

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Yahya Afridi

Civil Appeal No. 954/2014

(On appeal against the judgment dated 20.01.2014
passed by the Lahore High Court, Bahawalpur Bench,
in C. R. No. 187-D/2002)

Muhammad Sharif

... *Appellant*

Versus

Mst. Niamat Bibi

... *Respondent*

For the Appellant:

Mr. Zulfiqar Ali Abbasi, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent:

Ch. Irfan Saeed, ASC

Date of Hearing:

24.06.2021

ORDER

Qazi Faez Isa, J. Leave was granted against the judgment of the learned Single Judge of the High Court who had upheld the judgment of the Appellate Court decreeing the suit filed by the respondent, which had been dismissed by the Trial Court. In the suit the respondent alleged that she is the daughter of Majeedan, the sole sister of Taj Din alias Tajoo a Rajput, who had died issueless leaving behind as his legal heir just the one sister (Majeedan) who claimed his inheritance both as his sister and also claimed residuary share. Inheritance mutation No. 1392 had been sanctioned in Majeedan's favour on 22 March 1973, which the appellant challenged before the Assistant Commissioner exercising powers of Collector ('**Collector**') and his appeal was allowed *vide* order dated 9 February 1973 and the revenue officials were directed to determine the legal heirs of Taj Din, which was done by the Halqa Patwari and Tehsildar on 25 December 1976; Majeedan was found entitled to half-share in the estate of Taj Din as his sister and the appellant to the remaining half as collateral consanguine male residuary. The appellant based his claim on a

fatwa and a pedigree table and which is mentioned in the above mentioned sanction order of 25 December 1976.

2. The learned Mr. Zulfiqar Ali Abbasi, counsel for the appellant, submits that the judgment of the Trial Court, which had dismissed the suit of the respondent, was correct and did not call for any interference by the Appellate Court and the Appellate Court having decided against the appellant the High Court failed to correct the error by not restoring the judgment of the Trial Court. He further submits that the Appellate Court had not properly considered the documents on which the appellant had relied, including the said *fatwa* and pedigree table which showed that the appellant's paternal grandfather Tongal was the collateral of Taj Din.

3. On the other hand the learned Ch. Irfan Saeed, representing the respondent, submits that the judgment of the Appellate Court was well reasoned and in accordance with law and had comprehensively dealt with the dispute and in paragraph 10 the learned Additional District Judge ('ADJ') had rightly determined that the appellant could not connect himself to Tongal. He further submits that Taj Din was a Rajput whereas the appellant's predecessor Tongal, as per the pedigree table which he himself produced, was a Baloch and that this pedigree table mentioned 'Taj Muhammad' whereas the case and the inheritance pertained to Taj Din alias Tajoo who was a Rajput. Referring to the *fatwa* relied upon by the revenue authorities in the order dated 25 December 1976 he states that the same is not a *fatwa* as it did not opine on Islamic law or interpret *shariah*, but instead the *fatwa* asserts facts, as it showed the lineage of the appellant which a *fatwa* could not determine and that the person who had purportedly given the said *fatwa* was also not produced as a witness. The other document on which the revenue authorities relied was the pedigree table, which mentioned 'Taj Muhammad' (and not Taj Din) and showed this Taj Muhammad to be a Baloch, and as such was not relevant for the purpose of determining the legal heirs of Taj Din. Therefore, he submits, the inheritance mutation No. 1392 was correct and should not have been disturbed. The learned counsel further states that the Collector's order dated 9 February 1976 was passed behind the back of

the respondent and her mother, Majeedan. Concluding his submissions the learned counsel relied on the judgment in the case of *Saadullah v Gulbanda* (2014 SCMR 1205), wherein a 'Table of Residuaries in Order of Succession - Sunni Law' which sets out 18 categories and states that category 6 provides, '*In default of full brother and the other residuaries above-named, the full sister takes the residue*'. Therefore, even if it be accepted that Muhammad Sharif (the appellant) was Tongal's grandson then too he would not inherit from Taj Din because he does not fall in the stated *above-named* categories but, admittedly, was in category 16, titled '*Consanguine Paternal Uncle's Son*', and this category would not be entitled to inherit from Taj Din in presence of his sister (Majeedan).

4. We have heard the learned counsel for the parties and with their able assistance examined the documents on record and considered the cited judgment. The learned ADJ had comprehensively attended to the dispute and in paragraph 10 of his judgment gave reasons to conclude that Muhammad Sharif (the appellant herein) was unable to establish his connection with Taj Din and that the documents on which reliance was placed by the appellant also did not establish his connection with Taj Din. The appellant had admitted that Majeedan was Taj Din's sister. Therefore, the respondent did not have to establish her right as Taj Din's heir. The dispute was restricted to whether Majeedan would also take the remaining half of his estate as residuary. It lay upon the appellant to establish that he was the grandson of Tongal and having done so that he would inherit from Taj Din as per applicable *sunni fiqh* of *shariah*, and on both these counts he failed.

5. Much was said on whether the Collector passed his order after notice to and providing opportunity of hearing to Majeedan or her daughter (respondent herein). However, we need not determine this as the respondent otherwise succeeds. The Collector had directed the revenue authorities to determine who were the heirs of Taj Din and they had relied on the said two documents produced by the appellant, which were the *fatwa* and pedigree table, but these documents did not establish the appellant's connection to Taj Din and particularly one that would entitle

him as residuary to half of his estate. The judgment of the Appellate Court is well reasoned and it was rightly upheld by the High Court. Moreover, the cited judgment in the case of *Saadullah* also appears to be applicable on all fours to the facts of this case, which had determined that a full sister would inherit both as a sister and if there was no residuary in the said above-named categories (as mentioned therein) then she would also take the remainder as a residue, and exclude those falling in a category below her, including 'Consanguine Paternal Uncle's Son' (mentioned at category 16) of the said judgment. Therefore, for the aforesaid reasons this appeal is dismissed, but with no order as to costs since the Trial Court had dismissed the suit of the respondents and as the dispute between the parties was a complicated one.

Judge

Judge

Bench-II
Islamabad
24.06.2021
(Farrukh)

Approved for Reporting