

Stereo.HCJDA 38.
Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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CIVIL REVISION NO.519-D OF 2020

Mst. **KAYANAT MUMTAZ** and another

versus

Mst. **SARWAR SULTAN** and others

JUDGMENT

Date of hearing:	<u>03.12.2025</u>
Applicants by:	Mr. Furqan Ahmad Mirza, Advocate.
Respondent No.1 by:	Ex-parte.
Respondents No.2 to 5 by:	Mr. Muhammad Sajjad Baloch, Advocate.

MIRZA VIQAS RAUF, J. The applicants, herein, are daughters of Mumtaz Ali Khan, pre-deceased son of Mulakh Bano, who passed away and on her demise, inheritance Mutation No.4373 dated 14th October, 2013 was sanctioned. This followed a suit for declaration, instituted by Altaf Hussain, predecessor-in-interest of respondents No.2 to 5 and Mst. Sarwar Sultan, respondent No.1 (hereinafter referred to as “**respondents**”). The suit was resisted by the applicants, who submitted their written statement wherein the assertions contained in the plaint were controverted. From the divergent pleadings of the parties, multiple issues were framed and finally the suit was decreed with costs by way of judgment dated 28th January, 2020 handed down by learned Civil Judge Class-II, Talagang. The applicants, feeling dissatisfied, preferred an appeal before learned Additional District Judge, Talagang, which was partly allowed by way of judgment and decree dated 25th September, 2020

hence this revision application in terms of Section 115 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as “**CPC**”).

2. Learned counsel for the applicants contended that the applicants being daughters of late Mumtaz Ali Khan are entitled to inherit share of their father *i.e.* 2/5 share in the legacy of Mulakh Bano but the appellate court held them entitled for 2/3 of their father’s share only. Learned counsel emphasized that the impugned judgment of the appellate court is not tenable as the same is suffering with material irregularities.

3. Conversely, learned counsel for the **respondents** defended the impugned judgment passed by the appellate court.

4. Heard. Record perused.

5. The matter in issue relates to the legacy of Mulakh Bano, who passed away on 29th January, 2013 and on her demise, Mutation No.4373 dated 14th October, 2013 was sanctioned in favour of the applicants as well as **respondents** but being dissatisfied from the respective shares, the **respondents** instituted a suit for declaration. Suit was though resisted by the applicants, being defendants but it was decreed with costs vide judgment dated 28th January, 2020. Feeling aggrieved, the applicants preferred an appeal which has been decided through the impugned judgment, holding the applicants entitled to receive 2/3 share in the estate left by Mulakh Bano.

6. The moot point which requires consideration of this Court is relatable to the entitlement of the applicants, being children of pre-deceased son of Mulakh Bano. It is admitted fact that Mulakh Bano was having two sons namely Altaf Hussain (predecessor-in-interest of respondents No.2 to 5) and Mumtaz Ali Khan (father of the applicants) and one daughter namely Mst. Sarwar Sultan (respondent No.1). The parties are also not in dispute that Mumtaz Ali Khan passed away in the lifetime of his mother Mulakh Bano. Section 4 of the Muslim Family Laws Ordinance, 1961 (hereinafter referred to as “**Ordinance, 1961**”) caters the proposition, which reads as under: -

4. Succession.— [(1)] In the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.

[(2) If a Muslim Male from *Ahl-e-Tashih* dies, the share of a widow in the immoveable property left behind by her deceased husband shall be as follows: -

(a) one-fourth share of the fixed price or value of the property, if there is no child left behind the deceased husband; and

(b) One-eight share, if there is child left behind.

(3) If there are two or more widows, the share, as mentioned in sub-section (2), shall be divided equally among them.

(4) The price or value of the property shall be the price or value existing at the time of payment and not the price or value which existed at the time of death of the husband:

Provided that if the legal heirs of the deceased do not give the widow her share in the above terms, she shall become entitled to her due share in the corpus of immoveable property.

(5) A widow is entitled to her share in the corpus of movable property of her deceased husband provided that the provisions of sub-sections (2) and (3) shall *mutatis mutandis* apply.

(6) *Fiqah-e-Jafri* recognizes right of husband to get his share from the property left by his deceased wife, either movable or immovable, as follows: -

(a) one-half share, if there is no child left behind; and

(b) one-fourth share of the property, if there is child left behind.

(7) in case of dispute, the parties or any of the parties may have recourse to a court of competent jurisdiction or by approaching the *Mujtahid-e-Alam* from the panel maintained by the Council of Islamic Ideology. The decision of *Mujtahid-e-Alam* shall have a status of an award and the same shall be dealt with in accordance with the provisions of the Arbitration Act, 1940 (X of 1940).

Explanation. The expression "*Mujtahid-e-Alam (Faqih-e-Azam)*" means a juris-consult, religious scholar or doctor of *Shia* school of thought well versed with *Shariah* having

international repute and of such recognition. The Council of Islamic Ideology shall maintain a panel of *Mujtahid-e-Alam* having aforesaid qualifications.

(8) As enshrined in Article 227 of the Constitution of the Islamic Republic of Pakistan, the inheritance rights of *Ahl-e-Tashih* and matters connected therewith or ancillary thereto shall be decided according to their personal law interpreted by *Fiqah-e-Jafria* (*Shai* school of thought).]

In terms of Section 4 (1) of the **Ordinance, 1961**, the applicants, being daughters of pre-deceased son of Mulakh Bano were entitled to get their share in the estate left by the deceased. It is noticed that initially the trial court determined shares of the parties in the following manner: -

18. For what has been discussed above, it is held that the share of the parties in the inheritance of Mulakh Bano deceased, mother of the plaintiffs/deceased paternal grand-mother of defendants are as under:

- | | | |
|----|-----------------------------------|-----|
| 1. | Altaf Hussain | 2/5 |
| 2. | Mst Sarwar Sultan | 1/5 |
| 3. | Mumtaz Hussain (Pre-deceased son) | 2/5 |

The share of pre-deceased son was to be distributed further as under:

- | | | |
|------|------------------------------------|-----------|
| i. | Widow of pre-deceased son: | 1/8 |
| ii. | Both daughters of pre-deceased son | 1/3 & 1/3 |
| iii. | Brother of pre-deceased son | 5/36 |
| iv. | Sister of pre-deceased son | 5/72 |

The above noted shares were modified by the appellate court and the widow *i.e.* mother of the applicants was excluded from the inheritance and rightly so.

7. Now coming to the entitlement of the applicants, being daughters of pre-deceased son of Mulakh Bano, it is noticed that in the light of analogy in Section 4 of the **Ordinance, 1961**, they would be entitled to get the share in the legacy of their grandmother, which they would have inherited in case their father Mumtaz Ali was alive at the opening of succession of deceased Mulakh Bano. To make it more simple, it is observed that had Mumtaz Ali, father of the

applicants, was alive at the time of demise of Mulakh Bano, he would have received $\frac{2}{5}$ share alongwith his brother Altaf Hussain and ultimately on his death, when his inheritance will open, the applicants, being his daughters, would get $\frac{1}{3}^{\text{rd}}$ each and in toto $\frac{2}{3}$ share and remaining $\frac{1}{3}$ share would revert back to deceased son of Mulakh Bano namely Altaf Hussain and daughter Mst. Sarwar Sultan with the ratio of 2:1. Guidance to this effect can be sought from MUKHTAR AHMAD versus Mst. RASHEEDA BIBI and another (2003 SCMR 1664). Relevant excerpt from the same is reproduced: -

6. One thing deserves to be taken notice of. It is the Shari share of Mst. Rasheeda Bibi. No doubt, if she happened to inherit through her father Bir Din, her father would be entitled to $\frac{2}{5}$ th share in the property but she being the only daughter will inherit $\frac{1}{2}$ share from the property of Bir Din while the remaining would go to other collateral's i.e. Mukhtar Ahmad and Mst. Sardar Bibi. She in fact is entitled to $\frac{1}{5}$ th share and not $\frac{2}{5}$ th share.

Reference to above effect can also be made to MUHAMMAD YOUSAF and others versus Mst. BILQEES BEGUM and others (2006 YLR 889).

8. Though there is divergence of views in the courts below and conclusion are contrary to each other but this Court, while exercising revisional jurisdiction is supposed to make comparative analysis of both the judgments in order to determine their validity on the touchstones of Section 115 of CPC. It is cardinal principle of law that in the matter of giving preference to the judgments of the lower courts, while analyzing the same in exercise of revisional jurisdiction, the preference and regard is always given to the findings of the learned appellate court, unless those are suffering with any legal infirmity or material irregularity. Reference in this respect, if needed can safely be made to the case of MUHAMMAD NAWAZ through L.Rs versus Haji MUHAMMAD BARAN KHAN through L.Rs. and others (2013 SCMR 1300).

Relevant extract from the same is reproduced herein below:-

“12.....We have also taken into consideration the judgment of the Appellate Court which is based on proper appraisal of evidence on record and the findings of the Appellate Court are to be preferred as it has been held by this Court in the case of

Madan Gopal and others vs Maran Bepari and others (PLD 1969 SC 617) that *“if the findings of fact reached by the first appellate Court is at variance with that of the trial Court, the former will ordinarily prevail, although it would not possess the same value or sanctity as a concurrent finding.”* This view also finds support from the case of Muhammad Shafi and others vs. Sultan Mahmood and others (2010 SCMR 827).....”

The above view also finds support from the cases of AMJAD IKRAM versus Mst. ASIYA KAUSAR and 2 others (2015 SCMR 1), MUHAMMAD HAFEEZ and another versus DISTRICT JUDGE, KARACHI EAST and another (2008 SCMR 398) and Mst. SAEEDA through her son Muhammad Abid versus MUHAMMAD NAEEM and 3 others (PLD 2013 Sindh 39).

9. After having a comparative analysis of both the judgments, I am of the candid view that the learned Additional District Judge, Talagang has rightly interfered with the judgment passed by the learned Civil Judge, Talagang. The applicants have failed to point out any illegality or material irregularity in the impugned judgment, warranting interference by this Court in exercise of revisional jurisdiction. The instant application thus fails and is **dismissed** with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Sajjad

APPROVED FOR REPORTING

JUDGE