

Stereo. HCJDA 38
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Civil Revision No.164468 of 2018

Manzoor Ahmad
Versus
Chiragh Khan (deceased) through LRs.

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JUDGMENT

Date of Hearing:	26.09.2024.
Petitioner by:-	Sahibzada Saleem Raza, Advocate.
Respondent No.1-A,B by:-	Syed Afzal Haider, Advocate.
Respondents No.4 & 5 by:-	Mr. Ghulam Awais Ahmad Siddiqi, Advocate.
Respondents by:-	Mr. Muhammad Naeem Bhatti, Advocate.

CH. MUHAMMAD IQBAL, J:- Through this

civil revision, the petitioner has challenged the vires of consolidated judgment & decree dated 17.10.2014 passed by the learned Civil Judge, Kamalia whereby suit for declaration filed by the petitioner was dismissed and suit for declaration filed by respondents No.1 & 2 was decreed and also assailed the judgment & decree dated 11.12.2017 passed by the learned Addl. District Judge, Pir Mahal who dismissed the appeal of the petitioner.

2. Brief facts of the case are that Noora son of Makhna had four real brothers namely Rustam, Muhammad, Fazil and Jahana (issueless). Noora son of Makhna was married with Mst. Sammo and from this wedlock a daughter Mst. Nooran only was born. After death of Noora in the year 1940 his widow Mst. Sammo contracted second marriage with Rustam, who

was real brother of Noora. From this wedlock of Mst. Sammo with Rustam, Manzoor Ahmad was born; that Mst. Nooran daughter of Noora was owner of property measuring 76-Kanals 16-Marlas comprising Khewat Nos.14 and 15 situated in Chak No.699/GB, Tehsil Kamalia. She died as spinster (unmarried), and her inheritance mutation No.294 dated 20.07.2002 was sanctioned in favour of her uterine brother Manzoor Ahmad. The other sons of Rustam from his wedlock with Mst. Sattan namely Chiragh etc. (plaintiffs/respondents No.1 and 2) filed a suit for declaration that the plaintiff and defendant being sons of Rustam step father of deceased Nooran Bibi are entitled to inherit share from her estate and their names may also be incorporate in the revenue record, whereas inheritance mutation No.294 dated 20.07.2002 of deceased Nooran, exclusively in favour of the petitioner/defendant No.1 namely Manzoor Ahmad is against the law and facts, based on fraud and same is ineffective upon the rights of the plaintiffs and is liable to be cancelled.

Present petitioner/defendant No.1/Manzoor Ahmad contested the said suit on factual and legal parlances as well as filed suit for declaration with the assertion that Mst. Nooran his real sister was owner of the suit property. Petitioner/defendant being her real brother /the sole heir of the deceased is owner of the said property as Mst. Nooran died on 14.10.2001 after the death of plaintiffs father Rustam

on 09.06.2001, but Chiragh Khan etc. the respondents/plaintiffs got prepared a forged death certificate of Nooran showing her date of death as 10.06.1998 just to deprive the petitioner / defendant from his inherited land. The adverse parties contested the suits of each other by filing written statement by controverting the assertions of each other on legal and factual judicial parlances. Both suits were consolidated, accordingly issues were framed and the parties lead their respective oral as well as documentary evidence. The trial court vide consolidated judgment & decree dated 17.10.2014 decreed the suit of Chiragh Khan etc. respondents No.1 & 2 as prayed for, whereas dismissed the suit of the petitioner / Manzoor Ahmad. Against the said judgment & decree, the petitioner preferred an appeal which was dismissed vide judgment & decree dated 11.12.2017 by the appellate court. Hence, this civil revision.

3. Arguments heard. Record perused.

4. As both the divergent parties filed civil suit against each other, thus for clarity Chiragh Khan and Zahoor Ahmad respondent No.1 & 2 will be referred hereinafter as respondents/ plaintiffs whereas Manzoor Ahmad will be cited as petitioner/ defendant No.1.

5. The main controversy involves in this lis is centered upon issue Nos.1 to 3 which are reproduced as under:-

“1. Whether the plaintiffs are entitled to decree for declaration regarding suit land, as prayed for in the plaint? OPP

2. Whether the inheritance mutation No.294 dated 20.07.2002 is against the law and facts and is liable to be set aside? OPP

3. Whether Mst. Nooran daughter of Noora died on 14.10.2001 instead of 10.06.1998 and the death certificate of said Nooran bearing date of her death on 10.06.1998 is false, against the law, based on fraud and thus liable to be cancelled? OPP”

Chiragh Khan etc., plaintiff/ respondents filed a suit for declaration challenging therein the vires of inheritance mutation No.294 dated 20.07.2002 with the assertion that Mst. Nooran daughter of Noora died on 10.06.1998 and at that time, Rustum predecessor in interest of the respondents/plaintiffs, real uncle of Nooran remained alive till 09.06.2001 and he died after the death of Mst. Nooran as such they are entitled to inherit share from her estate, whereas Petitioner/defendant No.1/Manzoor Ahmad fraudulently got incorporated mutation No.294 dated 20.07.2002 in his favour. In support of above version, Chiragh Khan (one of the plaintiffs) appeared as PW1 who stated that Nooran died on 10.06.1998 at the age of 60/65 years without solemnization marriage. Rustam died on 09.06.2001 who was real uncle of Nooran and was only owner, as such mutation No.294 is based on fraud. In cross examination he admitted that against sanctioning of inheritance mutation, he filed an appeal before DOR which was dismissed. Murad appeared as PW2 who stated that

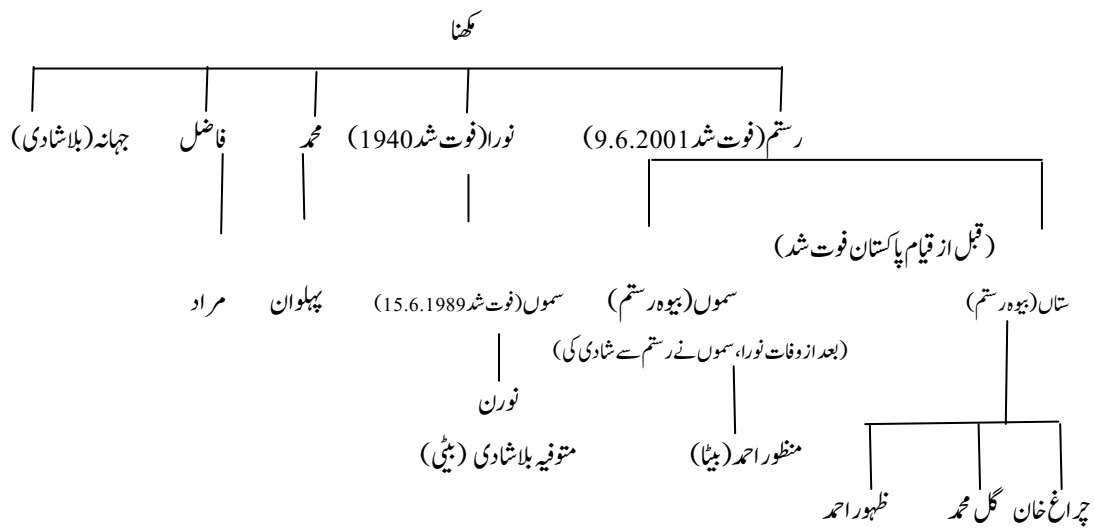
mutation No.294 was wrongly incorporated in favour of Manzoor Ahmad.

6. Conversely, Zakir Hussain appeared as DW1 who stated that he is general attorney of Manzoor Ahmad son of Rustam. Mst. Nooran was daughter of Noora who died on 14.10.2001. She was owner of the suit land and was alive on 10.06.1998 and Chiragh with collusiveness of the official of Union Council got prepared a forged death certificate of Mst. Nooran, as such death certificate is forged which is liable to be cancelled. From mother side Manzoor is real brother of Nooran. The inheritance mutation No.294 of Nooran was rightly incorporated in the revenue record in favour of Manzoor Ahmad. Against the said mutation Chiragh, Zahoor Ahmad, Gull Muhammad, Murad and Pehalwan filed an application before DDOR Kamalia for cancellation of inheritance mutation No.294 which was dismissed on 10.04.2003 whereafter Chiragh Khan and Zahoor Ahmad filed suit. Muhammad Sadiq appeared as DW2 who stated that:-

مجھے نوران دختر نور کی تاریخ وفات یاد نہ ہے۔ از خود کہا کہ تاریخ یاد آگئی ہے اور نوران بی بی مورخہ 14.10.2001 کو فوت ہوئی تھی۔ میں ان پڑھ ہوں۔ انتقال وراثت جس کی رو سے رقبہ منظور کو منتقل ہوا ہے درست ہوا ہے۔

7. As per available record, Noora contracted marriage with Mst. Samoo and from the said wedlock, Mst. Nooran was born. After death of Noora in the year 1940, his widow

Mst. Samoo contracted second marriage with Rustam who was real brother of deceased Noora. From the second wedlock of Mst. Samoo with Rustam, petitioner/Manzoor Ahmad was born as such he is uterine brother of Mst. Nooran deceased. For ready reference, admitted the pedigree table of the parties of the lis is reproduced as under:-



8. Admittedly, parties of the lis as well as their predecessor are Muslims and controversial issue of inheritance of a deceased Muslim are to be resolved according to Quran and Sunnah. Even as per Article 227 of the Constitution of the Islamic Republic of Pakistan, 1973, the principles of Quran and Sunnah are admitted as supreme law of this country and all provisions, rules, regulations are to be legislated and framed within the precincts of Islamic principles. For reference, Article 227 of the Constitution of Islamic Republic of Pakistan, 1973 is reproduced as under:-

227. Provisions relating to the Holy Quran and Sunnah.-(1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down

in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such injunctions.

Explanation.-In the application of this clause to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.

(3) Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.

As the predecessor-in-interest of the parties of the lis as well as the parties themselves are Muslims and principles of Quran and Sunnah are mandatorily applicable upon them as well. The shares of each and every Muslim inheritor have conclusively been prescribed in Holy Quran. Allah Almighty has ordained the Muslims to decide their all disputes including issue of inheritance as per the principles of the Holy Quran as described in following verses:

اور جو فیصلہ نہ کرے اس (کتاب) کے مطابق جسے نازل فرمایا اللہ نے تو وہی لوگ کافر ہیں۔ ﴿سورۃ المائدہ: آیت نمبر ۴۴﴾
 اور جو فیصلہ نہ کرے اس (کتاب) کے مطابق جسے اتارا اللہ نے تو وہی لوگ ظالم ہیں۔ ﴿سورۃ المائدہ: آیت نمبر ۴۵﴾
 اور جو فیصلہ نہ کریں اس کے مطابق جسے اللہ تعالیٰ نے اتارا ہے تو وہی لوگ فاسق ہیں۔ ﴿سورۃ المائدہ: آیت نمبر ۴۷﴾
 (ترجمہ: جناب مولانا فتح محمد جالندھری)

The rights or shares of each and every Muslim heirs in the estate of his/her deceased propositus is absolutely, conclusively and finally described/determined in the Holy Quran, which shares are definite in nature. In this regard, it is expedient to take guidance from the Holy Quran, particularly from Surah tul Nisa Ayat Nos.7 to 11 (English translation whereof by **Marmaduke Pickthall** and Urdu

translation by **Molana Fateh Muhammad Jalandari**) are reproduced as under:-

7. *Unto the men (of a family) belongeth a share of that which parents and near kindred leave, and unto the women a share of that which parents and near kindred leave, whether it be little or much. A legal share.*

8. *And when kinsfolk and orphans and the needy are present at the division (of the heritage), bestow on them therefrom and speak kindly unto them.*

9. *And let those fear (in their behaviour toward orphans) who if they left behind them weak offspring would be afraid for them. So let them mind their duty to Allah, and speak justly.*

10. *Lo! Those who devour the wealth of orphans wrongfully, they do but swallow fire into their bellies. And they will be exposed to burning flame.*

11. *Allah commands you concerning (the provision for) your children; to the male the equivalent of the portion of two females, and if there be only women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then for her is the half. And to each of his parents a sixth of the inheritance, if he have a son; and if he have no son and his parents are his heirs, then to his mother appertaineth the third; but if he have brethren, then to his mother appertaineth the sixth, after any legacy he may have bequeathed, or debt (hath been paid). Your parents and your children: Ye know not which of them is nearer unto you in usefulness. It is an injunction from Allah. Lo! Allah is knower, Wise.*

جو مال ماں باپ اور رشتہ دار چھوڑ مرے تھوڑا ہو یا بہت اس میں مردوں کا بھی حصہ ہے۔ اور عورتوں کا بھی۔ یہ حصہ (اللہ کے) مقرر کیے ہوئے ہیں۔ اور جب میراث کی تقسیم کے وقت (غیر وارث) رشتہ دار اور یتیم اور محتاج آجائیں تو ان کو بھی اس میں سے کچھ دے دیا کرو۔ اور شیریں کلامی سے پیش آیا کرو اور ایسے لوگوں کو ڈرنا چاہیے جو (ایسی حالت میں ہوں کہ) اپنے بعد نفع نہ نفع بچے چھوڑ جائیں اور ان کو انکی نسبت خوف ہو (کہ ان کے مرنے کے بعد ان بچپاروں کا کیا حال ہو گا) پس چاہیے کہ یہ لوگ اللہ سے ڈریں اور معقول بات کہیں۔ جو لوگ یتیموں کا مال ناجائز طور پر کھاتے ہیں وہ اپنے پیٹ میں آگ بھرتے ہیں۔ اور دوزخ میں ڈالے جائیں گے۔ اللہ تمہاری اولاد کے بارے میں تم کو ارشاد فرماتا ہے کہ ایک لڑکے کا حصہ دو لڑکیوں کے حصے کے برابر ہے۔ اور اگر اولاد میت صرف لڑکیاں ہی ہوں (یعنی دو یا) دو سے زیادہ تو کل ترکے میں ان کا دو تہائی۔ اور اگر صرف ایک لڑکی ہو تو اس کا حصہ نصف۔ اور میت کے ماں باپ کا یعنی دونوں میں سے ہر ایک کا ترکے میں چھٹا حصہ بشرطیکہ میت کے اولاد ہو۔ اور اگر اولاد نہ ہو اور صرف ماں باپ ہی اسکے وارث ہوں تو ایک تہائی ماں کا حصہ اور اگر میت کے بھائی بھی ہوں تو ماں کا چھٹا حصہ (اور یہ تقسیم ترکہ میت کی وصیت کی تعمیل) کے بعد جو اس نے کیا ہو یا قرض کے (ادا ہونے کے بعد جو اسی کے ذمے ہو عمل میں آئے گی) تم کو معلوم نہیں کہ تمہارے باپ دادوں اور بیٹوں پوتوں میں سے فائدہ کے لحاظ سے کون تم سے زیادہ قریب ہے یہ حصہ اللہ کے مقرر کیے

ہوئے ہیں۔ بے شک اللہ سب کچھ جاننے والا (اور) حکمت والا ہے۔ (ترجمہ: جناب مولانا فتح محمد جالندھری)

Further in respect of inheritance of a deceased bachelor / spinster Muslim (male/female) in Surah tul Nisa, Ayat No.176, it has been ordered as under:-

(اے پیغمبر) لوگ تم سے (کلامہ کے بارے میں) حکم (خدا) دریافت کرتے ہیں کہہ دو کہ خدا کلامہ بارے میں یہ حکم دیتا ہے کہ اگر کوئی ایسا مرد مر جائے جس کے اولاد نہ ہو (اور نہ ماں باپ) اور اس کے بہن ہو تو اس کو بھائی کے ترکے میں سے آدھا حصہ ملے گا۔ اور اگر بہن مر جائے اور اس کے اولاد نہ ہو تو اس کے تمام مال کا وارث بھائی ہو گا اور اگر (مرنے والے بھائی کی) دو بہنیں ہوں تو دونوں کو بھائی کے ترکے میں سے دو تہائی۔ اور اگر بھائی اور بہن یعنی مرد اور عورتیں ملے جلے وارث ہوں تو مرد کا حصہ دو عورتوں کے برابر ہے۔ (یہ احکام) خدا تم سے اس لئے بیان فرماتا ہے کہ بھگتے نہ پھرو۔ اور خدا ہر چیز سے واقف ہے ﴿آیت نمبر 176﴾

Reliance in this regard is placed on cases titled as The Federation of Pakistan through Secretary, Law & Parliamentary Affairs, Islamabad vs. Muhammad Ishaq and another (PLD 1983 SC 273), Abdul Ghafoor and others Vs. Muhammad Shafi and others (PLD 1985 SC 407), Mst. Fazal Jan Vs. Roshan Din and others (PLD 1990 SC 661), Ismail and another Vs. Ghulam Qadir and others (1990 SCMR 1667), Sardar Vs. Mst. Nehmat Bi and 8 others (1992 SCMR 82), Muhammad Yousaf through Legal Heirs and 2 others Vs. Mst. Karam Khatoon through Legal Heirs and 2 others (2003 SCMR 1535), Ghulam Haider and others Vs. Murad through Legal Representatives and others (PLD 2012 SC 501), Fayyaz Hussain and others Vs. Haji Jan Muhammad and others (2018 SCMR 698), Ghulam Qasim and others Vs. Mst. Razia Begum and others (PLD

2021 SC 812), Abdul Khaliq (deceased) through LR.s. Vs. Fazalur Rehman and others (**2022 SCMR 1665**) and Manzoor Hussain (deceased) through Legal Heirs and others Vs. Muhammad Rafique and others (**2020 CLC 400**). Reliance is also placed on the case cited as Gul Muhammad & Others Vs Allah Diwaya (deceased) through his Legal Heirs & Others (**2021 MLD 1146**).

9. Furthermore, the petitioner/Manzoor is real uterine brother of deceased Mst. Nooran and it is settled law that when a real brother of a deceased issueless spinster lady is alive, he is entitled to inherit the entire estate of the deceased and the paternal uncle or his successors are not entitled to inherit any share. Reliance in this regard is placed on cases cited as Saadullah and Others Vs. Mst. Gulbanda and Others (**2014 SCMR 1205**), Waris Ali and Others Vs. Rasoolan Bibi (**PLD 2014 SC 779**), Muhammad Sharif Vs. Mst. Niamat Bibi (**2021 SCMR 1355**) and Shahray Khan (deceased) through LR.s. and others Vs. Qadir Bakhsh (deceased) through LR.s. and others (**2023 SCMR 201**).

10. So far as the controversy of date of death of Mst. Nooran is concerned, suffice it to say that record shows that Chiragh Khan etc., did not prove that Mst. Nooran died on 10.06.1998, as only the death certificate was produced in evidence in the statement of the learned counsel for the plaintiffs and the said document has no intrinsic value and by

exclusion of the said document from judicial consideration, there is nothing on the record to show that Mst. Nooran died on 10.06.1998 which fallw leads to hold that plaintiff/respondents have failed to prove their stance. Further, respondents No.1 & 2/plaintiffs challenged the inheritance mutation No.294 before DDOR on the plea that it was incorporated on the basis of fraud and concealment of true fact but in this regard no credible evidence was produced. Thus, the reasoning expounded by the lower judicial fora has no consonance with the facts of this case and same suffers from perversity.

11. Moreover, copy of Jamabandi for the years 1999-2000 (Exh.P1), copy of mutation No.294 dated 20.07.2000 (Exh.P3) and death certificate of Nooran (Exh.P5) were produced in the statement of learned counsel for the respondents/plaintiffs which is considered as an invalid mode of tendering of documents and same are inadmissible in evidence, as such the documents produced by the respondents' counsel cannot be relied upon as valid evidence and such documents could not be taken into consideration. Reliance is placed on the case title Mst. Akhtar Sultana Vs. Major Retd. Muzaffar Khan Malik through his legal heirs and others (PLD 2021 SC 715). Similar view has been reiterated by the Hon'ble Supreme Court of Pakistan in its latest judgment cited as Rustam & Others Vs. Jehangir

(deceased) through LRs (2023 SCMR 730) wherein it is held

as under:-

7. As regards the other two documents i.e. mutation No.1836 (Exh.D-9) and mutation No.1837 (Exh.D-8), it is suffice to say that according to principle settled by this Court in the cases reported as Mst. Hameeda Begum and others v. Mst. Irshad Begum and others (2007 SCMR 996), Federation of Pakistan through Secretary Ministry of Defence and another v Jaffar Khan and others (PLD 2010 SC 604), Province of the Punjab through Collector. Sheikhpura and others v. Syed Ghazanfar Ali Shah and others (2017 SCMR 172) the document should be produced in the evidence by the party itself and a fair opportunity should be given to the opposite party to cross-examine the same, as such, the said two documents produced by the defendants counsel in his statement could not be taken into consideration."

12. As the decisions of the lower fora on issue Nos.1 to 3 suffer from blatant misreading and non-reading of the evidence as well as mis-application of law, as such the findings of both the courts below on issue Nos.1 to 3 being against the record, are hereby reversed and the same are decided in favour of the petitioner and against the respondents/plaintiffs. This Court is well within jurisdiction to reverse such illegal and perverse concurrent findings of the lower fora in its revisional jurisdiction under Section 115 CPC. Reliance is placed on the cases titled as Nazim-ud-Din & Others Vs. Sheikh Zia-Ul-Qamar & Others (2016 SCMR 24).

13. In view of above, this civil revision is allowed. Consolidated judgment & decree dated 17.10.2014 passed by

the learned Civil Judge, Kamalia as well as judgment & decree dated 11.12.2017 passed by the learned Addl. District Judge, Pir Mahal are hereby set aside and suit for declaration filed by the petitioner is hereby **decreed** whereas suit for declaration filed by the respondents is **dismissed**. No order as to costs.

(CH. MUHAMMAD IQBAL)
JUDGE

Approved for reporting.

JUDGE

Shahzad Mahmood /
Abdul Hafeez