

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE QAZI FAEZ ISA

MR. JUSTICE YAHYA AFRIDI

Civil Appeal No. 230 of 2016

*(On appeal from the judgment dated
06.05.2013 passed by the Islamabad High
Court, Islamabad in C.R. No. 121/13)*

*Mst. Raj Begum (deceased) through her
L.Rs and others.*

... *Appellants*

Versus

*Mst. Ajaib Jan (deceased) through her
L.Rs and others.*

... *Respondents*

For the Appellants:

Mr. M. Ishtiaq Ahmed Raja, ASC.

For Respondent Nos. 2-4:

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

For Respondents Nos. 1-A,;
C(i)-(v), 15 & 16

Ex-parte.

For Respondent No. 1-B:

Zahid Mehmood Abbasi, Attorney.

Date of Hearing:

19.04.2022

JUDGMENT

Qazi Faez Isa, J. Allah Ditta died in the year 1947 or 1948. He was survived by a widow, two sons and three daughters. Inheritance mutation number 2207 in the names of his two sons was attested on 6 April 1956 and showed them as the sole heirs to the agricultural land of Allah Ditta measuring 53 *kanals* and 13 *marlas*. A suit was filed by Allah Ditta's daughters, who claimed their inheritance and sought cancellation of inheritance mutation number 2207. The suit was decreed, the appeal against the same was dismissed, and so too was the civil revision filed in the High Court by the appellants. It is against these three concurrent judgments that a petition for leave to appeal (CPLA No. 1252/2013) was filed and leave was granted *vide* order dated 24 February 2016.

2. The learned Mr. M. Ishtiaq Ahmed Raja, representing the appellants (who are the legal heirs of the sons), states that, at the time of death of

Allah Ditta laws of inheritance as per *Islamic Shariat* were not applicable and as per prevailing custom sons alone were entitled to the estate of their father. In this regard reliance was placed on the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 (**'the 1962 Act'**). Section 2-A of the 1962 Act stipulates that, *'where before the commencement of the Punjab Muslim Personal Law (Shariat) Application Act, 1948, a male heir had acquired any agricultural land under custom'* 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).'* The learned counsel submits that the said Punjab Muslim Personal Law (Shariat) Application Act, 1948 (**'the 1948 Act'**) was enacted on 15 March 1948 (**'the cut-off date'**). Therefore, since Allah Ditta died prior to the cut-off date his sons alone would become the owners of his estate, to the exclusion of the other legal heirs. To support his contention reliance is placed on the decision in the case of *Ghulam Haider v Murad* (PLD 2012 SC 501).

3. Learned Mr. Zulfiqar Ali Abbasi, who represents two daughters/their legal heirs, submits that the three concurrent judgments had correctly applied the facts and the applicable law. Therefore, this appeal be dismissed. He further states that there is nothing on record to establish that the two sons had *acquired* the said agricultural land before the 1948 Act was enacted. On the contrary, learned counsel says, admittedly the sons purported to acquire the said land pursuant to inheritance mutation number 2207, which was made in their favour of on 6 April 1956, that is, long after the cut-off date of 15 March 1948. And, section 2-A of the 1962 Act requires the male heir to have *'had acquired any agricultural land under custom'* before the cut-off date. However, the sons, as per their own showing, had acquired the said land after the cut-off date. It is next submitted that the decision in *Ghulam Haider v Murad* also does not support the sons' claim of exclusive ownership, as therein the mutation in favour of the son was made in the year 1944, that is, before the cut-off date. The decision in *Ghulam Haider v Murad* had stated that *acquisition* prior to the cut-off date was essential for a son or sons to claim exclusive ownership, as under:

'However, as regards Murad's suit filed against Mutation No. 5631 attested on 28.02.1959 in favour of Mst. Sehati and Mst.

Bano the said suit should also have failed because the land subject matter of that mutation had never been formally "acquired" by Murad before March 15, 1948. Section 2-A introduced through Ordinance XIII of 1983 was applicable only to those acquisitions of agricultural land which acquisitions had come about prior to March 15, 1948 and in the case of the land subject matter of Mutation No. 5631 there was no formal acquisition of that land by Murad till attestation of that mutation on 28.02.1959 and, thus, after March 15, 1948 the said land could have devolved upon the heirs of Lal deceased only under the Islamic law of inheritance and not under the customary law of inheritance which by then had become extinct. In this view of the matter the suit filed by Murad challenging Mutation No. 5631 attested on 28.02.1959 was liable to be dismissed.'

The aforesaid (extract from paragraph 11, at page 542), according to learned counsel, clinches the argument in favour of all legal heirs

4. We have heard the learned counsel for the parties and with their able assistance examined the documents on record, the applicable laws and the cited judgment. In our considered view the contention of the learned counsel for the respondent is correct. Because, even if it be accepted that Allah Ditta died before the cut-off date of 15 March 1948 the two sons had not *acquired* the said land, and, thus, excluded the other legal heirs. The purported exclusion of the other legal heirs took place when inheritance mutation number 2207 took place in the sons' favour on 6 April 1956, which was after the cut-off date of 15 March 1948. The sons had relied upon the inheritance mutation number 2207 to establish their *acquisition* but such purported *acquisition* did not accord with the requirements of the 1962 Act, the enactment date of the 1948 Act and the interpretation thereof by this Court in the case of *Ghulam Haider v Murad*.

5. Leave to appeal was granted by recording learned Mr. M. Ishtiaq Ahmed Raja's contention (which has also been noted by us above) with regard to the 1962 Act, the enactment date of the 1948 Act and the decision in the case of *Ghulam Haider v Murad* (above). And, we have considered the application of the 1962 Act, the 1948 Act and the said

decision with regard to the date of purported *acquisition* by the two sons. Admittedly, the purported *acquisition* by the two sons was through inheritance mutation number 2207, which was after the cut-off date of 15 March 1948. Therefore, the inheritance mutation number 2207 and the purported *acquisition* by the sons cannot be saved as being contrary to the application of *Islamic Shariat* law of inheritance. Consequently, it was correctly cancelled. And, all the legal heirs of Allah Ditta are entitled to his estate as per their respective shares in accordance with *Islamic shariat*.

6. Therefore, for the aforesaid reasons, this appeal is dismissed. In case the judgments of the subordinate courts and of the High Court have still not been implemented by the concerned authority, and the ownership of all the legal heirs of Allah Ditta is not recorded in the property records, the same should be done immediately, as decades have already passed since the death of Allah Ditta and some of his legal heirs have remained deprived of their inheritance.

Islamabad
19.04.2022

Approved for Reporting
Arif