

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

R.F.A.No.174 of 2020  
Commander (R) Muhammad Riaz  
**Versus**

The Chief of Naval Staff, Naval Headquarters and others

**Dates of Hearing:** 20.03.2023 and 15.08.2023  
**Appellant by:** Mr. Shahid Mehmood Langrial, Advocate.  
**Respondents by:** Mr. Liaqat Ali Qasim, Advocate for respondent No.7.  
Raja Muhammad Jawad Arslan, learned Assistant Attorney-General.  
Captain Imtiaz Hussain, Director (Legal), Naval Headquarters.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant regular first appeal the appellant, Commander (R) Muhammad Riaz, impugns the judgment and decree dated 30.11.2018 passed by the Court of the learned Civil Judge, Islamabad whereby the suit for declaration, permanent and mandatory injunction filed by him against *inter alia* his daughter-in-law, Mrs. Ayesha Qayyum / respondent No.5 was dismissed. In the said suit, the appellant had sought a declaration to the effect that he and his family members were entitled to their shares in inheritance in House No.D-117, Pakistan Navy Housing Scheme – Haider, Zamzama, Karachi (“the suit property”) from his son, late Lt. Abdul Qayyum, who died on 29.12.1997 while still in service in the Pakistan Navy. The appellant had also challenged the letter dated 02.08.1999 from the Director General, Welfare and Rehabilitation, Naval Headquarters, Islamabad / respondent No.3 whereby the suit property was to be transferred to respondent No.5 only.

2. The facts essential for the disposal of the instant appeal are that late Lt. Abdul Qayyum was a member of Navy Housing Scheme and in this regard letter No.WE/0120/NHS/35/17/D-14(N-II) dated 11.01.1993 was issued to him. At the time when Lt. Abdul Qayyum applied for membership, he was not married. In his next-of-kin reporting form (Exh.P-5), he had mentioned his marital status as single. The terms and conditions on which the allotment of houses in the said scheme were to

be made were set out in the letter dated 31.12.1993 (Exh.P-4) issued by the Directorate General, Welfare and Rehabilitation Personnel Branch, Naval Headquarters, Islamabad. Clause 16 of the said terms and conditions show that 23 years of minimum qualifying service from the date of commission was required for the allotment of a house, and that the house was to be allotted at the time of retirement. Clause 19 of the said terms and conditions is reproduced herein below:-

*“Death Cases. A member who expires during currency of membership, house will be given to his widow/NOK on priorities for which the balance cost will be met by PNBA out of Additional Group Insurance claim. Any shortfall in the cost will have to be paid by the widow/NOK.”*

3. The issuance of letter dated 02.08.1999 (Exh.P-17) in favour of respondent No.5, whereby the Directorate General, Welfare and Rehabilitation, Naval Headquarters had declared that the suit property was to be transferred to respondent No.5 only and not to all the legal heirs of Lt. Abdul Qayyum, caused the appellant to file writ petition No.1969/1999 before the Hon'ble Lahore High Court. The said writ petition was dismissed vide order dated 16.10.1999 with the following observation:-

*“6. I, therefore, without dilating much on the controversy raised by the petitioner, dismiss this petition in limine, with the observation that the house allotted to respondent No.5 as widow of the deceased, Naval Officer, under the Naval Housing Scheme was not as such the property of the deceased to be inherited and the petitioner, if so desired, may establish his entitlement before the Civil Court.”*

4. Order dated 05.03.2007 passed by the Division Bench of the Hon'ble Lahore High Court in intra Court appeal No.109/1999 shows that the appellant had filed civil suits No.688/1999 and 897/2002 against *inter alia* respondent No.5 which were dismissed by the learned Civil Court vide judgment and decree dated 11.07.2005. After the said decree was passed and the appellant had filed an appeal against the said decree, he withdrew intra Court appeal No.109/1999 as well as writ petition No.1969/1999. Civil appeal No.34/2005 filed by the appellant against the judgment and decree dated 11.07.2005 was allowed by the Court of the learned Additional District Judge, Islamabad vide judgment and decree dated 15.07.2009 and the suit instituted by the appellant was decreed. Apparently, respondent No.5

had transferred the suit property to Mrs. Roshan Haroon / respondent No.7, who filed an application under Section 12(2) C.P.C. against the judgment and decree dated 15.07.2009 passed by the learned Appellate Court. This application was allowed vide order dated 04.09.2014 and consequently the judgment and decree dated 15.07.2009 was set-aside. Civil Revision petition No.332/2014 preferred by the appellant against the said order dated 04.09.2014 was dismissed by this Court vide order dated 26.11.2014. Now as regards the appeal that had been filed by the appellant and was to be considered as pending before the Court of the learned Additional District Judge, the same was allowed with the consent of the contesting parties vide order dated 08.12.2014; the judgment and decree dated 11.07.2005 passed by the learned Civil Court was set-aside and the matter was remanded to the learned Civil Court for a decision after impleading Mrs. Roshan Haroon as a defendant. The proceedings before the learned Civil Court culminated in the judgment and decree dated 30.11.2018 whereby the suit instituted by the appellant was dismissed. The said judgment and decree has been assailed by the appellant in the instant appeal.

5. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that respondent No.5 was not Lt. Abdul Qayyum's sole legal heir but he was survived by his father (appellant), mother (Mrs. Shaheen Riaz), one brother (Omer Riaz) and one sister (Ms. Naureen Riaz); that the suit property was a part of Lt. Abdul Qayyum's legacy / estate and therefore should have devolved on all his legal heirs in accordance with the injunctions of Islam; that Lt. Abdul Qayyum had contracted marriage with respondent No.5 in a clandestine manner without the consent of his parents or permission from Naval Headquarters; that since Lt. Abdul Qayyum had applied on 20.11.1997 to the Naval Headquarters for permission to contract marriage one month prior to his death on 29.12.1997, this shows that he was unmarried at the time of his death and the *nikkahnama* produced by respondent No.5 before the Naval Authorities was a forged and a fabricated document; that the said forgery was committed by respondent No.5 to deprive Lt. Abdul Qayyum's legal

heirs of their due right of inheritance; that in the succession certificate issued by the Hon'ble High Court of Sindh, the names of the appellant and his wife and children are also mentioned in addition to the name of respondent No.5; that the Naval Headquarters should have, on the basis of such certificate, transferred the suit property to all of Lt. Abdul Qayyum's legal heirs; and that the judgment and decree dated 15.07.2009 passed by the learned Appellate Court was strictly in accordance with the law and facts of the case whereas the impugned judgment and decree dated 30.11.2018 is liable to be set-aside since it is in violation of the Islamic law of inheritance.

6. The appeal was contested by respondent No.7 on whose behalf it was submitted that Lt. Abdul Qayyum had entered into a contractual arrangement under which the suit property was to be transferred in his name on retirement or to his widow in case of his death prior to retirement; that the terms and conditions on which Lt. Abdul Qayyum was granted membership in the Navy Housing Scheme clearly provided that the house would be given to the widow / next-of-kin of the member who expires during the currency of membership; that since respondent No.5 was Lt. Abdul Qayyum's widow, the suit property was correctly transferred in her name vide allotment letter dated 24.02.2001 issued by the Navy Housing Scheme; that respondent No.7 was a *bonafide* purchaser of the suit property without notice of the dispute between the appellant and respondent No.5; that the appellant was unable to prove any collusion between the officials in the Naval Headquarters and respondent No.5; that the appellant was also unable to prove that respondent No.5 had forged or fabricated any document; that the Hon'ble Lahore High Court in its order dated 16.10.1999 passed in writ petition No.1969/1999 held *inter alia* that the suit property was not the property of the deceased to be inherited; and that the learned Civil Court had correctly held that the suit property was not a part of Lt. Abdul Qayyum's legacy to be inherited by his legal heirs. Learned counsel for respondent No.7 prayed for the appeal to be dismissed.

7. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have

been set out in sufficient detail in paragraphs 2 to 4 above and need not be recapitulated.

8. Along with the instant appeal, the appellant has filed an application for condonation of delay in filing the appeal. The ground taken by him in the said application is that he had filed the appeal before the Court of the learned District Judge, Islamabad within the limitation period but the same had been returned as it was not within the pecuniary jurisdiction of the said Court. No sooner that the appeal was returned that the appellant filed the appeal before this Court. The Court of the learned District Judge ought to have returned the appeal soon after the same had been filed so as to have enabled the appellant to have filed the appeal before this Court within the limitation period prescribed by law. Since we are satisfied with the affidavit filed in support of the application for condonation of delay, the said application is allowed. We now proceed to decide the instant appeal on merits.

9. Since in terms of clause 19 of the terms and conditions of allotment, the suit property was to be allotted to a member's widow / next-of-kin where a member dies during the currency of membership, vide allotment letter dated 24.02.2001 (Exh.PW-2/2) issued by the Navy Housing Scheme, the suit property was transferred to respondent No.5. In these proceedings, respondent No.5 was proceeded against *ex-parte* vide order dated 16.03.2022 after she failed to appear before this Court despite summons having been issued to her through publication in newspapers. The instant appeal has been contested only by respondent No.7, who had purchased the suit property from respondent No.5.

10. The vital question that needs to be answered is whether or not the suit property was a part of Lt. Abdul Qayyum's legacy / estate to be inherited by all his legal heirs. As mentioned above, Lt. Abdul Qayyum had become a member of the Navy Housing Scheme and was to be allotted a house on retirement from service provided he had completed 23 years of commissioned service reckonable from the date of the commission. Clause 19 of the terms and conditions for the allotment issued by the Directorate General, Welfare and Rehabilitation, Naval Headquarters provided that where a member who expires during the

currency of membership, the house will be given to his widow / next-of-kin on priority basis and the balance cost will be met out of the additional group insurance claim. It was by virtue of the said clause that the Directorate General, Welfare and Rehabilitation, Naval Headquarters, vide letter dated 02.08.1999, decided that the suit property was to be transferred to respondent No.5 (who was Lt. Abdul Qayyum's widow) to the exclusion of his other legal heirs which included his parents, one brother and one sister. On 24.02.2001, the Navy Housing Scheme issued an allotment letter in favour of respondent No.5.

11. It is an admitted position that the ownership of the suit property did not vest in Lt. Abdul Qayyum at any material stage. He had simply obtained membership of the Navy Housing Scheme which entitled him to the allotment of a house on retirement provided he had 23 years of commissioned service. The suit property was transferred to respondent No.5 only due to clause 19 of the terms and conditions issued by the Navy Housing Scheme under which the house was to be given to the widow / next-of-kin of the member in case of his death during membership. It is also an admitted position that respondent No.5 was Lt. Abdul Qayyum's widow and a succession certificate recognizing this fact has already been issued by the Hon'ble High Court of Sindh.

12. Since Lt. Abdul Qayyum was not the owner of any house at the time of his death, the question of inheritance would not arise. In the case of Shahnaz Parveen Vs. Javed Yaqoob (2020 MLD 638), the deceased had obtained membership in the Federal Government Employees Cooperative Housing Society but had not been allotted a plot prior to his demise. There was no tangible and immovable property in the said Society owned by the deceased at the time of his death. The said Society allotted a plot to the person that had been nominated by the deceased in his application form for membership. In the said report, the Division Bench of this Court held that since it was after the deceased's demise that his widow had applied for the allotment of a plot on account of being the deceased's nominee, she had been

correctly allotted a plot by the said Society to the exclusion of the deceased's other legal heirs.

13. In the case of Wafaqi Hakoomat-e-Pakistan Vs. Awamunnas (PLD 1991 SC 731), the Hon'ble Mr. Justice Taqi Usmani held that as per the Holy Quran and *Sunnah*, what is of primary importance is whether there is property that is owned by the deceased prior to his death or property that was liable to be transferred to him prior to his death, and he could have lawfully exchanged this property. Such property will form part of his inheritance. But property which was not owned by the deceased prior to his death or property which he could not have exchanged prior to his death, will not form part of his *tarka* i.e. estate / legacy. Additionally, in the case of Zaheer Abbas Vs. Pir Asif (2011 CLC 1528), the Hon'ble Mr. Justice Faisal Arab speaking for the Hon'ble High Court of Sindh clarified after making reference to the said judgment reported as PLD 1991 SC 731 that any service benefit which an employee can claim from his employer in his lifetime and had also become payable to him in his lifetime but for any reason remained unpaid then they would become a part of his estate and become heritable by all his legal heirs according to their respective shares. Furthermore, it was held that the service benefits that accrued or became due for payment after the death of the deceased employee cannot be treated as part of the estate of the deceased employee.

14. In the instant case, there was no plot or house that was transferred or transferable to Lt. Abdul Qayyum during his lifetime as a service benefit. Therefore, the question of Lt. Abdul Qayyum being in a position to own or exchange a house or plot in the Navy Housing Scheme during his lifetime did not arise. The house in the Navy Housing Scheme was transferable to him only after his retirement and not before. In case of a member's death, the house was to be transferred to his widow in terms of clause 19 of the terms and conditions issued by the Navy Housing Scheme. The instant case does not entail any question of inheritance as Lt. Abdul Qayyum was not the owner of any plot or house in the Navy Housing Scheme at the time of his death. The terms and conditions issued by the Navy Housing Scheme have a contractual force and it is on this basis that a house

was allotted to respondent No.5 and not to all the legal heirs of Lt. Abdul Qayyum. Since it is in fulfillment of the terms and conditions issued by the Navy Housing Scheme that the suit property was allotted to respondent No.5, we do not find any legal infirmity in the impugned judgment and decree passed by the learned Civil Court. Consequently, the instant appeal is dismissed.

15. Since the appellant had attempted to question respondent No.5's marriage with his deceased son by asserting that the *nikahnama* relied upon by her was a forgery even though a succession certificate having been issued by the Hon'ble High Court of Sindh, which still holds the field and the appellant had, in his letter dated 09.09.1998 (Exh.P-11) to the Naval Headquarters acknowledged respondent No.5 as the widow of his deceased son, we order that he shall bear the costs of the contesting respondent.

(ARBAB MUHAMMAD TAHIR)  
JUDGE

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON 30/08/2023

(JUDGE)

(JUDGE)