

Form No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

CR No. 13153 of 2022

Muhammad Irfan Butt & another
vs.
Aliya Nawaz

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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12.11.2025	Sh. Muhammad Usman, Advocate for petitioners. Sh. Saeed Ahmad, Advocate for respondent.
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The respondent, Aliya Nawaz, filed a suit for partition of property bearing No. B-IX-7S-122/1 situated at Lahore Road, Haji Park, *Bar Lab-e-Lahore* Road City Sheikhupura against the petitioners, who are her real brothers, by claiming that father of the parties, namely, Muhammad Ali Butt son of Ahmad Bukhsh was owner of the suit property on the basis of sale deed bearing document No.360 dated 20.02.1967 which was purchased by him from one Aleem-ud-Din son of Allah Bakhsh. Father of the parties died on 12.04.2007 by leaving behind the parties i.e. the respondent and her two brothers namely Muhammad Irfan Butt and Muhammad Rizwan Butt, who were his daughter and sons as his only legal heirs and respondent sought possession of her share in inheritance through partition of property, which suit was contested by the petitioners by claiming that their father had gifted the suit property to the petitioners on 04.10.2002 at about 5:00 p.m. due to love and affection in presence of witnesses Ashiq Ali Butt son Elahi Bakhsh Butt and Anwar Ali Butt son of Haji Itbar Ali Butt at the “*Bathak*” of the disputed property, which gift was accepted by the petitioners and possession was delivered to them. Out of divergent pleadings of the parties, issues

were framed as to whether father of the parties had gifted suit property to the petitioners and whether the respondent was entitled to 1/5th share in the suit property and after recording of evidence led by respective parties, the suit was dismissed by the trial court vide judgment dated 09.11.2020, which findings were reversed by the appellate court vide judgment dated 27.01.2022 on an appeal filed by the respondent and the Court ordered to pass a preliminary decree in her favour by declaring the parties as legal heirs of the deceased and that gift in favour of the petitioners was not proved and held the respondent entitled to share in title and possession of property and as regards the question *qua* delivery of possession of property to the extent of share of respondent, sent back the matter to trial court concerned for proceeding in accordance with law after passing of preliminary decree of partition of inherited property.

2. The petitioners have challenged the said judgment on the ground that father of the parties had gifted suit property to them on 04.10.2002 at about 5:00 p.m. due to love and affection in presence of witnesses Ashiq Ali Butt son Elahi Bakhsh Butt and Anwar Ali Butt son of Haji Itbar Ali Butt and respondent had been given her share in shape of cash amounting to Rs.5,00,000/- which was deposited by her in her Account No.SA10332 in General Post Office, Railways Road, Sheikhpura, besides it was claimed that respondent had also received an amount of Rs.40,000/- from her father during his life time.

3. Although the petitioners produced evidence in support of their claim of property being orally gifted to them, yet they were not able to establish transferring of property by their father to them through gift by proving date, time and place when the offer was made and accepted by them with delivery of possession under the gift and the evidence to that effect by afore referred

witnesses were also disbelieved by the appellate court. The petitioners also failed to prove that Rs.5,00,000/- deposited in the account of the respondent had been in *lieu* of her share in inheritance in the suit property and that she had also previously received Rs.40,000/- on the said account, whereas the respondent had proved that suit property belonged to her father and she being his legal heir was entitled to 1/5th share through inheritance in his property. In view of the principles laid down in the judgments of the Supreme Court in cases titled **Muhammad Nawaz and others versus Sakina Bibi and others** (2020 SCMR 1021) and **Muhammad Sarwar versus Mumtaz Bibi and others** (2020 SCMR 276), the factum of oral gift is required to be proved through evidence of date, time and place where the gift was made by offer, acceptance in the presence of witness, hence, the aforesaid finding of fact recorded by the Appellate Court to the effect that the petitioners through evidence had not been able to prove gift in their favour is based on proper appreciation of evidence available on the record and law on the subject and does not suffer from any mis-reading and non-reading of record.

4. However, to establish their claim of gift on basis of other material available on record, the counsel for the petitioners states that respondent appeared before the civil court, where petitioners obtained succession certificate Exh-D8 on 07.08.2008 in favour of petitioner No.1 upon respective conceding statements of petitioner No.2 and the respondent produced in evidence as Exh-D5, whereby it is claimed that she had surrendered the title of the property to the petitioners and which is claimed to have strengthened, consolidated and established the claim of the petitioners of property having been gifted to them and it is claimed that said succession certificate is binding on the respondent and she cannot now claim any right to property. The question that arises

is that whether the succession certificate issued in favour of the petitioner No. 1 relating to amount of Rs. 7,40,679/- in Account No. SA 10330 in Post Office Saving Bank, (GPO), Sheikhupura, left behind by the father of the parties relating to cash, is sufficient to deprive the respondent from claiming share in property, the answer is in the negative for the reason that the conceding statement got recorded by the respondent is merely for the purpose of amount lying in the Post Office Saving Account of the father of the parties and not relating to his property. Furthermore, in the case titled **Mst. Jameela Akhtar versus Public-at-Large and others** (2002 SCMR 1544), the Supreme Court while addressing the question of determination of issue as to whether the claimant was a widow of the deceased arising out of the proceedings for issuance of succession certificate held that disputed questions of title and entitlement could not be decided in such summary proceedings and should be determined by Civil Court through a Civil Suit. The operative portion of the said judgment is reproduced below:

“4. We find that the trial Court while granting succession certificate to respondent No.2, should have directed that no share of the said amount should be paid to Mst. Umat- ul- Hameed unless she gets a decree from the Civil Court about her status as widow of Muhammad Zafarullah Khan, deceased, for such a question could not be decided in summary proceedings.

5. For the foregoing reasons, we convert this petition into appeal, the same is partly accepted and the findings recorded by the Courts below that respondent No. 3 was the widow of Muhammad Zafarullah Khan, deceased are hereby set aside and the said respondent may file a civil suit to establish her status as widow of Muhammad Zafarullah Khan, deceased and if she succeeds in getting a decree, the amount already received by her under succession certificate may be retained by her and in case the said suit is decided against her, she shall refund the same to Mst. Zubaida Akhtar, succession certificate holder, who shall distribute the same among the remaining heirs of

Muhammad Zafarullah Khan, deceased. In case, Mst. Umat- ul- Hameed files civil suit, the same shall be decided within six months positively. If no suit is filed within two months hereafter, she shall refund the amount to Mst. Zubaida Akhtar, failing which the latter can recover it through the process of the Court.”

Similar view has time and again been reiterated by the Courts of law in cases reported as **Ijaz Ghani Khan vs. District Judge, Karachi Central and 04 others** (PLD 2022 Sindh 505) wherein it has been held that issuance of letter of probate or succession certificate cannot be treated as declaration with regard to legal heir ship or title of the parties but purpose and scope thereof is always limited for specified purpose; in **Mst. Nadia Shakil and another vs. Shagufta Baqar and another** (2021 CLC 1712 Sindh), it has been held that in disposed of succession petition only extension of Letter of Administration was permissible under Section 376 of Succession Act, 1925, on subsequent discovery of any other estate of deceased which inadvertently or for any reason could not be mentioned in original succession petition and succession certificate could also be revoked on the grounds provided in Section 383 of Succession Act, 1925; in **Sofia Ashfaq vs. Haseeb Ashfaq Bhatti and others** (PLD 2019 Islamabad 238) it has been held that proceedings before trial court in petition for grant of succession certificate under section 373 of Succession Act, 1925 are summary in nature. Intricate questions cannot be resolved in such proceedings and question of title to property have to be left to be decided in a suit before court of plenary jurisdiction; in **Liaqat Zaman Khan and others vs. Mst. Tazeem Akhtar and others** (2017 YLR 150 Peshawar) the question of right of widow to inherit from deceased husband was under consideration, the court held that the law allowed the Judge to grant the succession certificate to the applicant

who appeared to be a person having *prima facie* the best title thereto, notwithstanding a rival claim appearing to Judge too intricate and difficult to determine in a summary proceedings and the said matter may be got resolved through already lodged civil suit for declaration where the factum of divorce was pending; in **Dawa Khan vs. Secretary (Sarfoon), Govt. of Pakistan, Islamabad & 14 others** (2015 PLC (CS) 1255 Peshawar) in a suit for declaration filed to seek share in *Shuhada Package*, gratuity and family pension of a deceased police constable who had embraced martyrdom the right of wife and children of deceased employee declared by grant of succession certificate was upheld by dismissing claim of other legal heirs who claimed the same as share in inheritance by declaring it to be a benefit of service and not an inheritable property; and in **Malik Muhammad Rafique vs. Mst. Tanvir Jahan and another** (PLD 2015 Islamabad 30), it has been held that proceedings under the Succession Act, 1925 were summary in nature and disputed status of parties to inherit property as legal heirs could be determined through a civil suit. In all the aforementioned cases, it has repeatedly been held that the proceedings for obtaining succession certificate are summary in nature and the disputed questions of title and entitlement to relief cannot be determined therein and resort should be made to the court of plenary jurisdiction for determination of disputed facts through a civil suit and the determination by the court in a civil suit is binding on courts granting succession certificates in summary jurisdiction whereas the findings recorded by the court granting succession certificate cannot be a hindrance or impediment in the way of the civil court to reach a contrary decision while determining the question of title or right in the matter.

5. In the instant case, there is another important aspect of the matter that Petitioner No.2 had also got

recorded his conceding statement in favour of petitioner No.1 in the said case and if the assertion of the petitioners that respondent had surrendered her share in the property by getting recorded her conceding statement (Exh-D5) in a petition for obtaining succession certificate is treated to be true, then petitioner No.2 would also not be entitled to any share in property on the same assumption for the reason that he also got recorded similar statement recorded in the same case which is evident from statements of the parties in the petition for obtaining succession certificate got exhibited in the instant case as Exh-D5, thus the petitioners cannot be allowed to blow hot and cold in the same breath. In view thereof, it is held that the respondent by getting her conceding statement recorded in the petition to obtain succession certificate in favour of petitioner No.1 has not conceded her right to obtain her share in inheritance in property left by her father. Despite vehement efforts by learned counsel for the petitioners, no illegality or jurisdictional defect, mis-reading or non-reading of the relevant record has been pointed out, whereby well-reasoned judgment passed by appellate court could be set-aside. Consequently, the appellate court was justified to set-aside the judgment of dismissal of suit passed by the trial court and rightly directed that preliminary decree be passed.

6. For what has been discussed above, this petition being devoid of any force is *dismissed*.

(MUZAMIL AKHTAR SHABIR)
JUDGE

Naveed *

APPROVED FOR REPORTING