

Before Mrs. Syeda Tahira Safdar, C.J. and Muhammad Ejaz Swati, J

HAWA BEGUM---Petitioner

Versus

NAIK BAKHT and others---Respondents

Constitutional Petition No.1 of 2014 and R.F.A. No.22 of 2017, decided on 1st July, 2019.

(a) Inheritance---

---Co-sharer, rights of---Principle---Co-sharership is result of devolution of inheritance, co-sharer becomes co-sharer the moment inheritance opens---Even mutation of entries or share in moveable property is also not necessary.

2004 SCMR 392 rel.

(b) Succession Act (XXXIX of 1925)---

---S. 383---Constitution of Pakistan, Art. 199---Constitutional petition---Succession certificate, revision of---Suit for declaration, injunction and rendition of accounts---Compensation---Widow contracting second marriage---Husband of widow was police constable who died in bomb blast and Government announced compensation package and other facilities to bereaved family---Deceased was issueless, therefore, succession certificate was issued in favour of widow and parents of the deceased---Parents of deceased assailed succession certificate in favour of widow on the plea that she had contracted second marriage and got revised succession certificate issued in their favour---Civil suit filed by parents of widow was decreed in their favour---Validity---Widow could not be deprived of her share in view of first succession certificate issued by Trial Court as on such date she was widow of the deceased; her second marriage could not operate retrospectively but Trial Court without considering such aspect of matter passed decree in favor of parents of deceased which could not be sustained except share of salary she received during subsistence of second marriage---Deceased was issueless and parents of deceased who were living with deceased and were dependents were included in the family---Revised succession certificate was issued by Trial Court with consent of both the parties and thereafter, separate certificate was issued respectively---High Court in exercise of appellate jurisdiction set aside judgment passed by Trial court but maintained order regarding salary of deceased received by widow to extent of her share during subsistence of second marriage---Appeal was allowed accordingly.

PLD 1991 SC 731; PLD 2010 Kar. 153; PLD 2019 Sindh 1 and PLD 2013 Pesh. 1 ref.

Nemo for Petitioner (in C.P. No.1 of 2014).

Farooq Anwar for Respondents Nos. 1 to 11 (in C.P. No.1 of 2014).

Zahoor Ahmed Baloch, Assistant A.G. for Official Respondents (in C.P.No.1 of 2014).

Khushal Khan Kasi for Appellant (in RFA No.22 of 2017).

Farooq Anwar for Respondents Nos.1 and 2 (in RFA No.22 of 2017).

Zahoor Ahmed Baloch, Assistant A.G. for Official Respondents (in RFA No.22 of 2017).

Date of hearing: 7th May, 2019.

JUDGMENT

MUHAMMAD EJAZ SWATI, J.---The husband of the petitioner Hawa Begum and son of respondents Nos.1 and 2 Muhammad Hussain was serving as a Head Constable in Police Department (ATF), who died in a bomb blast on 16th April 2010 at Civil Hospital, Quetta. The Government of Balochistan vide Notification dated 28th October, 2010 had announced a compensation package and other facilities to the bereaved family of civil servants of Balochistan, who are martyred due to acts of terrorism, pursuant to above Notification compensation amount as Rs.20,00,000/- (two millions) were approved in favour of legal heirs of the deceased husband of the petitioner. A joint application for succession certificate was filed by the father, mother brothers and sisters of the deceased including the petitioner, and Succession Certificate No.27/2010 dated 20th December, 2010 was granted by the Civil Judge-IV/with power of District Judge in favour of the petitioner for total amount of Rs.24,70403/- including compensation as under:

S.No.	Name of Debtor	Description	Amount
1	Balochistan Police, Quetta	Financial Assistance	Rs.3,50,000/-
2		Monthly Salary	Rs.197371/-
3		As Per announcement of Chief Minister	Rs.20,00000/-
4		Another relief as	As per rules
5.	Habib Bank Cantt.	Account No.00216968-01	Rs.100,666/-
6.		Total	Rs.24,70403/-

On 28th December 2010 the respondents Nos.1 to 12 had filed an application that petitioner after demise of her husband is residing with her parents and a revise succession certificate separating the shares of parents of the deceased. The petitioner also filed a separate application No.6/2011, during pendency of both above applications a settlement arrived between the parties, the counsel for the petitioner Mr.Zahid Advocate withdrew the

application No.6/2011. The application of the respondents was allowed in view of Fatwa whereby 3/4 share in the movable property of deceased given to his family while 1/4 share in movable properties were given to petitioner (Hawa Begum) and following order dated 19th April 2011 was passed:

".....during the course of arguments both the parties found agreed that the arrears of late Muhammad Hussain be distributed among his legal heirs as per Shari Fathwa issued by Jamia Imam Sadiq (A.S.) Alamdar Road Quetta, according to which applicant Nos.1, 2 and 12 who are real father, mother, brothers and sisters of late Muhammad Hussain are have 3/4 shares in the moveable property left by late Muhammad Hussain while respondent No.13 Hawa Begum who was wife of late Muhammad Hussain is entitled for 1/4 share in his moveable properties. Since breakup of liabilities/dues of late Muhammad Hussain are reproduced as under which are to be given to his legal heirs.

According to Shari Fathwa the respondent No.13 is entitled to receive Rs. 612,166/- (six lac twelve thousand one hundred sixty six) her share from the arrears of late Muhammad Hussain, while the rest of amount be distributed among the applicants Nos.1 to 12 and in this respect the salary of Late Muhammad Hussain will also be distribute among his legal heirs and respondent No.13 will also receive her share as 1/4 from salary of late Muhammad Hussain."

2. Pursuant to above orders, following separate succession certificates were issued in favour of the petitioner and respondents on 30th November 2011:

REVISED SUCCESSION CERTIFICATE

S#	Name of debtors	Particulars	Amount	Share of Naik Bakht
1.	Balochistan Police Quetta Balochistan.	Financial Assistance	Rs.3,50,000/-	Rs. 262500/-
2.		Monthly Salary	Rs. 19,731/-	Rs. 14802.75
3.		As per announcement of Chief Minister	Rs.20,00000/-	Rs.1500000/-
4.	Habib Bank Cantt Branch Quetta	A/C No.00216968-01	Rs. 100,666/-	Rs.75,500/-
5.		Total	Rs.24,70403/-	Rs.1852802.75

REVISED SUCCESSION CERTIFICATE

S#	Name of debtors	Particulars	Amount	Share of Hawa Begum
1.	Balochistan Police Quetta	Financial Assistance	Rs.3,50,000/-	Rs.87500/-

	Balochistan.			
2.		Monthly Salary	Rs. 19,731/-	Rs. 4934.25
3.		As per ann- ouncement of Chief Minister	Rs.20,00000/-	Rs.500000/-
4.	Habib Bank Cantt Branch Quetta	A/C No.00216968-01	Rs.100,666/-	Rs. 25, 166/-
5.		Total	Rs.24,70403/-	Rs. 617600.75

3. The petitioner challenged the succession certificate dated 30th May 2011 (impugned succession certificate) by way of filing application under section 383 of the Succession Act 1925 on the ground that impugned certificate was obtained through misrepresentation and fraud and brothers and sisters of the deceased were not entitled for any shares. The learned Civil Judge-IV vide order dated 22nd March 2013 (impugned order) dismissed the application and observed that impugned succession certificate was issued in favour of respondent No.1, and not in favour of respondents Nos.2 to 12 with consent of the parties. The appeal filed by the petitioner was also dismissed by the learned Additional District Judge-I, Quetta vide judgment/order dated 11th December 2013 (impugned judgment). The above impugned order has been challenged in Constitution Petition No.01 of 2014 by the petitioner (plaintiff).

4. The respondents Nos.1 and 2 parents, of the deceased, also filed a suit for declaration, injunction, rendition of account and recovery of Rs. 1.5 million (M) out of total 2(M) along with recovery of past salary of the deceased on the ground that she got married with brother of the deceased namely Ramzan Ali on 17th February 2011, therefore, the amount of Rs.5 lac out of total compensation amount of Rs.20 lac and 1/4 share from the dues and salary of the deceased received by the Hawa Begum is to be returned to the respondents Nos.1 and 2 (plaintiffs) which includes Rs.15,00000/- out of Rs.20 lac and monthly salary/pension and granting benefit of the deceased.

5. The suit was contested by the Hawa Begum, out of pleadings of the parties 5 issues were framed.

6. The learned Civil Judge-IV, Quetta (hereinafter the "trial Court") vide judgment/decreed dated 22nd April 2017 (hereinafter the impugned "judgment/decreed") decreed the suit in favour of respondents Nos.1 and 2 as under:

"Suit of the plaintiffs is decreed and the defendant No.2 is directed to recover the share of plaintiffs amounting to Rs.15 lacs out of Rs.20 lacs from the defendant No.1 being their Sharai share as per revised succession certificate granted to the plaintiff No.1 and the defendant. The defendant No.3 is directed to recover the amount of salaries from the date of second marriage i.e. 17.2.2011 till today and plaintiffs are entitled to receive the salary of deceased Muhammad Hussain from 18.2.2011. The defendants Nos.2 and 3 are permanently restrained from payment of further salaries to the defendant No.1. Being legal heirs of deceased Muhammad Hussain, the plaintiffs are entitled to receive the monthly salary/pensionary and gratuity benefits of the deceased Muhammad Hussain. The defendant No.1 is directed to return back the

amount to the plaintiffs according to their share which was taken by her."

7. The above impugned judgment/decreed has been assailed by the appellant in Regular First Appeal (RFA) No.22 of 2017.

Since both matters pertain to entitlement of the parties' shares with respect to Tarka and compensation, therefore, are being disposed of through this common judgment.

8. It is a matter of record that pursuant to succession certificate No.27/2010, dated 20th December, 2010, a succession certificate was granted by the learned trial court empowering petitioner to collect total amount of Rs.2470403/- and subsequently with consent of the parties the trial court passed order dated 19th April 2011, consequent whereof a separate succession certificate dated 30th November, 2011 total amounting to Rs.612166/- including her share of compensation Rs.500,000/- was granted in favour of the petitioner and another succession certificate total amounting to Rs.1852802.75 including compensation of Rs.1,500,000/- was issued in favour of the respondent No.1 (mother of deceased). It is necessary to mention here that above shares were determined on the basis of Sharai Fatwa whereby 3/4 shares in the movable property was given to the respondents and 1/4 in favour of the petitioner.

9. The petitioner has challenged the revised succession certificate on the ground that compensation of Rs.20 lac was not Tarka of deceased, therefore, grant of 3/4 share to respondent is illegal, which was declared by the trial court while in a suit filed by the respondents Nos.1 and 2 against the petitioner that she contracted second marriage with Ramzan Ali (brother of deceased) on 17th February 2011 lasted till 28th November, 2011. The trial court vide impugned judgment/decreed held that in view of her second marriage she was not entitled for any benefit of movable property of the deceased, therefore, the amount received by the petitioner i.e. Rs.1500000/- and monthly salary be liable to be recovered from her. The findings of the trial court in this regard are contrary to record and misinterpretation of law and facts.

10. According to revised/separate succession certificate petitioner received total amount of Rs.612166/- while Rs.1852802/- was granted in favour of respondent No.1 (mother of deceased) but the trial court passed judgment vice versa. Secondly, the trial court deprived the petitioner from her share in movable property of the deceased on the ground that she contracted second marriage on 17th February 2011. It is on record that husband of the petitioner died in bomb blast on 16th April 2010, and it is settled principle of law of inheritance that co-sharership is the result of devolution of inheritance, co-sharer becomes co-sharer, the moment inheritance open, even mutation of entries or share in the movable property also not necessary. Reliance is placed on case reported in 2004 SCMR 392. In the instant case petitioner's right to her share in the movable property of the deceased was open on 16th April 2010. Besides first succession certificate was issued in favour of the petitioner on 20th December 2010 which was though revised on 30th November, 2011, however, she contracted second marriage with Ramzan Ali on 17th February, 2011 lasted till 28th November, 2011, therefore, she cannot be deprived of her share in view of first succession certificate issued by the trial court on 20th December, 2010, as on such date she was widow

of the deceased. Her second marriage with Ramzan Ali on 17th February, 2011 cannot operate retrospectively, but the trial court without considering the above aspect of the matter passed the impugned order which cannot be sustained except share of salary she received during subsistence of second marriage.

11. The petitioner has challenged the revised succession certificate granted in favour of the respondents on the ground that compensation of Rs.20 lac, was not Tarka of the deceased, therefore, grant of 3/4 share to the respondent is illegal. According to the dictum laid down by the Hon'ble Supreme Court in PLD 1991 SC 731, and in PLD 2010 Karachi 153, PLD 2019 Sindh 1, 2013 Peshawar 1, it has been - held that compensation awarded by the Government to deceased was basically death benefit of the deceased, which he could not claim in his life time and cannot form part of his Tarka and same was not devisable among all legal heirs of the deceased nor it was inheritable by all his legal heirs and was to be paid to the family of the deceased according to terms set forth by the employer. The Notification dated 18th July 2018 issued by Government of Balochistan, Finance Department the terms legal heirs shall have the same meaning as defined in the Pension Rules of the Government of Balochistan under Balochistan Civil Services Pension Rules the terms Family including:

(a) Wife/wives in case of male Government Servant.

(b) Husband in case of female Government Servant.

(c) Children of Government Servant.

10(sic). In the instant case, the deceased was issueless, therefore, the parent i.e. respondents Nos.1 and 2, who were living with deceased and were dependent, therefore, as held in PLD 2013 Peshawar 1 included in the family. In the instant case in this respect order dated 19th April 2011 was passed by the trial court pursuant to succession certificates with consent of both the parties and thereafter separate certificate dated 30th November, 2011 were issued respectively. The petitioner has only assailed order dated 30th November 2011 but order dated 19th April, 2011 has not been assailed, which had taken finality, hence impugned order arising out of C.P. No.01 of 2014 warrants no interference.

In view of the above. Constitutional Petition No.01 of 2014 is dismissed. Whereas, R.F.A. No. 22 of 2017 is allowed and the impugned judgment/decreed dated 22nd April 2017 passed by the learned Civil Judge-IV, Quetta is set aside, however, the findings of the trial court with regard to salary of the deceased received by the petitioner to the extent of her share during subsistence of the second marriage is intact. Parties are left to bear their own cost.

MH/51/Bal.

Order accordingly.