

(Appellate Jurisdiction)

Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan

(Against the impugned order/decreed dated 04.03.2023 passed by the High Court of Sindh at Karachi in 2nd Appeal No.40 of 2021)

Abrar Hussain ...Petitioner

Mst. Bibi Shahida and others ... Respondents

For the petitioner: In person a/w Ms. Shubnum Sultan,
Advocate High Court

For the respondents: Nemo.

Date of hearing: 29.08.2025

Athar Minallah, J.- Abrar Hussain ('petitioner')/defendant No.6

has sought leave to appeal against the judgment of the High Court dated 3.3.2023, whereby his second appeal filed under section 100 of the Code of Civil Procedure, 1908 ('**CPC**') was dismissed. This petition was dismissed *vide* our short order of even date and a cost of Rs.5,00,000/- (five hundred thousand) was imposed on the petitioner. We now record our reasons in support of that short order.

2. The dispute concerns the property described in paragraph No.3 of the plaint filed by Mst. Bibi Shahida (**respondent No.1/plaintiff**) in March, 2015. The suit registered as suit No.522/15, sought a declaration/partition, recovery of mense profit and permanent injunction.

3. The petitioner/defendant No.6 and respondent No.1/plaintiff are siblings. Their father, Irfan Hussain Khan (predecessor-in-interest), passed away on 1.1.2002 leaving behind

five sons and four daughters. Two siblings i.e. Mst. Hussain Bano and Irshad Hussain passed away subsequent to their father's demise.

4. In her plaint, the respondent No.1/plaintiff asserted that the property was owned by the predecessor-in-interest and that succession opened upon his death. As a legal heir, she repeatedly demanded her share but the petitioner/defendant No.6 refused to give it. She further alleged that the petitioner was in illegal possession of the property and had rented out a portion of it without the consent of the other legal heirs, while retaining the rent without distributing it according to their respective shares. The remaining siblings, who were arrayed as defendants, supported the assertion made by the respondent No.1/plaintiff and consented to the suit being decreed. The petitioner/defendant No.6, however, contested the suit claiming that the predecessor-in-interest had gifted the property to him during his lifetime out of love and affection and that possession had been handed over to him. In support of his claim, he relied upon a purported *iqrar nama* dated 30.06.2000 and a document alleged to be a certificate of possession issued by the concerned *Nazim* of the union council. His entire claim to exclude the other heirs was based on these two documents. The trial court, after framing seven issues and recording evidence, decreed the suit *vide* the judgment and decree dated 17.10.2019. It declared the petitioner, the plaintiff, defendants Nos.1 to 5 and two deceased siblings as the legal heirs of the predecessor-in-interest, each entitled to their respective share in accordance with Mohammadan Law. The court further directed that the property be partitioned and if it was not capable of division by metes and bounds, it shall be sold, with the

proceedes distributed amongst heirs according to their shares. The petitioner was directed to pay mesne profit to the other legal heirs from the rent received by him at the rate of Rs.25,000/- per month for a period of three years preceding the filing of suit and was restrained from creating any third party interest in the property.

5. The petitioner's first appeal under section 96 CPC was dismissed by the appellate court *vide* judgment and decree dated 23.01.2021, and a second appeal under section 100 CPC was dismissed by the High Court *vide* the impugned judgment dated 04.03.2023.

6. The petitioner appeared along with the learned counsel. Written arguments were submitted which were carefully examined with their assistance.

7. The dispute essentially pertains to the right of inheritance in the property left by the predecessor-in-interest who passed away over twenty years ago. The petitioner/defendant No.6 took exclusive possession of the property; thereby depriving the other legal heirs of their lawful shares. The plaintiff, one of the daughters of the deceased, sought her share in the inheritance vested in her under the Mohammadan Law asserting that the ownership of the property had devolved immediately upon all legal heirs at the moment of her father's death in 2002.

8. The petitioner's plea that the property was gifted to him out of love and affection remained unproven. The burden to prove the *iqrar nama* dated 30.06.2000 and the alleged certificate issued by the *Nazim* lay on him. He neither produced the attesting witnesses nor adduced trustworthy and confidence-inspiring evidence to establish the document as genuine. The trial court rightly noted that the *iqrar nama* lacked the particulars of

witnesses such as their addresses and CNIC numbers, rendering it “*dubious and unreliable*”. Similarly, the purported certificate of possession allegedly issued by the *Nazim* remained unproven.

9. It was undisputed that the predecessor-in-interest continued to exercise possessory rights over the property during his lifetime and that utility connections remained in his name. The petitioner, having failed to substantiate his claim, was rightly non-suited, and the suit was decreed as prayed for. The appellate court found the judgment of the trial court to be well-reasoned and free of legal infirmity. The concurrent findings recorded by two competent courts were neither arbitrary nor contrary to law. Yet the petitioner/defendant No.6 chose to file a second appeal before the High Court, further delaying the enjoyment of the legal heirs’ right that had accrued to them upon the death of their father.

10. As already observed, the petitioner had no case on merits and yet persisted in litigation, thereby prolonging the deprivation of his siblings of their lawful inheritance which devolved upon them on 1.1.2002, the date of their father’s demise. The challenge before this Court was nothing more than an attempt to delay and frustrate the rights of the other legal heirs, amounting to a mere abuse of process.

11. In a recent judgment of the Federal Shariat Court¹, after a detailed examination of the Quranic injunctions, the traditions of the Holy Prophet (P.B.U.H.) and the principles of sharia, declared that the right of inheritance vested in every legal heir, male or female, is a divine right that cannot be curtailed, directly or indirectly. The practice of depriving legal heirs,

¹ Syeda Fauzia Shah v. Federation of Pakistan (PLD 2025 FSC 1)

particularly women of their inheritance is a social evil and contrary to the public policy.

12. This Court has consistently held that the heirs acquire ownership of the property immediately upon death of the predecessor-in-interest. The possession of one co-sharer is deemed to be for the benefit of all co-sharers, and delay in asserting a right or challenging a mutation does not extinguish that right. The doctrines of waiver, estoppel, relinquishment, or adverse possession do not apply amongst co-heirs². Even when a gift is pleaded, the donee bears a heavy onus to prove that the donor made a valid offer, that it was accepted, and that possession was delivered. The donor must also establish the date, time and place of the offer and acceptance. Failure to do so, renders such a plea untenable.

13. The violation of inheritance laws under sharia amounts to the exploitation of vulnerable family members, particularly women, and it is wholly impermissible. The estate of a deceased vests automatically and immediately in the heirs upon death without the intervention of any authority. This principle is firmly embedded in the public policy of Islamic law.

14. The learned counsel for the petitioner failed to persuade us that the well-reasoned judgments and decrees passed by the trial and appellate courts suffered from any legal infirmity, let alone misreading or non-reading of evidence. The petitioner's conduct in continuing frivolous litigation despite concurrent

² *Mst. Khalida Azhar v. Viqar Rustom Bakhsi and others* (2018 SCMR 30)
Islam-ud-Din through LRs and others v. Mst. Noor Jehan through LRs and others (2016 SCMR 986)
Ghulam Ali and others v. Mst. Ghulam Sarwar Naqvi (PLD 1990 SC 1)
Anwar Muhammad and others v. Shard Din and others (1983 SCMR 626)
Haji v. Khuda Yar (PLD 1983 SC 453)
Mirza Abib Baig v. Zahid Sabir (decd.) through LRs and others (2020 SCMR 601)
Farhan Aslam and others v. Mst. Nuzba Shaheen and others (2021 SCMR 179)

findings against him constituted abuse of the judicial process. Such conduct contributes to the mounting backlog of cases across the country and undermines the efficient dispensation of justice. The concurrent findings of the courts below require no interference nor does any question of law arise for consideration by this Court. Accordingly, leave to appeal is refused and this petition is dismissed.

15. As directed in our short order of even date, a cost of Rs.5,00,000/- was imposed on the petitioner to be deposited with the Registrar of this Court within seven days. It is directed that the amount so deposited shall be distributed amongst the legal heirs declared by the trial court.

16. These are reasons for our short order of even date.

17. Before parting, we may feel constrained to observe that it is incumbent upon the State under the Constitution and the clear injunctions of Islam, to ensure the effective and unfettered realization of women's right to inheritance. This right is not a concession granted by human law but a divinely ordained command, explicitly declared in the Holy Quran. Any denial or obstruction of this right is, therefore, not merely unlawful but transgression against Divine Will. Cultural or societal practices that deprive women of their rightful inheritance are rooted neither in faith nor in justice, they are remnants of ignorance which the message of Islam came to abolish. The State bears a sacred constitutional duty to uproot such practices by ensuring that every woman is informed of, and enabled to claim, her rightful share in inheritance without delay, fear or dependence on lengthy litigation. It must establish a proactive and accessible mechanism through which women can be identified, reached out to, and assisting in

securing their lawful entitlements. Furthermore, those who, through coercion, deceit, or undue influence deprive women of this divinely bestowed right must be held accountable under the law and made answerable. A society, that turns a blind eye to deprivation of inheritance rights to its women defies the spirit of Constitution and express Command of Almighty Allah. The strength of a nation lies in the protection of its most vulnerable classes. A State that fails to safeguard the inheritance rights to its women fails in its duty to uphold the principles of equity, faith and justice.

Judge

Judge

Islamabad, the

29th August, 2025

'APPROVED FOR REPORTING'

*M. Azhar Malik/**