

JUDGMENT SHEET**IN THE PESHAWAR HIGH COURT,****BANNU BENCH**
(Judicial Department)**C.R. No. 16-B of 2007****Abdul Haleem & others****Vs****Habibullah and others****JUDGMENT**Date of hearing 14.09.2015Appellant-Petitioner Abdul Haleem etc.by Mr. F. Zaigra v. Iqbal etc.Respondent Habibullah etc.by Mr. Rustam Khan Wani etc.**MUHAMMAD YOUNIS THAHEEM, J.-** The

petitioners through the instant revision petition called
in question the judgment and decree dated 8.02.2007
of the learned Additional District Judge-II, Lakki
Marwat, whereby on acceptance of appeal, decree
and judgment dated 26.10.2015 of trial court was set
aside and suit of the real respondents/plaintiffs was
decreed in their favour.

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2. Brief facts of the case are that Habibullah and others, Petitioners/plaintiffs has filed a suit for declaration and permanent injunction against Abdul Ghaffar etc, petitioners/defendants to the effect that they being legal heirs of Mst. Bibi Noor, the pre-deceased daughter of Abdul Ghaffar son of Baz Gul are entitled to 1/8 shares in the legacy of Abdul Ghaffar in view of Section 4 of Muslim Family Laws Ordinance, 1961. It was averred that they are owners /co sharers in the suit Katha Jat alongwith defendants No.1 to 23 and inheritance mutation No.3504 attested on 24.7.1993 in respect of legacy of deceased Abdul Ghaffar and inheritance mutations No.313, 314 and 315 etc in respect of Mauza Umar Tattar Khel and Tattar Khel Guli Jan to the extent of their mother Mst.; Bibi Noor are illegal, based on fraud and collusion and thus in effective upon their rights. It was also averred that if possession is not proved, then the same be delivered to them and Fard jamabandi for the

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year 1974 till date in respect of Mauza Umar Khel and mauza Tattar Khel Gul Jan is against law and their rights. They prayed that they being the legal heirs of Mst. Bibi Noor, who was pre deceased daughter of deceased Abdul Ghaffar and legal heirs of Mst. Bibi Noor, i.e. plaintiff, are entitled to 1/8 shares of their mother; that Abdul Ghaffar who was their maternal father, died during the year 1973, while their mother Mst. Bibi Noor died after his death, therefore, defendants No.1 to defendants No.23 with their mutual collusion deprived of her mother Mst. Bibi Noor from the inheritance of her father with the active connivance of Revenue officials while attesting the impugned inheritance mutation No.3504. It was averred in the plaint that inheritance mutation of deceased Abdul Ghaffar bearing No.3504 and subsequent mutations No.313, 314 & 315 to the extent of share of their mother Mst. Bibi Noor are against their rights and thus are liable to be declared as null

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and void; that defendants No.1 to 23 were asked time and again to cancel the inheritance mutation and considered them as owners/mortgagors to the extent of their shares in the legacy of deceased Abdul Ghaffar but they refused, hence the suit was instituted.

3. When summoned, defendants No.5 & 12 appeared and submitted written statement, wherein they raised several legal and factual objections therein. The divergent pleadings of the parties gave rise to the framing of as many as 12 issues including the relief. Therefore, the parties produced their pro and contra evidence which they wished to adduce, where after arguments of their learned counsel were heard and the learned trial judge on scanning the evidence brought on file and considering the arguments of learned counsel for the parties addressed at the Bar, dismissed the suit of the plaintiffs vide judgment and decree dated 26.10.2005.

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4. Feeling aggrieved from the aforesaid judgment and decree of the learned trial court, plaintiffs assailed the same through an appeal before the learned lower appellate court which was accepted by the learned Additional District Judge-II, Lakki Marwat, the impugned judgment and decree dated 8.2.2007 of the lower court was set aside and consequently the suit of the plaintiffs was decreed to the extent of 1/9 shares in the legacy of deceased Abdul Ghaffar.

5. Not contended with the aforesaid judgment and decree of the learned lower Appellate court, the petitioners/defendants have also assailed the same through the present Revision petition.

6. Learned counsel for the petitioners contended that the impugned judgment and decree of the learned lower appellate court is based on surmises and conjectures and thus it suffers from material illegalities and irregularities. He argued that

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predecessor of the plaintiffs/respondents was dead at the time when the inheritance of deceased Abdul Ghaffar got opened. Thus there was no person surviving to whom the legacy of Abdul Ghaffar could be devolved. His contention that the provision of Section 4 of Muslim Family Laws Ordinance, 1961 has been declared repugnant to injunction of Islam and thus there is no ambiguity regarding devolution of inheritance.

7. On the other hand, learned counsel for the respondents/plaintiffs has strongly defended the judgment and decree of the learned lower appellate court on the grounds mentioned therein.

8. I have carefully gone through the entire record of the case and anxiously considered the valuable rights of the learned counsel for the parties.

9. The perusal of the record depicts that the deceased Abdul Ghaffar had died in the year 1973

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leaving behind four sons and two daughters. One of his daughter Mst. Bibi Noora and his son Muhammad Khan had already died in his life time. They were survived by children when in 1973 Abdul Ghaffar died and his inheritance mutation No.3504 was attested on 24.7.1973, wherein children of his pre deceased son Muhammad Khan were given 2/9 shares in his inheritance . Besides one of his daughter namely Bibi Hawa was given 2/9 share in his legacy. The plaintiffs in their plaint had claimed 1/8 shares in the legacy of deceased Abdul Ghaffar but it was not based on correct legal footings that being the children of pre deceased daughter of Abdul Ghaffar like Bibi Hawa, they were also entitled to 1/9 shares in the inheritance mutation No.3504 attested on 24.7.1973. The learned trial court while placing reliance on the case law reported as "PLD 2000 Federal Shariat Court Page-1" wherein the provisions of Section 4 of Muslim Family Laws, Ordinance, 1961 have been

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declared repugnant to the injunction of Islam, has fallen into an error because the said authority was not applicable to the case in hand on the ground that the plaintiffs were children of pre-deceased daughter of Abdul Ghaffar and they were excluded from their legacy at the time of attestation of mutation No.3504 on 24.7.1973. Judgment of Federal Shariat Court is pending before the Apex Court and its operation has been suspended, so the aforesaid provisions of Section 4 ibid are in existence and in the field and are applicable on all score to the case in hand.

10. For the reasons discussed above, the learned Appellate court below has rightly appraised the evidence brought on record by properly applying the law in field and reached to a correct conclusion while passing the impugned judgment and decree dated 8.02.2007. Moreover, the legal heirs of one pre-deceased son were given the share of their father, so



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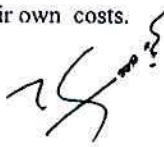
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she, (the plaintiff Mst. Bibi Noor), was at par with her brother.

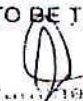
11. Learned counsel for the petitioners/ defendants failed to point out any illegality or irregularity, mis reading/non-reading of evidence or jurisdictional defect in the impugned judgment and decree dated 8/2/2007 passed by the learned Additional District Judge-II Lakki which could justify interference therein and thus the same is upheld and resultantly the Revision petition being devoid of any meritable consideration is hereby dismissed leaving the parties to bear their own costs.

Announced
14.9.2015


JUDGE



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Peshawar High Court Darnu Bench
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984