

Date of hearing : 10.12.2005.

Order

The petitioners who are legal heirs of Wali Muhammad and Muhammad Bakhsh pre-deceased sons of Ramzoo the original owner of the property in dispute, are aggrieved of the judgment and decree dated 18.11.2000 passed by learned Civil Judge 1st Class, Multan dismissing their suit for declaration and permanent injunction and also the judgment and decree dated 24.9.2003 passed by learned Additional District Judge, Multan dismissing their appeal against the above judgment and decree of the trial Court.

2. The facts succinctly are that Ramzoo the original owner of the property in dispute, died in the year 1951 and his two sons Wali Muhammad and Muhammad Bakhsh died during his life time. It appears that some property owned by said Ramzoo actually devolved on him through registered sale-deed dated 24.10.1974 and same was mutated in favour of his legal heirs (respondents) by excluding the petitioners being the sons and daughters of said Wali Muhammad and Muhammad Bakhsh, pre-deceased sons of Ramzoo. The petitioners, feeling aggrieved of said mutation, filed a suit before the learned trial Court on 14.3.1993 claiming that as the property in dispute was originally owned by Ramzoo, therefore, they being the sons and daughters of Wali Muhammad and Muhammad Bakhsh, his pre-deceased sons, were entitled to inherit the same in terms of Section 4 of Muslim Family Ordinance, 1961. The suit was contested by the respondents/defendants on the ground that as at the time of death of Ramzoo in 1951, Section 4 of the said Ordinance was neither in force nor the same had retrospective effect, hence, the petitioners/plaintiffs were not entitled to claim the benefit of Section 4 of Muslim Family Laws Ordinance, 1961. The learned trial Court framed issues, recorded evidence of the parties and vide judgment and decree dated 18.11.2000 dismissed the suit of the petitioners/plaintiffs. Against the said judgment and decree, the appeal filed by the petitioners/plaintiffs was also dismissed by the learned Additional District Judge, Multan on 24.9.2003, hence this petition.

3. Learned counsel for the petitioner has argued that applicability of Section 4 of Muslim Family Laws Ordinance, 1961 is to be considered from the date when the property actually devolved on Ramzoo deceased and not from the date of his death in 1951. He has therefore, argued that two Courts below have acted illegally and with material irregularity by non-suited the petitioners/plaintiffs on the ground that as at the time of death of Ramzoo in 1951 Section 4 of above Ordinance was not applicable, hence the petitioners were not entitled to claim share in the inheritance Ramzoo deceased.

4. Heard. Record perused.

5. The Muslim Family Laws Ordinance, 1961 was enforced in its totality on 2nd of March, 1961 which has no retrospective effect. Section 4 of the said Ordinance, reads as under:-

"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.

A perusal of the above Section 4 clearly indicates that it is applicable when the succession of propositus opens. It is an established principle of Muslim Law that succession of a Muslim opens the moment he dies and same is neither dependent nor suspended till happening or non-happening of certain event. Admittedly, Ramzoo the original owner died in 1951 notwithstanding the fact that property in dispute was mutated in his name in 1974. Learned counsel for petitioners has not been able to point out any provisions of law making succession of Ramzoo effective upon happening or non-happening of some future event in order to bring the case of the petitioner within the ambit of Section 4 of the Muslim Family Laws Ordinance, 1961 with retrospective effect. Since, admittedly when Ramzoo died in 1951 provisions of Section 4 of the above Ordinance were not in vogue nor the said provisions have been made effective retrospectively, the two Courts below acted within the framework of law by non-suited, the petitioners and excluding them from inheritance of Ramzoo deceased, the original owner. Reliance is placed on the case "Muhammad Yaqub and others v. Muhammad Ibrahim and others" (2002 CLC 819). Resultantly, this civil revision fails and is dismissed in limine, leaving the parties to bear their own costs.

(A.S.) Petition dismissed.