

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Irfan Saadat Khan

Justice Shahid Bilal Hassan

C.P.L.A.No.2095-L of 2016

(Against the order dated 05.04.2016 passed by Lahore High Court, Multan Bench, Multan in C.R.No.29-D of 2001)

Matloob and others

... *Petitioner(s)*

Versus

Taj Din (deceased) through Legal Heirs and others

... *Respondent(s)*

For the Petitioner(s):

Mr. Muhammad Vasif Naveed, ASC

For Respondent:

N.R.

Date of Hearing:

15.01.2025

ORDER

SHAHID BILAL HASSAN, J. Malcontented with the judgment dated 05.04.2016 passed in revision petition bearing No.29-D of 2001 by the Lahore High Court, Multan Bench, Multan, the petitioners have filed the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973.

2. Tersely, the respondents instituted a suit for declaration by maintaining that they were in possession of the suit land as successors-in-interest of Hameed Khan (deceased) and petitioner No.1 was merely his nominee, therefore, the sale deed dated 16.12.1991 and the orders dated 19.12.1991, 09.09.1991 and mutation No.255 dated 31.12.1991 were against law, facts and ineffective upon their rights; that the suit land was originally allotted to Hameed Khan in the year 1948 under the Co-operative Farming Scheme, whose nominee was Muhammad Anwar. Both Hameed Khan and Muhammad Anwar (his nominee) died in the year 1962 and the name of the

petitioner/Matloob, brother of the latter, was entered as a nominee after Muhammad Anwar in the record of the Society; that the petitioner No.1, Matloob, requested the Collector to sanction proprietary rights in his favour but it was turned down on 21.08.1969 on account of his minority. Against the said order, the petitioner No.1 preferred an appeal before the Additional Collector (Revenue) Multan who declared him as a nominee on 06.04.1970; that the petitioner No.1 moved an application to the District Collector, Vehari for the allotment on the ground that he remained in possession of the property during the life time of Hameed Khan, upon which he was allowed to deposit official dues on 09.09.1991 and a sale deed was executed on 19.12.1991, where-after mutation No.255 dated 31.12.1991 was also sanctioned. The suit was instituted on the ground that said Matloob was not born in the year 1948 and that his status was that of a nominee; therefore, the proprietary rights could have been bestowed upon the legal heirs of Hameed Khan in accordance with Shariah. The petitioners contested the suit while submitting written statement contending therein that Hameed Khan had no concern with the suit land and the same was correctly transferred in their names. The divergence in pleadings of the parties was summed upon into issues:

ISSUES:

1. *Whether the plaintiffs are owners in possession of the suit property as legal heirs of Hamid Khan deceased? OPP*
2. *Whether Matloob Hussain defendant No.1 was nominee of the suit property? OPP*
3. *Whether the impugned sale deed dated 16.12.1991, order dated 19.12.1991, mutation dated 31.1.21991 and order dated 09.09.1991 are illegal, void, ultra vires and ineffective upon the plaintiffs' right? OPP*
4. *Whether the plaintiffs are estopped to file the present suit by their conduct and act? OPD*
5. *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction and what is its effect upon the suit? OPD*
6. *Whether the suit is not maintainable in view of preliminary objection No.7? OPD*
7. *Whether the suit is time barred? OPD*
8. *Whether the suit is hit by section 11 CPC? OPD*
9. *Whether the suit is barred under Order 23 Rule 1 CPC? OPD*
10. *Whether the defendants are entitled to special costs u/s 35-A CPC? OPD*
11. *Relief.*

On 25.02.1997, the suit instituted by the respondents was dismissed on the ground that Ex.P4, Ex.P5 and Ex.P6 reveals that Matloob was never allotted any land whereas Hameed Khan was actual allottee and the former was merely his nominee after death. It was also observed that allotments dated 09.09.1991 and 19.12.1991 as well as mutation No.255 dated 31.12.1991 were not produced, therefore, no findings could be given on these documents. The appeal was preferred by the respondents against the said judgment and decree. The appellate Court vide judgment and decree dated 23.12.2000 allowed the appeal and decreed the suit on the ground that on 06.04.1970 the Additional Commissioner (Revenue), Multan declared the petitioner/ Matloob eligible for acquisition of proprietary rights as on 20.11.1962 at the age of 7 years; no minor could be made a member of the Society under the byelaws and as such he was a nominee of Muhammad Anwar (deceased) and was also observed that Muhammad Anwar was enrolled as a member of the Society on 13.06.1968 who nominated his brother Matloob as his nominee, therefore, he was entitled for the conferment of the proprietary rights. It was, thus, concluded that after his death it was the legal heirs/respondents who were to be conferred the proprietary rights as per Notification No.6366-84/3089-CL-II 59 BOR, Punjab Lahore dated 18.11.1984 under the Muslim Personal Law (Shariat Application) Act, 1948. The petitioners being aggrieved challenged the said judgment and decree by filing C.R.No.290D of 2001 before the Lahore High Court, Multan Bench, Multan but they remained unsuccessful as the same was dismissed vide impugned judgment dated 05.04.2016; hence, the instant petition.

3. Heard and record perused.

4. The controversy involved in the case in hand is: whether a nominee can substitute a heir(s) after the death of a Member of a Society under the Co-operative Societies Act, 1925? The said question has been answered by the Act in section 27, which reads:-

'27. Transfer of interest on death of member: (1) On the death of a member of a society such society may within a period of one year from the death of such member transfer the share or interest of the deceased member to a person or persons nominated in accordance with the bye-laws of the society, if duly admitted a member of the society, in accordance with the rules or the bye-laws of the society, or, if there is no person so nominated, to such person as may appear to the Committee to be the heir or legal

representative of the deceased member if duly elected a member of the society, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules or bye-laws:

Provided that such nominee, heir or legal representative, as the case may be, may require that payment shall be made the society within one year from the death of the member of the value of the share or interest of such member ascertained as aforesaid:

Provided further that nominee, heir or legal representative shall distribute the amount received by him among the heirs of the deceased.

(2) A society shall subject to the provisions of Section 25 and unless prevented by an order of a competent Court pay to such nominee, heir or legal representative, as the case may be, all other money due to the deceased member from the society,

(3) All transfers and payments made by a society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by the other person.' (underline for emphasis)

Bare perusal of the above provision of law makes it vivid that share or interest of the deceased member is to be transferred to a person or persons who has/have been nominated in accordance with the bye-laws of the society and when the relevant clause of the bye-laws is gone through, it emerges that under clause 8(alif) the eldest son of the deceased member has been burdened with responsibility to watch the interest of the member after his death and will be the heir, which clause has rightly been referred by the High Court in the impugned judgment. For ready reference, the same is reproduced:

8(الف). انجمن میں ممبر کی ملکیت، اس کا حصہ دار دیگر مفاد کا وارث اس کا سب سے بڑا لڑکا ہوگا۔ جب ممبر کا کوئی بیٹا نہیں ہوگا تو وہ کسی شخص کو نامزد کرے گا جو اس کی موت کے بعد اس کا وارث ہوگا اور اس نامزدگی کی تصدیق و رجسٹر ممبران میں اپنے دستخط کرنے سے کرے گا یا اپنے انگوٹھے کا نشان لگائے گا۔ یہ نامزدگیاں بیک وقت ایک شخص کے حق میں ہوں گی۔

The abovesaid clause rules out the possibility that Anwar, the nominee, could substitute as legal heir of Hameed Khan, the member, after his death, because it is not a case that Hameed Khan was not having a male descendent i.e. son and after death of Anwar, the petitioner No.1 namely Matloob being nominee of his brother could claim his (Anwar's) inheritance, especially when it is a settled principle of law that nomination is merely made to confer a right to collect the money or to receive the money and it does not operate either as a gift or as a will; therefore, it cannot deprive the other heirs of the nominator who may be entitled thereto under the law of succession applicable to

the deceased.¹ The said ratio was further adopted and reiterated in judgment² by this Court, wherein it was held that nomination by a member of a cooperative society does not operate as a gift or will and it was further held that membership of the Society is a matter altogether different from succeeding to the estate of the deceased. Further, the said view was continuously upheld by this Court in judgments³; therefore, it can safely be held that in presence of heirs of Hameed Khan, the nominee Anwar and after his death the petitioner No.1 namely Matloob, could not succeed him (Hameed Khan) rather the share and interest of the deceased Hameed Khan, established in the Society would devolve upon his legal heirs.

5. In addition to the above, it is astonishing that when the petitioner Matloob was not in existence as he was born in the year 1953, how can he claim the allotment on the basis of membership in the Society, originally accorded to Hameed Khan in the year 1948, as admittedly his date of entry was mentioned as 13.06.1948 at Sr.No.78 instead of 02.09.1962, the date of entry of Anwar, the original nominee of Hameed Khan because Hameed Khan was shown as member of the Society on 13.06.1948 in respect of square No.53, 12-Kanals 04-Marlas as per Ex.P1. All these facts establish that some fraud was played by the petitioner Matloob in order to deprive the legal heirs of Hameed Khan from their valuable rights, accrued in their favour. There appears no illegality in the impugned judgment warranting interference by us.

6. Pursuant to the above discussion, we find it not a fit case for grant of leave. Leave is refused, consequent whereof the petition stands dismissed.

Judge

Judge

Islamabad

15.01.2025

'Approved for reporting'
(M.A.Hassan)

¹ Mst. Amtul Habib and others v. Mst. Musarrat Parveen and others (1974 SCMR 185)

² Fazal Shah v. Muhammad Din and others (1990 SCMR 868)

³ Manzoor Ahmad v. Mst. Salman Bibi and others (1998 SCMR 388) & Muhammad Bakhsh v. Mst. Ghulam Ghulam Fatima (2007 SCMR 1227)