

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No. 219 of 2016

Muhammad Ahmed Khan, etc

Vs

Mst. Nashid Anum Shahid, etc

APPELLANT BY: Syed Khurram Shahzad, Advocate.

RESPONDENT BY: Mr. Muhammad Wajid Hussain Mughal, Advocate.
Syeda Rida-e-Batool, Advocate for CDA.

DATE OF HEARING: 14-05-2018.

ATHAR MINALLAH, J.- Through this consolidated judgment we intend to decide the instant appeal alongwith Civil Revision No.174 of 2015, titled 'Mubarik Ahmed Khan, etc vs. Shahid Saddique Khan, etc',. The instant appeal is directed against judgment and decree, dated 08.11.2016, passed by the learned Civil Judge-West, Islamabad whereby the application filed under Order VII Rule 11 of the Civil Procedure Code, 1908 (hereinafter referred to as the "**CPC**") was accepted and the suit filed by the appellants was rejected.

2. The facts, in brief, are that the controversy in the instant appeal and the connected civil revision is regarding the right of inheritance in respect of the legacy/estate left behind by Shahid Saddique Khan s/o Saddique Ahmed Khan (hereinafter referred to as the "**Deceased**"). The latter passed away on 28-07-2013 and was

survived by his wife, namely Ms. Nishad Anum Shahid and three full/real sisters, namely Ansir Saqib, Ambar Asif and Ayesha Aqil. The Deceased also had consanguine sisters who had filed a suit and the same was later dismissed as withdrawn. The appellants claim to be the real brothers of Saddique Ahmed Khan and thus the paternal uncles of the Deceased. The appellants filed a suit on 03-02-2015 praying for declaration, administration and partition of properties, permanent and mandatory. The properties left behind by the Deceased have been described in paragraphs no.6 and 7 of the amended plaint. The appellants assert that, being paternal uncles of the Deceased, they are entitled to inherit as residuaries. An application under Order VII Rule 11 of the CPC was filed by the respondents and the same was accepted by the learned trial Court vide the impugned judgment and decree, dated 08.11.2016. Placing reliance on the law enunciated by the august Supreme Court in the case titled 'Saad Ullah and others vs. Mst. Gul Banda and others', **2014 SCMR 1205**, the suit of the appellants was rejected.

3. The learned counsel for the appellants has argued that; the appellants, as paternal uncles of the Deceased, are entitled to inherit from his legacy/estate; the Deceased was the only son and had died issueless; the remaining legal heirs are all females i.e his widow and full/real sisters; in the light of the judgment rendered by the august Supreme Court in the case titled 'Waris Ali and others vs. Rasoolan Bibi', **PLD 2014 Supreme Court 779** the appellants are entitled to inherit from the legacy/estate left behind by the Deceased; the residue, after satisfying the shares of the widow and full/real sisters,

is to be distributed amongst the appellants; in accordance with the Sunni Fiqh of law of inheritance the respondents fall in the category of sharers while the rest of the legacy/estate will devolve upon the residuaries; the principles of Raad/Return is attracted and thus the appellants are entitled to inherit; the authoritative treaties i.e. principles of Mohammadan Law by Charles Hamilton and Mohammadan Jurisprudence by Abdul Raheem etc declare that the paternal uncles are entitled to inherit as residuaries; reliance has been placed on 'Dhuman and others vs. Ghulam Sarwar and others', **1985 SCMR 947**, 'Qazi Fazal Ahmad and others vs. Riaz ur Rahim and others', **2004 SCMR 432**, 'Waris Ali and others vs. Rasoolan Bibi', **PLD 2014 Supreme Court 779**, 'Mir Sahib Jan vs. Janan', **2011 SCMR 27**, 'Mir Sahib Jan vs. Janan', **2011 SCMR 27**, and 'Abdul Sattar vs Mst. Naheed Akhtar through her uncle Muhammad Hadayat and another', **2011 CLC 1398**.

4. The learned counsel for the respondents, on the other hand, has argued that; the appellants are not entitled to inherit from the estate of the Deceased; they are neither sharers nor entitled to inherit as residuaries; they are paternal uncles and, therefore, excluded by the surviving full/real sisters; the august Supreme Court in the case titled 'Saad Ullah and others vs. Mst. Gul Banda and others', **2014 SCMR 1205**, has explicitly held that if full/real sisters are not excluded then the residue is to be distributed amongst them; no cause of action has arisen in favour of the appellants and, therefore, the learned trial Court has rightly accepted the application under order VII Rule 11 CPC; the precedent law cited at the Bar on behalf of the

appellants is not relevant and based on altogether different facts and circumstances and, therefore, distinguishable; no legal infirmity has been pointed out so as to warrant interference.

5. The learned counsels have been heard and the record perused with their able assistance.

6. Admittedly, the Deceased left behind a legacy/estate and was survived by his wife, three full/real sisters and consanguine sisters. The Deceased had no children and, therefore, the appellants who assert to be paternal uncles i.e. brothers of the father of the Deceased, claim a right to inherit as residuaries on the basis of the principle of Raad/Return. The suit filed by the appellants was rejected by the learned trial Court pursuant to acceptance of an application filed under order VII Rule 11 of the CPC. The learned trial Court accepted the application, placing reliance on the law laid down by the august Supreme Court in the case titled 'Saad Ullah and others vs. Mst. Gul Banda and others' **2014 SCMR 1205**. It is an admitted position that the parties belong to the Sunni Fiqh and thus the principles relating thereto are attracted.

7. The principles of law of inheritance known as Ilmul Faraiz have been discussed in various authoritative treatise. It would be beneficial for the adjudication of the instant appeal to briefly highlight the fundamental principles and manner of inheritance so as to answer the question which we are required to answer i.e whether in the presence of full/real sisters the appellants, who claim to be paternal

uncles of the Deceased, are entitled to inherit as residuaries by application of the principle of Raad or Return. There is no cavil to the proposition that a number of blood relations of a person who passes away may become entitled to inherit out of his or her estate. They have been divided into three categories i.e. Zav-ul-Furuz, the Asabah and Zav-ul Arham. The first category is that of the sharers who are entitled to receive a fixed share in the prescribed order of preference and mode of succession. The second category i.e. Asabah are known as residuaries and they are those relatives who inherit what remains of the legacy/estate after shares of the sharers have been distributed. When there are no sharers, then the residuaries take the entire inheritance. In the absence of the residuaries, the residue after distribution of shares amongst the entitled sharers, again devolves upon the latter (sharers) in accordance with their prescribed shares. The third category of Zav-ul Arham is that of distant kindred who are neither sharers nor residuaries of the deceased. The basis of inheritance is through Sabab i.e. marriage, for example husband and wife, Nasab and Wala. There are twelve sharers i.e. husband or wife as the case may be, father, mother, true grandfather, true grandmother, uterine brother, daughter, son's daughter, full/real sister, consanguine sister and uterine sister. Out of these sharers eight are expressly mentioned in the Holy Quran. The sharers who are converted into residuaries are father, true grandfather, mother, daughter, son's daughter, full sister and consanguine sister. The general rules which determine the conversion of sharers into residuaries are, firstly, that a female sharer is excluded from inheriting as a sharer and is converted into a residuary by one or more male

residuaries of the same degree and consanguine relationship to the deceased and, secondly, that the father and true grandfather are converted into residuaries in default of any descendants of the class of sharers or residuaries. They inherit as residuaries in the absence of children. Some relationships, which are sharers under prescribed circumstances, may also become entitled to inherit as residuaries. A full or real sister inherits as a sharer in the absence of a full brother, daughter or son's daughter and if there are no other excluders. The full sister inherits as a residuary when there is a full brother or a daughter or son's daughter and no excluder. There are four classes of residuaries, firstly, the offspring of the deceased such as son or daughter, secondly, the father and a true grandfather, thirdly, the offspring of the father of the deceased i.e. brothers and sisters and lastly, the offspring of the true grandfather i.e. paternal uncle and their male descendants. The fundamental principle is that each class must be exhausted before the next and thus as a corollary the latter stands excluded. The full/real sister, if not excluded by any other relation and in the absence of any other persons entitled to inherit as a residuary belonging to the higher categories would, therefore, become entitled to the residue and thus exclude a relation of the deceased who falls in the lower or the last category.

8. The august Supreme Court in the case titled 'Saad Ullah and others vs. Mst. Gul Banda and others', **2014 SCMR 1205** has reproduced in the judgment the table of residuaries in the order of succession as described in the "Principles of Mohammadan Law" by D.F Mullah. It explicitly shows that a full sister falls in a higher degree

and would, therefore, exclude a paternal uncle. The principles have also been succinctly enunciated by the august Supreme Court in the case titled 'Waris Ali and others vs. Rasoolan Bibi' **PLD 2014 Supreme Court 779**.

9. In the instant case the Deceased, namely Shahid Saddique Khan, had no children and had passed away leaving behind a widow and three full/real sisters. There is no relation of the Deceased who according to the Sunni law of inheritance would exclude a full/real sister as sharer. Likewise, there is no relation who is entitled to inherit as a residuary. The appellants claim to be paternal uncles of the Deceased. They belong to the last category i.e the descendants of the grandfather while the full sisters belong to the higher category i.e. descendants of the father of the Deceased. In such an eventuality, the appellants who are paternal uncles stand excluded from inheriting as residuaries out of the legacy of the Deceased by the full/real sisters. The learned trial Court, therefore, has correctly interpreted the law and no legal infirmity has been pointed out which may require interference.

10. For the above reasons, the instant *Regular First Appeal* is without merit and accordingly dismissed. The connected Civil Revision No.174 of 2015, titled 'Mubarik Ahmed Khan, etc vs. Shahid Saddique Khan, etc' stems from the claim of the appellants based on their right to inherit as residuaries from the legacy left behind by the Deceased. In the facts and circumstances, the appellants are not entitled to inherit as residuaries and are excluded by the full/real sisters and

therefore, the civil revision has become infructuous and consequently dismissed.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on **11-07-2018**

JUDGE

JUDGE

Approved for reporting.

*Asif Mughal/**

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