* law of inheritance. In this backdrop, we have no hesitation to hold that the judgment of the Revisional Court impugned before us is not in consonance with the real facts and the ratio of judgment in *Syed Muhammad Munir's* case (*ibid*), which, as discussed above, proceeded on different premises. Under Section 113 of Mohammedan Law by Sir D.F. Mulla (17th Edition), the status of a childless widow for the purpose of inheritance under *Shia Fiqah* has been discussed as follows:

> *"**Section 113. Childless widow.—**A childless widow takes no share in her husband's land, but she is entitled to her one-forth share in the value of trees and buildings standing thereon, as well as in his movable property including debts due to him though they may be secured by a usufractuary mortgage or otherwise."*

Apart from it, right of inheritance of a Shia widow from the estate of her deceased husband, not being a childless widow, is also clearly established from the table of sharers under Section 90 of the same book, where in the column of sharers she is placed at serial No.2, with normal share of 1/8, being one or more.

11. Similarly, in another book on *Shia* Law of succession titled 'Muhammadan Law' Volume-II, authored by renowned scholar, Syed Amir Ali, only a childless widow has been shown disqualified from

claiming share from the estate of her deceased husband, that too only to the limited extent of lands left behind by her husband.

12. Further, in the book of succession in Muslim family, authored by N.J. Coulson, he has opined that:

> *" 'Childless' here means, according to the text, that the surviving widow is without a child, alive or in embryo and subsequently born alive, at the time succession to the estate opens. A wife, therefore, suffers from this disability if she has had children by the prepositus who have died before the succession opens or if her only children are those of another marriage. The rule is clearly aimed at ensuring, to a larger degree, that lands remain within the husband's family. A widow succeeds to a share in her husband's lands only when that share, or the greater part of it, will in the normal course of events be transmitted to the husband's issue upon her deceased."*

13. This aspect of the case has also been considered in the case of *Syid Murtaza Husain v. Musammat Alhan Bibi* **1909 IC (Vol.2) 671**, which lays down that under the *Shia* faith, a widow with a child from her deceased husband is entitled to a share in both movable and immovable property of her husband.

14. This being the position, in our considered opinion, the learned single Judge in chambers of the Lahore High Court committed patent error of law and failed to exercise his jurisdiction in accordance with law, which resulted in gross injustice to the appellants. Thus, such judgment is liable to be set aside.

15. Foregoing are the reasons for our short order dated 17.03.2016.

Chief Justice

Judge Judge

Judge Judge

ISLAMABAD.
17th March, 2016.
Mudassar/*

"Approved for reporting."