IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: **Mr. Justice Mushir Alam**
Mr. Justice Mazhar Alam Khan Miankhel

Civil Appeal No.694/2008
(On appeal from the judgment dated 5.10.2004 passed by the Lahore High Court, Lahore in C.R. No.3562/1994)

Khan Muhammad (decd.) through L.Rs. etc. — Appellants

Versus

Mst. Khatoon Bibi and others — Respondents

For the Appellants: Mr. Muhammad Ilyas Sheikh, ASC
Ch. Akhtar Ali, AOR

For Respondents No.1,2,3(ii) & 5: Ch. Mushtaq Ahmed Khan, Sr. ASC
Mr. M.S.Khattak, AOR

For Respondents No.3 (i, iii-v) & 4: Ex-parte

Date of Hearing: 1.03.2017

JUDGMENT

Mazhar Alam Khan Miankhel, J.- The Respondent No.1/plaintif filed a suit for declaration to the effect that she being real daughter of Rajada, the pre-deceased son of Ahmad (*the last male owner herein after "the propositus of the parties")*, was entitled to inherit from the legacy of her grandfather to the extent of her *shari* share out of the share his father would have inherited if alive at the time of opening of succession of his father (the propositus). Her claim was totally denied by the defendant/appellants being the legal heirs of Sadiq alias Sadu, the only surviving son, who got half share in the legacy of deceased father Ahmad, the propositus, in the year 1944 and the remaining half went to the two widows namely Mst. Fatima and Mst. Aisha (defendants No.1 & 2) respectively of pre-deceased son Rajada (father of the plaintiff). Her suit was dismissed by the trial Court by holding that she is not entitled to the decree prayed for and she was also non-suited on the question of

limitation. The appellate Court was also in concurrence with the findings of the trial Court by dismissing the appeal of Respondent No.1/plaintiff.

The High Court while dealing with the matter in civil revision, allowed the same both on merits as well on the question of limitation and held that Respondent No.1/plaintiff being daughter of pre-deceased son of the last male owner was equally entitled to inherit the legacy of her grandfather to the extent of her *shari* share in the legacy of her pre-deceased father had he been alive at the time of opening of succession as per law. The defendant/appellants questioned the said findings of the High Court by way of Civil Petition No.3311-L/2004 wherein leave was granted vide order dated 29.07.2008 in the following terms:-

> "After hearing the learned counsel for the petitioners as well as respondent No.1 we grant leave to appeal to consider, inter alia, the following questions:-
>
> (i) Where Mst. Fatima and Mst. Ayesha widow of late Rajada a pre-deceased son of Ahmed had inherited the land in dispute as full owners or holders of limited estate?
>
> (ii) Where respondent No.1 Mst. Khatoon daughter of Rajada and Mst. Fatima were entitled to inherit the shares in the suit property and, if so, to what extent?
>
> (iii) Where the provisions of the Punjab Tenancy Act, Muslim Family Laws Ordinance, 1961 and West Pakistan Muslim Personal Law (Shariat Application) Act, 1962 were attracted and were rightly construed with reference to facts and circumstances of the present case?
>
> Since short points are involved the office is directed to fix the main appeal on the present record within a period of one year. However, the parties any file additional documents with the permission of the Court."

Hence the present appeal.

2. Learned counsel for the appellants argued that the findings arrived at by the High Court are against the settled law of the land; that the plaintiff/Respondent No.1 and the two widows of the pre-deceased son of the last male owner, the propositus, were not entitled to inherit the legacy of the propositus as the provisions of Section 4 of the Muslim Family Laws

Ordinance, 1961, (the '**Ordinance VII of 1961**'), having no retrospective effect, were not applicable. He next contended that in view of the provisions of West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 (the '**Act V of 1962**') Sadiq alias Sadu, the only surviving son at the time of death of Ahmad, the propositus, was entitled to inherit his entire legacy as a sole heir and thereafter, his legal heirs, the two widows and the daughter i.e. the plaintiff in no way were entitled to inherit the legacy of the propositus as heirs of the pre-deceased son. He further argued that the suit of the plaintiff/Respondent No.1 was hopelessly time barred as the same was filed after more than three decades. In support of his arguments, learned counsel placed reliance on the following cases:-

1. Mst. Sarwar Jan and others Vs. Mukhtar Ahmad and others **(PLD 2012 SC 217)**
2. Aslam and another Vs. Mst. Kamalzai and others **(PLD 1974 SC 207)**
3. Abdul Ghafoor and others Vs. Muhammad Shafi and others **(PLD 1985 SC 407)**
4. Muhammad Hussain and others Vs. Muhammad Shafi and others **(2008 SCMR 230)**
5. Mst. Grana through Legal Heirs and others Vs. Sahib Kamala Bibi and others **(PLD 2014 SC 167)**
6. Ghulam Abbas and others Vs. Mohammad Shafi through LRs and others **(2016 SCMR 1403)**
7. Mst. Ghulam Bano alias Gulab Bano and others Vs. Mst. Noor Jehan and others **(2005 SCMR 658)**

3. As against that learned counsel for the Respondents while supporting the impugned judgment submitted that the plaintiff being daughter of the pre-deceased son of the last male owner was entitled to get her *shari* share from the share her father would have inherited from the legacy of his father if alive at the time of opening of succession. The learned counsel further argued that question of limitation in the case of inheritance would not arise

as the plaintiff/Respondent No.1 became sharer in the property when the succession was opened. In support of his submissions, learned counsel placed reliance on the following cases:-

1. Sardar Vs. Mst. Nehmat Bi and 8 others **(1992 SCMR 82)**
2. Sahib Jan and others Vs. Mst. Ayesha Bibi through L.Rs. and others **(2013 SCMR 1540)**
3. Mst. Fazeelat Jan and others Vs. Sikandar through his Legal Heirs and others **(PLD 2003 SC 475)**
4. Mahmood Shah Vs. Syed Khalid Hussain Shah and others **(2015 SCMR 869)**
5. Lal Khan through Legal Heirs Vs. Muhammad Yousaf through Legal Heirs **(PLD 2011 SC 657)**
6. Ghulam Ali and 2 others Vs. Mst. Ghulam Sarwar Naqvi **(PLD 1990 SC 1)**

4. Learned counsel for the parties were heard and record of the case was perused. Perusal of the same would reveal that the predecessor-in-interest of the parties 'the propositus' Ahmad son of Sajawal had five sons. Three out of whom namely Khan, Raja and Taja died issueless during his lifetime whereas the fourth son Rajada also died during the lifetime of his father, the propositus, but leaving behind two widows namely Mst. Fatima and Mst. Aisha and a daughter Mst. Khatoon, the plaintiff (from his first wife Mst. Fatima). The fifth son was Sadiq alias Sadu, the predecessor of Defendants No.3 to 16. Ahmad, the propositus, died in the year 1944, leaving behind the only surviving son Sadiq alias Sadu. The propositus, Ahmad, was recorded as an occupancy tenant of a chunk of land owned by the Provincial Government under Section 8 of the Punjab Tenancy Act, 1887 (the '**Act XVI of 1887**). His occupancy rights devolved upon his only surviving son to the extent of 1/2 shares and the remaining half went to the two widows of his pre-deceased son Rajada as holders of limited estate as per customs prevailing in the area vide mutation No.124 attested on 13th November, 1944

available on the record as Exh.P.1. It is worth to mention here that entries of this mutation were incorporated in the record of rights in the year 1944-45 but their status was recorded as occupancy tenants under Section 10(2) of the Colonization of Government Lands (Punjab) Act, 1912 (the **'Act V of 1912'**) vide Notification No.20668 dated 7.08.1922. These entries in the record of rights continued up to 1964 when mother of plaintiff Mst. Fatima (the widow of Rajada) re-married with one Sultan son of Sadiq. Her limited estate reverted back to Sadiq alias Sadu vide mutation No. 51 dated 29.09.1964, available on the record as Exh.P.2, and thereby the share of Sadiq alias Sadu in the legacy swelled up to 3/4 and 1/4 remained with Mst. Aisha, the 2nd widow. It would also be worthwhile to mention here that vide mutation No.52 dated 19.04.1964, the remaining 1/4 share of the said Mst. Aisha also went to Sadiq alias Sadu as after promulgation of the Act V of 1962, the limited estate was terminated but the entries in the record of rights, available on the record, would show that this mutation was never incorporated in the record of rights and entries in her name continued up-till 1980 when their occupancy rights in the property were converted into ownership vide mutation No.150 dated 23.11.1980. Sadiq alias Sadu died in the year 1984 and his mutation of inheritance bearing No.227 dated 14.11.1987 was attested in favour of his legal heirs i.e. Defendants No.3-10.

The plaintiff filed the instant suit to claim her share in the inheritance of her father Rajada (pre-deceased son of the propositus) as per Section 4 of the Ordinance VII of 1961 when her rights were denied firstly by Sadiq alias Sadu and then his legal heirs i.e. the defendants. Her suit was dismissed by the trial Court and the appellate Court on the question of her entitlement as such and also on the question of limitation but the learned Judge-in-

held her entitled to her *shari* share by granting a decree in her favour by holding that question of limitation would not come in her way.

5. To answer the queries raised in the leave granting order, we, in the given circumstances, have to see as to whether the plaintiff /Respondent No.1 and the two widows would be entitled to inherit the legacy left by the propositus, being legal heirs of the pre-deceased son, within the meaning of Section 4 of the Ordinance VII of 1961. If answer to the above question comes in positive then the legal heirs of the pre-deceased son naturally will get their right of inheritance otherwise, the suit of the plaintiff would be liable to dismissal.

6. To proceed further, it would be useful for the adjudication of the matter in hand to reproduce the relevant statutory provisions of the Act V of 1962 and Ordinance VII of 1961 which read as under:-

" Act V of 1962

Section 2.-- Application of the Muslim Personal Law.

Notwithstanding any custom or usage, in all questions regarding succession (whether testate or intestate), special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority legitimacy' or bastardy, family relations, wills, legacies, gifts religious usages or institutions, including Waqfs, trusts and trust properties, the rule of decision, subject to the provisions of any enactment for the time being in force shall be the Muslim Personal Law (Shariat) in cases where the parties are Muslim.

Section 2(A): - Succession prior to Act IX of 1948.

Notwithstanding anything to the contrary contained in section 2 or any other law for the time being in force or any custom or usage or decree, judgment or order of any Court, where before the commencement of the Punjab Muslim Personal Law (Shariat) Application Act, 1948, a male heir had acquired any agricultural land under custom from the person who at the time of such acquisition .was a Muslim:--

(a) he shall be deemed to have become, upon such acquisition, an absolute owner of such land, as if such land had devolved on him under the Muslim Personal Law (Shariat);

(b) any decree, judgment or order of any Court affirming the right of any reversioner under custom or usage, to call in question such an alienation or directing delivery or possession of agricultural land on such basis shall be void, inexecutable and of no legal effect to the extent it is contrary to the Muslim Personal Law (Shariat) Act;

(c) all suits or other proceedings of such a nature pending in any Court and all execution proceedings seeking possession of land under such decree shall abate forthwith;

Provided that nothing herein contained shall be applicable to transactions past and closed where possession of such land has already been delivered under such decrees.

Section 3.-- Termination of limited estates under customary law.

The limited estates in respect of immovable property held by Muslim female under the Customary Law are hereby terminated;

Provided that nothing herein contained shall apply to any such estate saved by enactment repealed by this Act, and the estates so excepted shall continue to be governed by that enactment notwithstanding its repeal by this Act.

Section 5.-- Devolution of property on the termination of life estate and certain wills.

The life estate terminated under section 3 or the property in respect of which the further operation of a will has ceased under section 4 shall devolve upon such persons as would have been entitled to succeed under the Muslim Personal Law (Shariat) upon the death of the last full owner or the testator as though he had died intestate; and if any such heir has died in the meantime, his share shall devolve in accordance with Shariat on such persons as would have succeeded him if he had died immediately after the termination of the life estate or the death of the said legatee;

Provided that the share to which a Muslim female holding limited estate under customary law would have been entitled under the Muslim Personal Law (Shariat) upon the death of the last full owner shall devolve on her.

Ordinance VII of 1961

Section 4: -- Succession.

In the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes receive a share equivalent to the share which such son or daughter, as the case may be, would have received, if alive. ”

7. There are two judgments of this Court which could decide the fate of the case, one referred and relied upon by the appellants i.e. *Mst. Sarwar Jan and others Vs. Mukhtar Ahmad and others* **(PLD 2012 SC 217)** and the other referred and relied upon by the plaintiff/respondents i.e. *Sardar Vs. Mst. Nehmat Bi and 8 others* **(1992 SCMR 82).** Relevant parts of both the judgments would also require to be reproduced which for ready reference read as under:-

" **Mst. Sarwar Jan's case**

6. .....The Ordinance was in force at the time of such termination, therefore, the retrospective application of section 4 was not an issue in the case. However, in the instant matter there is no element of any limited holding of the estate by a female under the custom which would terminate on the enforcement of Act, resultantly, the judgment supra has no relevance qua the present proposition.

7. In order to examine if as per its own force section 4 ibid has a retrospective effect, it is settled rule that any statute or a provision thereof forming part of substantive law, which creates or extinguish or affect the rights of the persons/citizen shall ordinarily have a prospective effect, except where by the clear command of the law, it is made applicable retrospectively. From the language of section 4 ibid we do not find such to be the intention of the legislature, therefore, in our considered view, the application of the section for all intents and purposes is prospective in nature and by no rule of interpretation can it be given a retrospective effect, so as to undo or reopen the past and closed settlements of inheritance, which had been concluded prior to the coming into force of the Ordinance, otherwise, there shall be no sanctity and conclusiveness attached to all or any of the successions, which have been settled under the Mohammedan Law, much before the enforcement of the Ordinance, 1961, even those successions finalized 50 or 100 years prior thereto shall have no protection. This has never been the object of section 4 ibid and the intendment of the legislature. Thus, considering this case in the light of the above rule and criteria, Ilam Din in the case died in 1956 and the legal heirs of his pre-deceased son would not be entitled to inherit his estate, under the Mohammedan Law.....

Sardar's case

9. After hearing the learned counsel for the parties and perusing the precedents cited by them, we are of the view that while enforcing section 5 of the Muslim Personal Law (Shariat) Application Act, 1962 for the purpose of devolution of the estate of the last full owner we will have to apply Muslim Personal Law (Shariat) wherein is included the Muslim Family Laws Ordinance, 1961. The contention of the learned counsel for the respondents in this behalf is supported by the judgment of the Supreme Coart (Shariat Bench) in Federation of Pakistan v. Mst. Farishta PLD 1981 SC 120 that Muslim Personal Law (Shariat) is a comprehensive term to cover all laws relating to personal matters of Muslims. Section 4 of the Muslim Family Laws Ordinance, 1961 allows inheritance to the children of the pre-deceased son or daughter to the extent that the son or daughter would have got. Section 3 of the latter Ordinance 1961 also provides that `The provisions of this Ordinance shall have effect notwithstanding any law, custom or usage'. Therefore, it appears to us that the learned Judge in the High Court was right in holding that by providing for devolution of the property under section 5 of the Muslim Personal Law (Shariat) Application Act, 1962 on termination of the life estate, the children of pre-deceased daughter of the last full owner will inherit the share which their mother would have got as if she were alive at the time of the opening of the succession, that is to say, on the demise of her father Ilam Din in 1947.

10. .....

11. Finally if the statutory provisions i.e. section 5, section 2 and section 2-A of the Muslim Personal Law (Shariat) Application Act, 1962 and section 4 of the Muslim Family Law Ordinance, 1961 are read together and the rule of interpretation for harmonizing statutory provisions is applied, it is quite clear that on the termination of the life estate of Mst. Nehmat Bi, inheritance will open with reference to the full owner namely Ilam Din who died in 1947. He would be succeeded by his heirs the widow, sister and pre-deceased daughter's children. The claim

> of the appellant to exclude children of the pre-deceased daughter of Ilam Din is untenable. As regards distribution of shares amongst the heirs, assigned by the Lahore High Court, no one has come up in appeal; therefore, no interference is called for in this behalf."

A bare look of the above two judgments would reveal that there is a very delicate distinction in these judgments and if the true import of these judgments is seen then it becomes crystal clear that in the case of Sardar (*supra)* it was held by the Hon'ble five Member Bench that there were limited estate holders of the legacy of the propositus being the legal heirs of the pre-deceased son. On termination of the limited estate, in view of Section 3 of the Act V of 1962, the provisions of Section 4 of the Ordinance VII of 1961 were in field, so it was made applicable to that case and the right of inheritance to the legal heirs of the pre-deceased son was given whereas in the case of Mst. Sarwar Jan (*supra)* no such question of limited estate was involved in that case and the only question of inheritance and rights of the legal heirs of pre-deceased son was involved prior to the promulgation of the Ordinance VII of 1961, so in this view of the matter, the provisions of Section 4 of the Ordinance VII of 1961 was declared to be prospective in nature and would not extend any benefit to the legal heirs of pre-deceased son retrospectively. Apart from the case of Mst. Sarwar Jan (*supra)* we were unable to lay hand on any such judgment of this Court dealing with the effect of provisions of Section 4 of the Ordinance VII of 1961 and for that matter we almost went through the entire case law available on Section 4 *ibid* except the two judgments of the Lahore High Court i.e. *Muhammad Yaqub and others Vs. Muhammad Ibrahim and others* **(2002 CLC 819)** and *Muhammad Murad and 12 others Vs. Allah Bakhsh and 34 others* **(2006 MLD 286)**. The ratio which comes out of the above two referred judgments is that when there is a question of limited estate holders and the legal heirs of pre-deceased son or daughter, the legal heirs of pre-deceased son or daughter would become entitle on

termination of the limited estate in view of Section 3 of the Act V of 1962 as Section 4 of the Ordinance VII of 1961 would be in field and in simple case of inheritance, the legal heirs of pre-deceased son or daughter, prior to promulgation of the Ordinance VII of 1961, would not be entitled to get any benefit under Section 4 of the Ordinance VII of 1961 as it will have no retrospective effect rather it will take effect prospectively.

8. While reverting back to the facts and circumstances of the case in hand, it is admitted and established on the record that the propositus of the parties died in the year 1944 leaving behind his only son Sadiq alias Sadu and the two widows and a daughter of his pre-deceased son namely Rajada. In view of the introduction of Section 2-A to the Act V of 1962, Sadiq alias Sadu though inherited as legal heir but also became full owner. His inheritance devolved upon his son to the extent of 1/2 share and the remaining 1/2 share went to the two widows as limited estate holders. Their limited estate got terminated after promulgation of the Act V of 1962 and by the time Section 4 of the Ordinance VII of 1961 was very much in field so was applicable in their case. The above referred situation tallies on all fours to the case of Sardar (*supra)* entitling the legal heirs of pre-deceased son i.e. the two widows and the daughter i.e. the plaintiff according to their respective *shari* shares i.e. 1/8 to the two widows, 1/2 to the daughter (plaintiff) whereas the remaining would go to the son Sadiq alias Sadu as residuary, full brother.

9. Since the status of parties to the lis is admittedly of occupancy tenants under Section 10 (2) of the Act V of 1912 so their succession would no doubt be dealt with under Section 19-A of the said Act. Since the appellants and the second widow namely Mst. Aisha of pre-deceased son after depositing the requisite fee under the scheme have become full owners so the plaintiff and her mother namely Mst. Fatima, the first widow of pre-deceased son, be also dealt with accordingly and the same principle was laid down in the case of

Mst. Ghulam Bano alias Gulab Bano and others Vs. Mst. Noor Jehan and others **(2005 SCMR 658)**.

10. It is also worthwhile to mention here that provisions of Section 4 of the Ordinance VII of 1961 were declared against the tenets and injunctions of Islam by the Federal Shariat Court by reviving the theory of *Mahjub-ul-Irs* (otherwise, under the traditional Muslim Law of inheritance grandson is not excluded from the inheritance of his grandfather) in its judgment rendered in the case of *Allah Rakha and others Vs. Federation of Pakistan and others* **(PLD 2000 FSC 1)**, wherein the effective date of such declaration was also given as 31.03.2000 but such verdict has been questioned before the Shariat Appellate Bench of this Court and by virtue of provisions of Article 203D of the Constitution of Islamic Republic of Pakistan, 1973 operation of such verdict becomes automatically suspended. Besides, such declaration could not affect previous operation of law or succession taking place before such date as was held in the cases of *Mst. Samia Naz and others Vs. Sheikh Pervaiz Afzal and others* **(2002 SCMR 164)**, *Muhammad Ali and others Vs. Muhammad Ramzan and others* **(2002 SCMR 426)**, *Mst. Fazeelat Jan and others Vs. Sikandar through his legal heirs and others* **(PLD 2003 SC 475)** and *Mahmood Shah Vs. Syed Khalid Hussain Shah and others* **(2015 SCMR 869)**.

11. As far as the question of limitation in filing suit for declaration is concerned, we also would like to discuss it in some detail. In general, the time provided for such suit under Article 120 of the Limitation Act, 1908 is six years. Different aspects regarding reckoning /calculating this period of limitation have been considered and some yardsticks have been settled by this Court in different nature of cases and the situation cropping-up according to the facts and circumstances of the cases. In the cases of simple correction of revenue record, it is settled by now that every fresh wrong entry in the record of rights would provide fresh cause of action provided

the party aggrieved is in possession of the property as owner needless to say that it can be either physical or symbolic possession. Similarly, in the cases of claiming right of inheritance, it is well settled that the claimant becomes co-owner/co-sharer of the property left by the predecessor alongwith others the moment the predecessor dies and entry of mutations of inheritance is only meant for updating the revenue record and for fiscal purposes. If a person feels himself aggrieved of such entries, he can file a suit for declaration within six years of such wrong entries or knowledge. Any such repetition of the said entries in the revenue record would again give him a fresh cause of action or when the rights of anyone in the property are denied it would also give fresh cause of action. Similarly, it is again settled by now that no limitation would run against the co-sharer. We for instance can quote few judgments covering all these aspects like *Ghulam Ali and 2 others Vs. Mst. Ghulam Sarwar Naqvi* **(PLD 1990 SC 1)**, *Riaz Ahmad and 2 others Vs. Additional District Judge and 2 others* **(1999 SCMR 1328),** *Mst. Suban Vs. Allah Ditta and* others **(2007 SCMR 635),** *Muhammad Anwar and 2 others Vs. Khuda Yar and 25 others* **(2008 SCMR 905)** and *Mahmood Shah Vs. Syed Khalid Hussain Shah and others* **(2015 SCMR 869)**. In recent past certain judgments have been rendered in the cases of inheritance wherein the question of waiver, acquiescence and estoppel have been considered like in the cases of *Mst. Phaphan through L.Rs. Vs Muhammad Bakhsh and others* **(2005 SCMR 1278),** *Atta Muhammad Vs. Maula Bakhsh and others* **(2007 SCMR 1446),** Lal Khan through Legal Heirs Vs. Muhammad Yousaf through Legal Heirs **(PLD 2011 SC 657)**, *Muhammad Rustam and another Vs. Mst. Makhan Jan and others* **(2013 SCMR 299)**, Mst. Grana through Legal Heirs and others Vs. Sahib Kamala Bibi and others **(PLD 2014 SC 167)** and *Noor Din and another Vs. Additional District Judge, Lahore and others* **(2014 SCMR 513)**. Since the question of limitation in the instant case has not been argued in the light of above noted cases, so we would not like to

discuss the questions involved in the above noted cases qua the question of limitation and would leave it open and consider this aspect in some other appropriate case wherein such like issues are involved. Since we have held that plaintiff Mst. Khatoon Bibi and the two widows of pre-deceased son Rajada of the propositus Ahmad are entitled to receive their due share and they being co-sharers/co-owners in the legacy of the propositus just after opening of succession have become fait accompli after the demise of the propositus and would not need the intervention of the revenue authorities to make them co-sharers/co-owners as such no limitation would run against them as possession of one co-sharer would be deemed to be the possession of all and further any wrong entry in the record of rights would also equip them with a fresh cause of action. Non-filing of any suit by the first widow namely Mst. Fatima, the mother of the plaintiff, by claiming 1/4 share out of 1/8 would also not disentitle her to claim her share.

12. After considering each and every aspect of the case in hand the answers to the queries, raised in the leave granting order, would be as under:-

(i) Both the widows being female were not entitled to full ownership under Section 2-A of the Act V of 1962. They were holders of limited estate only which terminated after promulgation of Act V of 1962 and the property held by them as limited estate would only go back to the legal heirs of pre-deceased son.

(ii) Both were entitled to inherit according to their respective *shari* share out of the share of the pre-deceased son Rajada which he would have received at the time of opening of succession of the propositus.

(iii) Provisions of the Ordinance VII of 1961 and Act V of 1962 were attracted besides the provisions of Section 19-A of the Act V of 1912.

13. The upshot of the above discussion is that this appeal has lost its fate and the same is, therefore, dismissed.

Judge

Judge

Announced in Open Court at _____ on _____.

Judge

Bench-IV
(Nasir Khan) 'APPROVED FOR REPORTING'