

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE QAZI FAEZ ISA  
MR. JUSTICE YAHYA AFRIDI

**Civil Appeal No. 438 of 2021**

*(On appeal from the order dated 18.01.2016 of the  
Peshawar High Court, Mingora Bench (Dar-ul-Qaza)  
Swat passed in Civil Revision No. 271-M/15)*

*Mst. Hayat Bibi and others.* ... *Appellants*

**Versus**

*Alamzeb and others.* ... *Respondents*

For the Appellants: Mr. Muhammad Siddique Awan, ASC.  
Syed Rifaqat Hussain Shah, AOR.

For Respondent Nos.: Mr. Dil Muhammad Khan Alizai, ASC.  
*(1-6, 9-10, 12-13, 15-18, 20-22 & 24)* Mr. Nazir Ahmad Bhutta, ASC.  
Ch. Akhtar Ali, AOR.

For Respondent Nos.: Mr. Muhammad Sharif Janjua, AOR.  
*(27, 31, 33-36 & 38)*

Other Respondents: Nemo.

Date of hearing: 26.10.2021

**JUDGMENT**

**Qazi Faez Isa, J.** Leave to appeal was granted in this case on 28 April 2021 on the basis of the points noted in the earlier order dated 12 April 2017 of a three member bench, reproduced hereunder:

States that the learned Courts below have misread the oral evidence, particularly the statements of DW-5 and DW-6, who claimed to be the marginal witnesses of the disputed document Ex.DW-4/1 as the said witnesses were minors at the time of the alleged execution of the document and this is clear from their own statements in which they have given their age when considered in the light of the date of the document, i.e. 12.05.1971. It is also submitted that the document referred to above is

neither a registered document or a part of any *nikahnama*, nor has it been given effect to in any official record such as that of property tax or revenue; further, the possession of the property was also not delivered as per the said document, resultantly for all intents and purposes the property in question remained to be the estate of Habib Khan and thus the petitioners being his legal heirs were entitled to have their respective shares in the property through partition. All these aspects have not been taken into consideration by the Courts below. Issue notice to the respondents.

2. This appeal involves a dispute regarding the estate of Habib Khan who died in the year 1986. Habib Khan had married thrice and had eight daughters. His third wife, Mst. Gulsaza, at the time of her marriage with Habib Khan brought with her two children from a previous marriage. Some of the daughters of Habib Khan filed a suit to claim their inheritance in accordance with *Shari'ah* in the property left by Habib Khan. The suit was dismissed. Appeal against the same was also dismissed and so too the civil revision. Therefore, this appeal assails three concurrent judgments.

3. Mr. Muhammad Siddique Awan, the learned counsel for the appellants, states that the appellants were denied their share in their rightful inheritance by their step-mother, Mst. Gulsaza and her two children from her previous marriage the respondent Nos. 1, 2 and 3 (**'the contesting respondents'**). Mst. Gulsaza's children from her previous marriage are not the heirs of Habib Khan. The contesting respondents relied on two documents to claim the entire estate of Habib Khan and to exclude his daughters. Firstly, a *Meharnama* (dower deed) dated 12 May 1971 (exhibit DW4/P1) and, secondly, a *Razinama* (compromise) dated 13 June 2004 (exhibit DW1/P1). The learned counsel has attended to both these documents in some detail. The *Meharnama* is assailed on the following grounds: (i) It was/is a self-serving document which had been manufactured to deprive the daughters from the estate of their father, Habib Khan. (ii) It has three attesting witnesses, namely, Daulat Khan

(DW5) who was aged about 16 years when he purportedly attested it, Lal Sarfraz (DW6) who was aged only seven years when he statedly attested it and the third attesting witness is shown to be Gul Hakeem (DW7). To confirm that two of the said attesting witnesses were minors, the learned counsel referred to their testimony in which they confirm that they were respectively sixteen and seven years of age at the time when they supposedly attested the *Meharnama*. (iii) And, that the purported *Meharnama* was never acted upon. As regards the *Razinama* dated 13 June 2004 the learned counsel submits the following: (i) The *Razinama* was purportedly executed thirty-three years after the *Meharnama* yet the *Meharnama* is not mentioned therein. (ii) The *Razinama* is shown to have been signed by about 20 *Jirgah* members but only one member, namely, Saifur Rehman (DW3), was produced and his testimony and the contents of the *Razinama* were at variance. (iii) Not a single legal heir of Habib Khan is shown to have signed the *Razinama*, therefore, it could not be categorized as a compromise. (iv) A *Jirgah* had no jurisdiction with regard to the inheritance shares which have been prescribed by the *Shari'ah* of Islam. (v) And, a *Jirgah* could not determine shares in inheritance contrary to the commands of Almighty Allah mentioned in the Holy Qur'an.

4. Referring to the conceding written statement filed by some of the defendants in the suit (arrayed as respondents herein) and which are mentioned in the impugned judgments, the learned Mr. Awan submits that those who purportedly signed it did not come forward to testify and a purported attorney, namely, Ahmed Jan (DW-1), when cross-examined, admitted that he had never met those who were shown to have given him the power of attorney nor did they sign the power of attorney in his presence. Therefore, it was not established that Ahmed Jan was authorized, through the said power of attorney, consequently, any written statement submitted by him and any concession made in such written statement was bereft of legal effect.

5. The learned Dil Muhammad Khan Alizai and Muhammad Sharif Janjua represent the respondents. Mr. Janjua adopted the submissions of his colleague. The learned Mr. Alizai submits that in this case there

are three concurrent judgments and that only in a rare and exceptional case does the Supreme Court interfere with such concurrence, particularly when all the judgments are well reasoned and without any legal defect. He states that the *Meharnama* and the *Razinama* were proven in accordance with law. The learned counsel emphasized that the suit was filed on 21 January 2013 and as such was time-barred and relied on Article 120 to the First Schedule of the Limitation Act, 1908, which prescribes six years within which such a suit is to be filed; Habib Khan died in 1986, therefore, the suit should, at the latest, have been filed in the year 1992, but it was filed in the year 2013. He further states that the *Razinama* was in terms of a family settlement and Habib Khan's daughters should not be permitted to resile therefrom, particularly when some of them had received benefits pursuant thereto.

6. We have heard the learned counsel representing both sides and with their able assistance examined the documents on record. On the death of a Muslim his/her property devolves on his/her legal heirs in accordance with the shares prescribed by Islamic *Shari'ah* and possession by any legal heir is deemed to be possession by all. If someone lays exclusive claim to the property, or to any part thereof, which is contrary to the shares as determined by *Shari'ah*, the burden to establish such claim vests on the one alleging it. In the present case Mst. Gulsaza claimed that her husband had given away all his property to her as *mehr* (dower) and she and her two children base this claim on the *Meharnama* dated 12 May 1971. Therefore, they had to prove that the *Meharnama* was executed by Habib Khan. Admittedly, the two shown to be the attesting witnesses to the *Meharnama* purportedly did so when they were minors, and no explanation was offered why Lal Sarfraz Khan, who was only 7 years old, and Daulat Khan, aged 16 years, were called upon to attest it. This has raised serious doubts about the authenticity of the *Meharnama* and it appears that it was manufactured to deprive the legal heirs of Habib Khan from their inheritance. Significantly, the *Meharnama* only surfaced after the filing of the suit. The *Meharnama* also did not find mention in the *Razinama* which is inexplicable. If the *Meharnama* did exist it would have been natural to show it to the members of the said *Jirgah* who would have mentioned it in the

*Razinama*. The burden to establish the execution by Habib Khan of the *Meharnama* lay upon the contesting respondents, who had failed to establish its execution. Therefore, the *Meharnama* cannot be relied upon and used to deprive Habib Khan's heirs from their inheritance.

7. We now consider the *Razinama* and whether its execution was established and, if so, its effect. Out of the 20 signatories thereon only Saifur Rehman was produced to testify and his testimony did not accord with the contents of the *Razinama*. The *Razinama* purported to be a compromise amongst the heirs of the late Habib Khan but it is not signed by even a single one of his heirs. To state the obvious, a compromise cannot be arbitrarily imposed on anyone. Even if for arguments sake it be accepted that a *Jirgah* was convened and decided matters relating to inheritance a *Jirgah* cannot substitute its decision to what is prescribed in the Holy Qur'an.

8. The learned Civil Judge was impressed by the fact that the suit was belatedly filed but without realizing that under Islamic *Shari'ah* heirs become owners of their predecessor's property immediately on his death. The legal heirs of Habib Khan filed the suit and asserted their right to inheritance themselves, unlike some cases filed long after the first generation of heirs have passed away. The suit was filed by the daughters of the late Habib Khan claiming what was rightfully theirs. They had also not relinquished their rights. Therefore, it was both factually and legally wrong to hold that the suit was time-barred. The learned Civil Judge further erred by accepting the authenticity of the suspect *Meharnama* and that it and the *Razinama* could deprive legal heirs from their inheritance. In any event, the execution of neither document was established. These mistakes were not corrected either by the Appellate Court or by the High Court. Therefore, all three impugned judgments are not sustainable and have to be set aside by allowing this appeal. Consequently, the suit filed by the appellants, who had been deprived of their inheritance, is decreed by holding that the entire estate of Habib Khan shall be distributed amongst his legal heirs in accordance with the shares as determined by Islamic *Shari'ah*. As Habib Khan died about 35 years ago and during this long period his legal heirs remained

deprived from their inheritance we expect that this judgment will be promptly implemented. Since we have set aside three concurrent judgments there shall be no order as to costs.

Judge

Judge

Islamabad  
26.10.2021  
Approved for Reporting  
Arif