

P L D 2021 Balochistan 172

Before Jamal Khan Mandokhail, C.J. and Muhammad Kamran Khan Mulakhail, J
MUHAMMAD SAJID TAREEN---Petitioner

Versus

**GOVERNMENT OF BALOCHISTAN through Chief Secretary and 2 others---
Respondents**

C.P. No. 901 of 2021, decided on 19th July, 2021.

Constitution of Pakistan---

----Art. 199---Constitutional petition---Inheritance---Protection of women's right of inheritance---Prohibition of depriving woman from inheriting property---Scope---Petitioner filed constitutional petition with the assertion that the process of settlement was initiated in the different parts of the province and during such process, the property was being settled and mutated only in the name of male members, whereas, the names of females were not being provided/supplied to the revenue authorities nor the revenue authorities were making efforts to get the names of the female shareholders---Validity---Perusal of the reply filed by the Provincial Government revealed that no mechanism was drawn in the pre-settlement process---Though the publication was being made in the newspapers prior to carrying out the mutation of inheritance, but the same was not enough, as firstly the newspapers were not supplied and circulated in the far flung areas of the province and secondly the womenfolk being illiterate either did not have access to the newspaper or being illiterate were unable to read and understand the same---Mere publication in the newspapers was not enough to invite the shareholders or to draw their attention, rather concrete steps were required to be taken by the Revenue Authorities to ensure that no female shareholder was deprived from her right of inheritance or her name was not excluded from the settlement process or mutations carried thereon---High Court observed that it would be good enough to take the NADRA authorities (National Database and Registration Authority) on board prior to carrying out the process of inheritance and the family tree of the deceased, whenever felt necessary, be obtained from the NADRA authorities and after assuring and confirming the number and names of the legal heirs of the deceased, the further process be carried out---High Court while accepting the petition issued certain directions to the official respondents.

Following directions were issued by the High Court while accepting the petition:

I. The rights of women are being protected by the Holy Quran, which cannot be denied, thus, they are entitled to be given their/her right from the legacy of their/her deceased predecessor.

II. No mutation process of inheritance be carried out without transferring the property firstly in the name of all shareholders including female(s) and any property being transferred/mutated by concealing or excluding the name(s) of female(s) shareholder(s), the entire process would be treated as null and void, and liable to be reversed without even approaching the court of civil jurisdiction.

III. No female shareholder can be deprived from her right on basis of relinquishment/gift deed, bridal gift, maintenance allowance, payment of some cash for any erroneous consideration, force, or for any other means, whatsoever high it may be, other than right of inheritance in the legacy/property of her/their deceased predecessor. In case of any such reason stated hereinabove or leading to deprivation of female shareholder from her right of inheritances, the entire process would stand null and void.

IV. No Process of settlement is to be carried out anywhere in the province, unless it is

assured that the name of female shareholders are provided and are included in the process, and in case, there is no female in the family, the Revenue Authorities must specifically mention the relevant details in this behalf.

V. The Secretary/Senior Member Board of Revenue shall ensure and direct his subordinate revenue/settlement officials that before starting the settlement operation in any area of the province, the leaflet/handbill duly written in Urdu and local language of the respective area shall be distributed in the girls' schools/colleges, hospitals and door to door by deputing a lady constable and if not available the lady teacher or midwife/nurse of the respective basic health unit (BHU)/District Head Quarter Hospital (DHQH).

VI. The respective Deputy Commissioners shall also be directed to arrange the announcement in Urdu and local language of the respective area on loudspeaker in the Masjids/Madrasas, followed by beat of drum in the streets/vicinities, within the precincts of the targeted area(s) of settlement operation.

VII. The DG NADRA is directed to establish an on call special desk facilities at the revenue office of the relevant District/Tehsil for provision of family tree of the deceased, whose property is either likely to be inherited or to be settled during the settlement operation to ensure inclusion of name(s) of female legal heir(s) of any deceased either male or female.

VIII. The DG NADRA is also directed to ensure that wherever the female legal heir after getting marriage is or has been included in the family tree of her husband, through registration track system (RTS), the origin of her father's family shall also be ascertained to avoid any deprivation of legal right.

IX. The Secretary, Member Board of Revenue is directed to convene a meeting with the DG NADRA for evolving a comprehensive mechanism for avoiding unnecessary delay for provision of family tree of the deceased and till establishment of special facility at the revenue offices, an interim procedure shall be devised to achieve the objects of this judgment.

X. The Secretary, Member Board of Revenue is further directed to constitute a complaint cell at the Revenue Office(s) supervised by an officer not below the rank of Additional Secretary, to avoid any unnecessary delay in the process of inheritance as well as in the settlement operation and also to eradicate the possibility of illegal gratification.

XI. The Member Board of Revenue and his all sub-ordinate officials are strictly directed that in case of any complaint with regard to deprivation of any female legal heir(s) a legal action shall be initiated against the wrong doers by registering a criminal case under the provision of section 498-A, P.P.C. While for this purpose no female shall be compelled either to withdraw from her claim or to force her to initiate a criminal proceeding on her own, rather, it would be the duty of the concerned revenue official to lodge a criminal case.

XII. All civil suits relating to inheritance pending before the Civil Court are directed to be decided within three months from receipt of this judgment and such period in no case shall exceed six months, from today, whereas, if any suit is newly instituted, the same be registered as Inheritance Suit/appeal/revision/ petition and be decided within three months without extension of further time. All the appeals and revisions pending before the Appellate Court and Revisional Courts are directed to be decided within one month preferably, but not later than two (02) months. The Member Inspection Team of this court shall circulate a circular and ensure that these directions are followed in letter and spirit within stipulated time.

XIII. The Registrar of this Court is directed that if any complaint is received by any

aggrieved person against any revenue/settlement official or by any private individual with regard to deprivation of female legal heir either in case of inheritance or settlement operation, the same be immediately placed before us for our perusal in chamber and after passing an appropriate direction same shall immediately be transmitted to Senior Member Board of Revenue for information and compliance.

XIV. Any application/complaint filed with regard to issue decided in this judgment shall be treated as an execution application, which after entering as a Civil Miscellaneous Application shall be proceeded accordingly either under the Code of Civil Procedure, 1908, (C.P.C.) or The Contempt of Court Ordinance, 2003, and as a criminal complaint under section 200, Cr.P.C.

Verses 1, 2, 7, 11 and 12 of Surah An-Nisa (4); Farhan Aslam and others v. Mst. Nuzba Shaheen and others 2021 SCMR 179; Mst. Brikhna v. Faiz Ullah Khan and others 2020 SCMR 1618; Taleh Bibi and others v. Maqsooda Bibi and others 1997 SCMR 459; Ghulam Ali and others v. Mst. Ghulam Sarwar Naqvi and others PLD 1990 SC 1 and R.F.A. No.40 of 2011 rel.

Petitioner in person.

Shai Haq Baloch, A.A.G. along with Qamar Masood, SMBR, Javed Iqbal, Legal Expert and Muhammad Akram, Secretary (Judicial and Inquiry), Board of Revenue Department for Respondents.

Kashif Panezai for Intervenors.

Date of hearing: 30th June, 2021.

JUDGMENT

MUHAMMAD KAMRAN KHAN MULAKHAIL, J.---Through this petition, the following relief has been sought:

"It is, therefore, respectfully prayed that in view of above submission the writ may kindly be issued in favour of petitioner in the public interest, further the respondents may kindly be directed (sic) at the time of transferring of any moveable and immoveable property which is left by the any deceased the same (sic) transferred on the names of successor with the consultation of NADRA after taking family tree of deceased from NADRA, any other relief which this Hon'ble Court deems fit and proper may also kindly be awarded in the favour of petitioner, in the interest of justice, equity and fairplay."

2. Facts as narrated in the memo of the petition are that the petitioner is a practising lawyer, political activist and social worker. The petitioner through this petition has sought aforesaid relief mainly on a strength that generally in all over the country and specially in the province of Balochistan, the law of inheritance as ordained by Almighty Allah in the Holy Quran and in the Constitution of Pakistan, especially with regard to the right of inheritance of women folk is not being regarded and followed according to the divine law and law of the country; that in the backdrop of complex tribal system in the province the women folks are being deprived from their legitimate rights of inheritance, when in case of distribution of legacy of their (her) deceased predecessor, they/she are/is being deprived or concealed by excluding their/her name(s) from the array of legal heir(s) for no good and justifiable reason; that it was further asserted that in case of inheritance the women legal heir(s) are/is also being deprived on pretext of gift or relinquishment deed; that similarly the women are also being deprived on a pretext that their/her legal share has already been given in the shape of bridal gifts and maintenance allowance; that in the tribal system the male offspring are being

considered as real successors and, therefore, in pedigree table/genealogical tree name(s) of female(s) successor(s) is/are not being included, rather disclosing their/her names are/is being portrayed as question of honor. Thus, the afore-stated reasons lead to a deprivation of women legal heirs at the time of recording the mutation entries in lieu of inheritance. Moreover, in case of any claim by woman legal heir, the male relatives become provoked and being resorted to force leading to an untoward criminal wrong. Which in some cases is being followed by their forced marriages, forcible disappearance or unfortunately forcibly restraining them/her from marriage(s). In the backdrop of ongoing settlement operation in the province of Balochistan the revenue/settlement officials being in league with the male members of the respective families do not bother to inquire about the female legal heir(s) of the predecessor of the respective family, which ultimately leads to a complete deprivation of women folk from the array of legal heir(s). It was, therefore, prayed that an appropriate direction be issued to the Board of Revenue Balochistan for evolving a comprehensive mechanism in respect of compilation of revenue record after completion of settlement and attestation of mutation entries, particularly to ensure the inclusion of names of female legal heir of any deceased predecessor (Father, Mother, both Paternal and Maternal Grandfather and Grand Mother) in the record of rights in respect of all movable and immovable properties. It was also asserted in the prayer clause that NADRA authorities shall also be directed for cooperation with the settlement officials to ensure a timely provision of NADRA record of any deceased predecessor of the respective family.

3. The petitioner present in person argued that it is case of women's right in inheritance, who have been denied in our society or forcibly restrained from claiming their right in the inherited property; that even in the process of settlement carried out in the different areas, the names of the females are not being provided to the revenue authorities, nor the revenue authorities bother to inquire and insert the names of female shareholders, thus, the entire process is being carried out by excluding the females legal heirs; that as per Sharia and Ordains of Almighty Allah in Holy Quran, the rights of women are protected and the same are strongly ordained to be given to the female shareholders, but despite being residing in the Muslim Society and following the Ordains of Almighty Allah, the females are treated in manner as in pre-Islamic era; when they were neither given right, nor were treated humanely. He finally urged for issuance of a writ, directing the official respondents (revenue authorities), not to carry out any mutation, settlement process or transfer the property, wherein the names of female shareholder is not included or concealed, with further direction that in the process of settlement in the areas throughout the province, the names of the female shareholders be included in the revenue record.

4. On the other hand, the learned Additional Advocate General, assisted by Mr. Qamar Masood, SMBR Board of Revenue, Department, Mr. Javed Iqbal, Legal Expert, Board of Revenue Department and Muhammad Akram, Secretary (Judicial and Inquiry), Board of Revenue Department, conceded the fact that the females are being deprived of their right of inheritance from the legacy of their deceased predecessors, and added that the Revenue Department has taken all necessary steps for transparent process of settlement. He produced a report containing the proposed procedure likely to be adopted by the revenue officials for transfer of property rights, with certain suggestions and proposals.

5. Undisputedly, the rights of women in the inherited properties are not only protected in Islam, but the Constitution of Islamic Republic of Pakistan, 1973, also guarantees protection of their right, whereas the question in most of the cases before the courts is not determination

of their right, rather always the transfer of their rights, which are being denied by the male dominated society. The rights of legal heirs are being determined by the Allah Almighty in the Holy Quran in Chapter-4, Surah Nisa; ordains as under:

(Respectively Verses 1, 2, 7, 11 and 12 of Surah An-Nisa (4), translation in Urdu by Hazrat Moulana Mufti Muhammad Shafi and translation in English by Abullah Yusuf Ali, (the Roman Translation of the Holy Quran):

1) O Mankind! Reverence your Guardian-Lord, who created you From a Single person, Created, of like nature, His Mate, and from them twain Scattered (like seeds) Countless men and women; Reverence Allah, through Whom Ye demand your mutual (rights), and (reverence) the wombs (That bore you): for Allah Ever watches over you. 2. To orphans restore their property (when they reach their age), nor substitute (your) worthless things For (their) good ones; and devour not their substance (by mixing it up) With your own. For this is Indeed a great sin.

7. From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, a determinate share.

11. Allah (thus) directs you as regards your children's (Inheritance): to the male, a Portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half.

For parents, a sixth share of the inheritance to each, if the deceased left children; If no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth, (the distribution in all cases is) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are Settled portions ordained by Allah and Allah is All-Knowing, All-Wise.

12. In what your wives leave, your share is a half, if they leave no child; But if they leave a child, ye get a fourth; after payment of legacies and debts. Of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child, but if ye leave a child, they get an eighth; after payment of legacies and debts.

If the man or woman whose inheritance is in question has left neither ascendants nor descendants, But has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third, after payment of legacies and debts; so that no loss is caused (to anyone). Thus is it ordained by Allah, And Allah is All-Knowing, Most Forbearing."

6. The rights of each legal heir(s) are also given and determined in the law of inheritance, so that no one could be deprived of his/her right nor any deduction or exchange could be made in share of the shareholder in the legacy of the deceased. Despite Ordains of Allah Almighty, we being citizens of Islamic Republic of Pakistan are reluctant to follow Islamic principles properly with reference to women's right of inheritance. It is painfully noted that there are enough number of cases of civil nature filed by the families, who that have been deprived of their right of inheritance and there are numerous judgments of the Hon'ble Supreme Court of Pakistan, in this respect, but yet we face such issues, which is highly unfortunate. The Hon'ble Supreme Court in case of "Farhan Aslam and others v. Mst. Nuzba Shaheen and others (2021 SCMR 179) has held that:

4. It is most unfortunate that rather than supporting the widow and her daughter in the hour of their greatest need their relatives, the petitioners, turned into predators to deprive them of their rightful inheritance, and have successfully managed to do so for

sixteen long years. A widow and a daughter were deprived because of the acquisitive greed of the petitioners who were facilitated and enabled by the revenue authorities in recording the making of a fictitious gift mutation. The petitioners did not abide by the decisions, all of which were in favour of the respondents and challenged each one of the three courts; those of the Subordinate Courts and then impugned the order of the High Court.

5. Presumably, the petitioners will now wait for the said judgments/order to be implemented through the Trial/Executing court and they may then resort to filing unwarranted objections to the execution application. Violating the law of inheritance, which in the case of Muslims is the shariah, and exploiting the most vulnerable members of society is wholly unacceptable. An heir inherits property to the extent of his/her share the very moment his/her predecessor passes away. But, the petitioners have audaciously managed to deprive the respondents of their inheritance from Mansab Khan.

6. Almighty Allah commands:

'Let those (disposing of an estate) have the same fear in their minds as they would have for their own if they had left a helpless family behind; Let them fear Allah, and speak words of appropriate (comfort).'

'Those who unjustly eat up the property of orphans, eat up a fire into their own bodies: They will soon be enduring a Blazing Fire.'

(Respectively verses 9 and 10 of surah An-Nisa (4), translated by Abdullah Yusuf Ali, 'The Holy Qur'an, Translation and Commentary'.)

7. In the present case a widow and an orphan ('yatama' in Arabic) were deprived of their inheritance for over sixteen years which must have been excruciatingly painful for them. The petitioners did not abide by the aforesaid verses and forgot what had been made incumbent:

'And come not nigh [near] to the orphan's property, except to improve it'.

(Verse 152 of surah (6) Al-Anam of the Holy Qur'an, translation by Abdullah Yusuf Ali, 'The Holy Qur'an Translation and Commentary'.)

If the petitioners had remembered that they too will face Ultimate Justice they may have acted better.

8. The Constitution of the Islamic Republic of Pakistan (the 'Constitution' safeguards property (including inherited property) under Article 24(1) of the Constitution and protection of women and children is guaranteed by Article 25(3) of the Constitution. The Constitution sets out the goals which the people of Pakistan have set out for themselves in the 'Principles of Policy', which include the protection of 'mother and the child' (Article 35) and require the promotion of social justice and eradication of social evils' (Article 37). Depriving a mother and her child from their inheritance does not protect them but preys on them. Such conduct is a prevalent social evil and inherently unjust. It is expected that the organ and authority of the State will act in accordance with the Principles of Policy as provided by Article 29(1) of the Constitution. Therefore, claims by orphans and widows alleging that they have been deprived of their inheritance must be expeditiously, decided by the concerned organ and authority of the State, including the courts.

9. The revenue authorities must also be extra vigilant when purported gifts are made to deprive daughters and widows from what would have constituted their shares in the

inheritance of an estate. The concerned officers must fully satisfy themselves as to the identity of the purported donor/transferee and strict compliance must be ensured with the applicable laws, as repeatedly held by this Court, including in the cases of Islam-ud-Din v. Noor Jahan (2016 SCMR 986) and Khalida Azhar v. Viqar Rustan Bakhshi (2018 SCMR 30). Purported gifts and other tools used to deprive female family members, including daughters and widows, are contrary to law (shariah in such cases), the Constitution and public policy. In Abid Baig v. Zahid Sabir (2020 SCMR 601) this Court reiterated what it had held thirty years earlier in the case of Ghulam Ali v. Mst. Ghulam Sarwar Naqvi (PLD 1990 Supreme Court 1), as under:

11. We cannot be unmindful of the fact that often times male members of a family deprive their female relatives of their legal entitlement to inheritance and in doing so shariah and law is violated. Vulnerable women are also sometimes compelled to relinquish their entitlement to inheritance in favour of their male relations. This Court in the case of Ghulam Ali had observed that 'relinquishment' by female members of the family was contrary to public policy and contrary to shariah. It would be useful to reproduce the following portion from the decision of this Court:

"Here in the light of the foregoing discussion on the Islamic point of view, the so-called 'relinquishment' by a female of her inheritance as has taken place in this case, is undoubtedly opposed to 'public policy' as understood in the Islamic sense with reference to Islamic jurisprudence. In addition it may be mentioned that Islam visualised many modes of circulation of wealth of certain types under certain strict conditions. And when commenting on one of the many methods of achieving this object, almost all commentators on Islamic System agree with variance of degree only, that the strict enforcement of laws of inheritance is an important accepted method in Islam for achieving circulation of wealth. That being so, it is an additional object of public policy. In other words, the disputed relinquishment of right of inheritance, relied upon from the petitioner's side, even if proved against respondent, has to be found against public policy. Accordingly the respondent's action in agreeing to the relinquishment (though denied by her) being against public policy the very act of agreement and contract constituting the relinquishment, was void."

In case of "Mst. Brikhna v. Faiz Ullah Khan and others (2020 SCMR 1618), the Hon'ble Supreme Court held as under:

"The sole purpose of a mutation is to keep the record of rights updated and to maintain the fiscal records straight. When she being one of the legal heirs of deceased Habib Khan then she becomes entitled to inherit the legacy of her father from the day her father died and as such becomes co-sharer/co-owner in the property and this entitlement of petitioner is based on operation of Mohammadan Law and the Law of Inheritance. We in the peculiar circumstances of the case can lay hands on the case of Mst. Gohar Khanum v. Jamila Jan (2014 SCMR 801). The learned Judge of the Peshawar High Court though has based his findings on the basis of case of Mst. Grana ibid but the parties to the suit have not developed their case in line with the findings of the case of Mst. Grana ibid. So, we, in the circumstances, leave the question of limitation and acquiescence in the matter of Muslim inheritance open for any other appropriate case. Record of the case would further make it clear that amongst the three sons, it is the respondent No.1 Faiz Ullah alone who is avoiding to give the petitioner her due share. We have also noted that respondent No.1 has also failed to

establish the stance taken by him in his written statement that their father died by leaving only the three sons i.e. defendants Nos. 1 to 3 and Mst. Brikhna was not the real daughter of their father. In support of his stance, he appeared alone as his own witness. He during the course of his cross-examination admitted that PW-5 Miraj Khan and PW-6 Fateh Khan were the elders of the locality. While going through their statements i.e. PW-5 and PW-6, it appears that both of them being elderly persons, have supported the stance of petitioner. We would also like to mention here that people in this region normally avoid to give the daughters/sisters i.e. women folk, their due shares in the inheritance of their predecessors which is totally against Sharia and the law of inheritance prevailing in the country. Preponderance of the evidence would also make it clear that the petitioner being one of the legal heir of Habib Khan is entitled to get her due Sharai share which in the circumstances comes to 1/7 share. Learned counsel for respondent No.1 was heard at length but he was unable to satisfy us regarding the stance of respondent No. 1 . Needless to mention that revenue records be corrected accordingly."

In case of "Taleh Bibi and others v. Maqsooda Bibi and others" (1997 SCMR 459), the Hon'ble Supreme Court held as under:

"It may pertinently be observed that the learned Additional District Judge found on evidence that Mst. Maqsooda plaintiff is an illiterate and Pardah-observing lady who "never entered into a contract to sell the suit property in favour of late Abdul Ghani nor appeared before the Revenue Officer" and her rights were sought to be usurped through the impugned mutation based on fraud. Law regarding the disposition of property by Pardahnashin ladies which is equally applicable to illiterate and ignorant women is fairly well-settled that it is for the person claiming the benefit of such disposition to establish affirmatively by the strongest and most satisfactory evidence that the transaction was real, genuine and bona fide. See Janat Bibi v. Sikandar Ali and others (PLD 1990 SC 642)".

Similarly, in case of "Ghulam Ali and others v. Mst. Ghulam Sarwar Naqvi and others" (PLD 1990 Supreme Court 1), the Hon'ble Supreme Court has elaborated the question of inheritance, right of women in inherited properties.

7. There are several reasons for keeping the women/womenfolk away from their legal and sharai right of inheritance in the legacy of the deceased and, in case such right is given that is not considered as a right or grace of women, but as courtesy or to show the men's dominance. Economic dependency on men, fear of social breakup and conflicts with family and deficiency of proper Islamic knowledge are the reasons for women not to press for their share. Such conduct of men dominated society and failure to abide by the Ordains of Allah Almighty, has almost forced us back to pre-Islamic period, where Arab culture and normative structure was male dominated and did not favour women in almost every field including property rights. Women had no right to inherit property from father or husband. The Arab had a principle that only those would inherit who could ride horse and could fight in the battle field. By that time, this principle clearly favored to men and disfavored to women with reference to the right of inheritance. In pre Islamic traditions women had no assured right of inheritance, which in many cases was a matter between men, the men of the husband's clan or her own relatives. When a man lost his father, brother or son and that person left a widow, the heirs used to take advantage of the privilege of the dowry paid by the dead man. They used to deprive women of the right to the part of inheritance constituted

by dowry."

In order to realize the status of women, Islam grants her different type of rights like right to life, education, marriage, dower, maintenance, divorce etc. Among these rights one is the right of inheritance. Islam entitles both men and women to inherit from the deceased person. However, the shares of men and women are different in inheritance. These shares are justifiable in Islamic society, keeping in view the status and role of men and women in Islamic society. It is crystal clear from the above-referred verses of the Holy Quran that Islam entitles women the right of inheritance in the legacy of deceased person. In other verses of Surah Al- Nisa 11, 12, 176, the shares of wife, mother, sister and daughter in different cases are mentioned clearly. There are a number of traditions/Hadiths of the Holy Prophet Muhammad (PBUH) regarding inheritance, women inheritance, shares of women in inheritance and traditions stressing muslims to give heirs (men and women) their share in legacy. Islam is a complete code of life which not only provides rather ensures social space to women in Islamic society.

Albeit Islamic injunctions are clear about women right of inheritance but these are somehow ideal statuses of women inheritance, but, despite believing and following the Ordains of Holy Quran and the Law of Inheritance, we instead follow traditions, customs and give preference to the traditional values, wherein a concept has been developed to usurp the right of an orphan, a women (sister/daughter) from the right of inheritance. While, it has been noted at several occasions that sister and daughter are denied the right of inheritance, but the share of mother in her property is being sought from her brothers, which shows the duplicity of men's mind. The right of inheritance for women is given by Allah, but men are reluctant to follow and fulfill the directions of Allah. Most people of the province/country are well aware of the provisions of women's rights of inheritance, but they are not ready to give the women the full share of inheritance. People, who give the share of inheritance to women, is comparatively low in ratio. Many times women get their rights through litigation, but disinherited in the family partition, even on most of the occasion women are persuaded to relinquish their due right of inheritance by various tactics, or compensated in cash or kind in lieu of their actual share ordained by Allah. It is another stigma that parents exclude women from inheritance by transferring property to sons during their life time, to avoid the tension and future demand by daughters, and whenever, a female approach the court for seeking her right of inheritance, she is not only considered to be bad and disobedient toward the family members, but is dragged into long and unnecessary litigations, which run for years to years. Yet it is to note again that those who disrespect the law of inheritance are regarded as snatchers of others property and rights, and are considered transgressors of Islamic Shariah. Allah the Exalted in power has given a severe warning against the violation of the law of inheritance. Yet, there is another situation with the women, being so loyal and loving towards the brother(s), father and other male members of the family, waive of their shares in the inherited property, or they are persuaded to waive of their shares in the legacy, and therefore, they are deprived of their right either willingly or unenviably. Though, every female shareholder, has the right to waive of her right, dispose of her share, but prior to making any decision, the share of the female shareholder is to be transferred in her name, she be put on possession and thereafter, any decision could be made by her. Prior, to transferring/mutating the property in the female shareholder and putting her in possession, any decision of waiving made by the female shareholder, either willingly or outcome of any promise or coercion, will have no legal effect.

8. In order to overcome the issue of depriving the women from right of inheritance, the Criminal Law was amendment by inserting the section 498-A in Pakistan Penal Code (P.P.C.), which stipulates as under:

"Section 498-A Prohibition of depriving woman from inheriting property: Whoever by deceitful or illegal means deprives any woman from inheriting any movable or immovable property at the time of opening of succession shall be punished with imprisonment for either description for a term which may extend to ten years but not be less than five years or with a fine of one million rupees or both."

The wisdom behind the insertion of section 498-A, P.P.C., was to ensure that no woman would be deprived of her right of inheritance, and a punishment is prescribed for the violators of the said section. The action of taking a criminal proceedings against the violators is surely a good sign, but, yet it would be another test case for women folk to initially approach the concerned police station against her own family members and register a criminal case, and thereafter, to approach the court to pursue a case. It would not be easy for a female in a men dominated society to approach the police station or to pursue a criminal case against the male members of the family. Yet, the Government should take the responsibility of distribution of deceased's property to heirs and to attribute punishment for the transgressor of inheritance provisions. Whereas, the social awareness with print media and electronic media, and especially taking the Ulama/Scholars of Islamic Jurisprudence on board to aware not only the women but also the men in the society, about the right of legal heirs of the deceased, injunctions of Islam and also the Ordains of Allah Almighty and consequences thereon. The fact of unawareness of men about injunctions of Islam is also not out of consideration, as the Islamic teaching principles and injunctions are not taught regularly, thus, the government in order to give awareness, beside taking other necessary step, shall undertake positive efforts by upgrading and including the injunctions of Islam especially the rights of women in inheritance in the Syllabus of Schools, Colleges and Universities level.

9. During course of arguments, the learned Additional Advocate General assisted by the Senior Member Board of Revenue and other legal expert officers and officials of the Revenue Department, placed on record the reply with some proposed recommendations. The reply was to the effect:

The perusal of the above reply reveals that though certain steps are shown to have been taken and some actions are also proposed, but despite such steps statedly taken by the revenue authorities, still the women are facing the same issues and are being deprived of their legitimate rights of inheritance. The role and inefficiency of the revenue authorities and staff cannot be ruled out and on most of the occasion they have played the role of abettor and aided the violators/usurpers of women's right, which fact is evident from the pendency of civil cases, the wrong and manipulated mutation entries challenged frequently before the courts, wherein after carrying out the mutation entries in the names of the male members of the family, the same are thereafter sold out and transferred on the names of buyers and on no occasion it is assured that whether a female is deprived or otherwise or her right is secured. Therefore, the actions and proposals so made, despite being a positive step, are not enough to overcome the issue in hand, rather, the Revenue authorities shall assure that no property is transferred, mutated or sold out, where the share of females are involved and without the consent of female shareholder(s).

10. The petitioner during course of arguments also pointed out that the process of

settlement is initiated in the different parts of the province and during such process, the property is being settled and mutated only in the name of male members, whereas, once again the names of the females are not being provided/supplied to the revenue authorities, nor the revenue authorities make any efforts to get the names of the female shareholders. The perusal of the reply filed by the learned Additional Advocate General reveals that no mechanism is drawn in the pre-settlement process. Though the publication is being made in the newspapers prior to carrying out the mutation of inheritance, but the same is not enough, as firstly the newspapers are not supplied and circulated in the far flung areas of the province and secondly the womenfolk being illiterate either do not have access to the newspaper or being illiterate are unable to read and understand the same. So, mere publication in the newspapers would not be enough to invite the shareholders or to draw their attention, rather a concrete steps are required to be taken by the Revenue Authorities to ensure that no female shareholder is deprived from her right of inheritance or her name is not excluded from the settlement process or mutations carried thereon. It would be good enough to take the NADRA authorities on board prior to carrying out the process of inheritance and the family tree of the deceased, whenever felt necessary, be obtained from the NADRA authorities and after assuring and confirming the number and names of the legal heirs of the deceased, the further process be carried out. Since, there is a strong apprehension that after involving the NADRA authorities in the process, the same may consume time or the delay would be caused in the process, beside the NADRA may demand some extra charges for the purpose, thus, to avoid any misuse and uncalled for eventuality, the NADRA authorities should establish a desk at the Revenue offices, wherever, the process is being carried out for the purpose of providing the necessary details to the revenue authorities at the earliest and preferably on the same day, that too without charging any additional fees. The Secretary, Board of Revenue and the DG NADRA, may also convene a meeting to evolve a mechanism in order to avoid any unnecessary delay, solely to facilitate the female shareholders in the legacy of their/her deceased predecessor.

11. It has also been noticed on several occasions, that the Revenue Authorities and the officials while conducting the process gratuitously delay the process and linger on the matter without any reason, or to grab some illegal gratification, which is highly unfortunate. It has always been a matter of concern, that the revenue offices are meant for illegal gratification and without fulfilling their demands, no heed is being paid towards the request of applicant(s). But we, while deciding the issue in hand, would not allow any such act, nor would spare any responsible person for creating any hindrance in the process of inheritance, rather we, not only expect, but also direct the Secretary, Board of Revenue to constitute a special complaint cell for eradication of such practice, and in case of failure, any individual having any complaint against the revenue authorities, may approach the Registrar of this Court.

12. It is noteworthy to add here that beside above stated factors, there is another factor creating interruption in provision of the shares of the female is the inordinate delay in deciding the cases, pertaining to inheritance property and shares of female shareholders. It was also held by the Hon'ble Supreme Court in case of Farhan Aslam Supra, that unnecessarily delay is caused while deciding cases of inheritance, which remain pending for indefinite period before the trial courts and thereafter, appellate court and revisional courts, and after passing a decree, the execution proceedings also consume ample time. This court, while deciding the RFA No.40 of 2011 vide judgment dated 28th September 2020, passed the

following directions:

"Before parting with the judgment, it is painful for us to note that in our society still the females are deprived of their right in the legacy, despite the fact that there are strict ordain of Almighty Allah and Sharia, while they are further constrained to take help of the law by filing the suits in the courts and then they have to wait for years and years even upto the level of the apex court to get the fruit of their legal shares in the inheritance due to our legal system as the courts are already over burdened and such like cases of real controversy and hardship are also intermingled with the other cases of general nature. Alike, in the present case the respondents/plaintiff being real sisters of the defendants/appellants had filed a suit initially in the year 2008 before the learned Qazi Bori for receiving their share in the legacy of their deceased father, but the relief could not be granted to them despite elapse of almost thirteen years. The delay in dispensation of justice has really damaged the reput of our legal system and such like tendency has to be condemned. We are also mindful of the famous principle that 'justice hurried is justice buried' but at the same time we also cannot ignore the other principle that 'justice delayed is justice denied' and in such like case of real hardship as observed supra the courts are required to take special care and give extra time for speedy disposal of such like cases so that the female legal heirs and in some cases main legal heirs as well, may be able to obtain justice and derive fruit of their share in their life. As such, we, firstly expect from the learned trial Courts that such like cases involving inheritance matters will finally be decided expeditiously as early as possible while proceeding with the trial. The Member Inspection Team of this court is directed to ensure that a copy of this judgment be circulated to the subordinate judiciary through all the District Judges in the province for information and compliance.

But, it has been brought in our notice that despite clear direction of this court and circulated by the Inspection Branch of this court, the courts below have failed to abide by the directions of this court, nor decided the cases at the earliest. Thus, it is once again directed that all the cases, involving the issue of inheritance, be registered separately by the courts below by assigning a name of Inheritance suit, Appeal and Revision; the suits be tried expeditiously and decided preferably within three months, but not latter then six months, whereas the appeals and revisions be decided within one month but not later than two months. In respect of all the petitions, revisions and appeals pending before this court, the Incharge of Judicial Branches are directed to prepare a list and fix the same before the bench(s) for hearing. On filing fresh appeals, revisions and constitutional petitions, the same be assigned name and registered as Inheritance Appeal, Revision and Petition and it is expected that the same may also be decided within shortest possible time.

Before parting with the Judgment, we may note here that every individual has almost played its role in depriving the female shareholders from their right of inheritance, despite considering to be part of the 21st Century and claiming to be more educated. Last but not the least, it is the time to discontinue and discourage such practice and protect the right of every individual.

In view of above discussion, the petition in hand is accepted with directions to the official respondents in the following terms:

- I. The rights of women are being protected by the Holy Quran, which cannot be denied, thus, they are entitled to be given their/her right from the legacy of their/her deceased

predecessor.

- II. No mutation process of inheritance be carried out without transferring the property firstly in the name of all shareholders including female(s) and any property being transferred/mutated by concealing or excluding the name(s) of female(s) shareholder(s), the entire process would be treated as null and void, and liable to be reversed without even approaching the court of civil jurisdiction.
- III. No female shareholder can be deprived from her right on basis of relinquishment/gift deed, bridal gift, maintenance allowance, payment of some cash for any erroneous consideration, force, or for any other means, whatsoever high it may be, other than right of inheritance in the legacy/property of her/their deceased predecessor. In case of any such reason stated hereinabove or leading to deprivation of female shareholder from her right of inheritances, the entire process would stand null and void.
- IV. No Process of settlement is to be carried out anywhere in the province, unless it is assured that the name of female shareholders are provided and are included in the process, and in case, there is no female in the family, the Revenue authorities must specifically mention the relevant details in this behalf.
- V. The Secretary/Senior Member Board of Revenue shall ensure and direct his subordinate revenue/settlement officials that before starting the settlement operation in any area of the province, the leaflet/handbill duly written in Urdu and local language of the respective area shall be distributed in the girls' schools/colleges, hospitals and door to door by deputing a lady constable and if not available the lady teacher or midwife/nurse of the respective basic health unit (BHU)/District Head Quarter Hospital (DHQH).
- VI. The respective Deputy Commissioners shall also be directed to arrange the announcement in Urdu and local language of the respective area on loudspeaker in the Masjids/Madrasas, followed by beat of drum in the streets/vicinities, within the precincts of the targeted area(s) of settlement operation.
- VII. The DG NADRA is directed to establish an on call special desk facilities at the revenue office of the relevant District/Tehsil for provision of family tree of the deceased, whose property is either likely to be inherited or to be settled during the settlement operation to ensure inclusion of name(s) of female legal heir(s) of any deceased either male or female.
- VIII. The DG NADRA is also directed to ensure that wherever the female legal heir after getting marriage is or has been included in the family tree of her husband, through registration track system (RTS), the origin of her father's family shall also be ascertained to avoid any deprivation of legal right.
- IX. The Secretary, Member Board of Revenue is directed to convene a meeting with the DG NADRA for evolving a comprehensive mechanism for avoiding unnecessary delay for provision of family tree of the deceased and till establishment of special facility at the revenue offices, an interim procedure shall be devised to achieve the objects of this judgment.
- X. The Secretary, Member Board of Revenue is further directed to constitute a complaint cell at the Revenue Office(s) supervised by an officer not below the rank of Additional Secretary, to avoid any unnecessary delay in the process of inheritance as well as in the settlement operation and also to eradicate the possibility of illegal gratification.

- XI. The Member Board of Revenue and his all sub-ordinate officials are strictly directed that in case of any complaint with regard to deprivation of any female legal heir(s) a legal action shall be initiated against the wrong doers by registering a criminal case under the provision of section 498-A, P.P.C. While for this purpose no female shall be compelled either to withdraw from her claim or to force her to initiate a criminal proceeding on her own, rather, it would be the duty of the concerned revenue official to lodge a criminal case.
- XII. All civil suits relating to inheritance pending before the Civil Court are directed to be decided within three months from receipt of this judgment and such period in no case shall exceed six months, from today, whereas, if any suit is newly instituted, the same be registered as Inheritance Suit/appeal/revision/ petition and be decided within three months without extension of further time. All the appeals and revisions pending before the Appellate Court and Revisional Courts are directed to be decided within one month preferably, but not later than two (02) months. The Member Inspection Team of this court shall circulate a circular and ensure that these directions are followed in letter and spirit within stipulated time.
- XIII. The Registrar of this Court is directed that if any complaint is received by any aggrieved person against any revenue/ settlement official or by any private individual with regard to deprivation of female legal heir either in case of inheritance or settlement operation, the same be immediately placed before us for our perusal in chamber and after passing an appropriate direction same shall immediately be transmitted to Senior Member Board of Revenue for information and compliance.
- XIV. Any application/complaint filed with regard to issue decided in this judgment shall be treated as an execution application, which after entering as a Civil Miscellaneous Application shall be proceeded accordingly either under the Code of Civil Procedure, 1908, (C.P.C.) or The Contempt of Court Ordinance, 2003, and as a criminal complaint under section 200, Cr.P.C.

Office to transmit copies of this Judgment to the Registrar and the Member, Inspection Team of this Court for onward transmission to all sub-ordinate Civil, Appellate and Revisional Courts, to the Senior Member Board of Revenue, with direction for onward transmission of the same to all Commissioners, Deputy Commissioners/Collectors, Tehsildars, Revenue/Settlement Officers, to the Chairman NADRA and Regional Director General NADRA, to the Chief Secretary, Government of Balochistan, Principle Secretary to the Chief Minister Balochistan, Secretaries Schools and Colleges of Government of Balochistan, Vice Chancellors of Public Sector Universities, Director General Public Relations (DGPR) Balochistan, and Director General Pakistan Electronic Media Regulatory Authority (DG PEMRA) for information and compliance. The DGPR and DG PEMRA in turn are directed to ensure the wide publication and broadcasting of this Judgment in leading newspapers and media channels. The Secretaries of Schools and Colleges and Vice Chancellors, shall also ensure the circulation and distribution of this judgment in all girls' schools, colleges and universities for information and awareness of public in general and female population in particular.

SA/129/Bal.

Order accordingly.