Judgment Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Civil Miscellaneous Appeal No.S-07 of 2024

[Muhammad Khalid v. Muhammad Sabir and others]

Appellant by	:	Mr.Rao Faisal Ali, Advocate
Respondents by	:	Nemo
	:	Mr.Harish Chander, Assistant A.G Sindh
Date of hearing	:	14.04.2026 & 30.04.2026
Date of decision	:	18.05.2026

J U D G M E N T

ARBAB ALI HAKRO, J.- The present Miscellaneous Succession Appeal is directed against the order dated 28.09.2020, passed by the learned District Judge, Mirpurkhas, in Succession Application No.62 of 2020, whereby the learned Court below, while granting the succession certificate in respect of the movable estate of the deceased spouses Saeed-ur-Rehman and Mst.Aneesa Bano Rajput proceeded to include, as legal heirs, the children of the pre-deceased nephew Muhammad Ayoub, by extending to them the benefit of Section 4 of the Muslim Family Laws Ordinance, 1961, a course of action which the appellant assails as being wholly misconceived and contrary to the settled principles of Muhammadan inheritance.

2. The brief background of the case is that the appellant Muhammad Khalid, being the real nephew of the deceased Saeed-ur-Rehman S/o Abdul Ghafoor Khan, instituted a Succession Application under Section 372 of the Succession Act, 1925, asserting that the deceased Saeed-ur-Rehman and his wife, Mst.Aneesa Bano Rajput had died intestate on 16.06.2020 and 19.06.2020 respectively, leaving behind no issue from their wedlock. It was specifically pleaded that the only surviving legal heirs of both deceased spouses were their nephews and nieces, namely the appellant and respondents Nos. 1 to 4, all children of the deceased's real brother, Ameen-ur-Rehman. The appellant further averred that his own brother Muhammad

Ayoub had expired on 22.06.2008, long prior to the demise of the propositus and therefore, under Muhammadan Law, the children of the said pre-deceased brother could not inherit in the presence of surviving nephews and nieces of equal degree.

3. Upon admission of the petition, the Trial Court called for reports from NADRA, the Mukhtiarka, the SHO and the concerned banking institutions. The reports confirmed the deaths of the propositus and his spouse and further affirmed that the appellant and respondents Nos.1 to 4 were the surviving nephews and nieces. The respondents appeared before the Trial Court and filed affidavits of no objection to the grant of a succession certificate in favour of the appellant and themselves. The banking institutions furnished detailed statements of the accounts, Islami Amdani Certificates, Meezan Amdani Certificates and other instruments standing in the names of the deceased spouses.

4. After hearing the learned counsel and examining the material on record, the learned District Judge proceeded to dispose of the succession petition through the impugned order dated 28.09.2020, wherein, while acknowledging that the deceased had left behind only nephews and nieces, the Court nevertheless invoked Section 4 of the Muslim Family Laws Ordinance, 1961 (**"MFLO"**) and held that the children of the pre-deceased nephew Muhammad Ayoub were also entitled to inherit in the analogy of Section 4, on the premise that the said provision continued to hold the field. Learned Trial Court thus directed that the estate be distributed not only amongst the appellant and respondents Nos.1 to 4, but also amongst the legal heirs of the pre-deceased nephew.

5. Aggrieved by the aforesaid extension of Section 4 to the children of a pre-deceased nephew, an interpretation which the appellant contends is alien to the text, spirit, and scheme of the Ordinance, the appellant instituted the present appeal.

6. Learned counsel for the appellant, while opening his submissions, assailed the impugned order on the foundational premise that the learned Trial Court travelled far beyond the permissible contours of Section 4 of the MFLO, by extending its benefit to the children of a pre-deceased nephew, a category of heirs which the statute neither contemplates nor protects. He submitted that the deceased

Saeed-ur-Rehman and his wife died issueless, and that the only surviving heirs in the line of agnatic succession were the nephews and nieces, all children of the deceased's real brother, Ameen-ur-Rehman. It was emphasised that the appellant had candidly disclosed that his brother, Muhammad Ayoub, had predeceased the propositus in 2008. Therefore, under the classical Hanafi doctrine, the children of such pre-deceased brother stood excluded in the presence of surviving nephews of equal degree. Learned counsel submitted that the Trial Court's reliance upon Section 4 was wholly misplaced, as the statutory text restricts its operation exclusively to the children of a pre-deceased son or daughter of the propositus and cannot be judicially expanded to collateral branches such as nephews, nieces, or their descendants. He argued that under the Hanafi jurisprudence, the sons of a full brother constitute Asabat-bin-Nafs (residuaries in their own right). In the absence of primary heirs, they inherit the whole residue to the exclusion of Zaw-il-Arham, which includes nieces. He further submitted that the Trial Court's approach, premised upon an analogy drawn from judgments relating to the children of pre-deceased sons and daughters, was legally untenable, as the jurisprudence under Section 4 has never been extended to collateral heirs. Learned counsel maintained that the impugned order, to the extent that it accords inheritance rights to the children of the pre-deceased nephew, is contrary to the settled doctrine of exclusion, unsupported by statutory authority and liable to be set aside.

7. Conversely, learned Assistant Advocate General Sindh, while supporting the impugned order, submitted that the learned Trial Court had proceeded on the strength of judicial precedents wherein the operation of Section 4 of the MFLO was held to remain intact in view of the suspension of the Federal Shariat Court's judgment in Allah Rakha's case. He therefore prayed that the impugned order, being a reasoned judicial determination, does not warrant interference in appellate jurisdiction.

8. Heard and perused the record.

9. Based on the record and the submissions, the principal question that arises for determination is whether, on a correct construction of Section 4 of the MFLO,

the benefit of representation can be extended beyond the children of a predeceased son or daughter of the propositus to collateral heirs such as the children of a predeceased brother or nephew. A closely allied question is whether, in the present factual matrix, the nieces, being daughters of the deceased's brother, can claim any share in the estate in the presence of the nephews, who are sons of the same brother and stand as nearer agnatic residuaries.

10. It is a matter of legislative history that Section 4 of the MFLO was enacted as a specific reform to mitigate the hardship suffered by orphaned grandchildren who, under the classical Islamic law of succession, would be excluded where their parent (the son or daughter of the propositus) had predeceased the opening of succession. The classical rule that "the nearer excludes the remoter" meant that such grandchildren, though often the most vulnerable, would receive nothing if their parent died before the propositus. Section 4 introduced a statutory principle of representation, providing that "the children of such son or daughter shall per stirpes receive a share equivalent to the share which such son or daughter would receive, if alive. The provision thus creates a narrow, carefully worded exception to the classical scheme, confined to a defined class: the children of a predeceased son or daughter of the propositus.

11. The controversy surrounding Section 4, including its challenge before the Federal Shariat Court in the case of Allah Rakha[1] and connected matters and the subsequent proceedings before the Shariat Appellate Bench of the Supreme Court are well known. While the Federal Shariat Court declared Section 4 to be repugnant to the injunctions of Islam and directed that it be suitably amended, the operation of that judgment was suspended by the Shariat Appellate Bench, and Section 4 has continued to be applied by the ordinary courts. Over time, the jurisprudence of the superior courts has crystallized around a textual and confined reading of Section 4, limiting its operation to the precise class identified by the legislature, namely, the

[1] Allah Rakha v. Federation of Pakistan (PLD 2000 FSC 1)

children of a predeceased son or daughter of the propositus and resisting attempts to extend it to other categories of heirs not mentioned in the statute.

12. In this context, particular significance attaches to the judgment of the Supreme Court of Pakistan in the case of Hassan Aziz[2]. In that case, the question was whether the great-grandchildren of the propositus could claim representation under Section 4. The Supreme Court, upholding the judgment of the Islamabad High Court, answered this question in the negative. The judgment is summarised in the following terms: "The great-grandchildren of a propositus are not entitled to inheritance rights under section 4 of the MFLO because it is limited to the children of a predeceased son/daughter." It was further observed that "section 4 of the MFLO is itself a well-worded exception to the Islamic law of inheritance that does not allow its liberal extension." The Court emphasized that the phrase "the children of such [predeceased] son or daughter, if any, living at the time the succession opens" must be given its ordinary meaning and that the provision does not employ expressions such as "how low so ever" which, in classical law, would extend rights to more remote descendants.

13. The ratio of Hassan Aziz is directly instructive for present purposes. If, as the Supreme Court has held, Section 4 cannot be extended even from grandchildren to great-grandchildren, who are still lineal descendants of the propositus because the statute is confined to "children of predeceased son/daughter", then a fortiori it cannot be stretched to encompass collateral relatives such as nephews, nieces or the children of a predeceased nephew. The Supreme Court's characterization of Section 4 as a "well-worded exception" that does not permit "liberal extension" is a clear admonition against precisely the kind of analogical expansion undertaken by the learned District Judge in the present case.

14. This Court is, therefore, bound to approach Section 4 with the same interpretive discipline. The text of the provision is unambiguous in identifying the beneficiaries as "children of any son or daughter of the propositus" who predecease

[2] Hassan Aziz and others v. Meraj-ud-Din and others (2022 SCMR 1131)

the opening of succession. There is no reference to brothers, sisters, nephews, nieces or their descendants. To read into the provision a right of representation for the children of a predeceased nephew is to legislate under the guise of interpretation and to create a new class of heirs which neither the classical law nor the statute has recognised. The learned District Judge invocation of Section 4 “by analogy” to the children of Muhammad Ayoub thus stands in direct conflict with both the statutory text and the binding guidance of the Supreme Court.

15. Turning to the classical Hanafi doctrine, it is beyond dispute that the sons of a full brother are agnatic residuaries (asabat-bin-nafs) who, in the absence of nearer residuaries or fixed-share heirs, succeed to the entirety of the estate. Daughters of a full brother, by contrast, fall within the category of distant kindred (zaw-il-arham) and are excluded in the presence of any residuary of the same or higher degree. The Legal Statement of Inheritance filed in this appeal accurately reflects this position when it states that the three nephews “fall under the category of *‘Asaba’* (Residuaries) and inherit the entire residue of the estate” and that the four nieces, being distant kindred, are “excluded from inheritance in the presence of any member of the Residuaries (Asaba). Unlike a sister who inherits with a brother, a niece does not become a residuary in the company of her brother (the nephew).” This is entirely consonant with the authoritative Hanafi texts.

16. The question then is whether Section 4 of the MFLO has, in any manner, altered this classical position in relation to nephews and nieces. In my considered view, the answer must be in the negative. Section 4 was designed to address a specific lacuna concerning orphaned grandchildren; it did not purport to recast the entire hierarchy of heirs or to elevate distant kindred to the status of residuaries in the presence of nearer agnates. To extend Section 4 to the children of a predeceased nephew would not only be textually unwarranted but would also disrupt the carefully balanced structure of the classical law by allowing more remote collaterals to compete with or even displace nearer residuaries. Such a result would be inconsistent with both the legislative intent and the underlying principles of Muhammadan Law.

17. It is also material that the appellant, in his original succession application, did not seek to conceal the existence of the predeceased brother or his children. On the contrary, he candidly pleaded that “deceased Muhammad Ayoub died on 22.06.2008, prior to the death of deceased uncle Saeed-ur-Rehman S/o Abdul Ghafoor Khan, therefore, according to law, the pre-deceased predecessor has no right in the moveable and immovable properties of uncle Saeed-ur-Rehman S/o Abdul Ghafoor Khan. The grievance is not that the branch of Muhammad Ayoub was suppressed, but that the learned District Judge, of its own motion, imported Section 4 to confer upon that branch a right of representation which the law does not recognize. The transparency of the appellant’s pleadings reinforces the conclusion that the impugned extension of Section 4 was not the product of any factual misrepresentation but of a legal misdirection.

18. Learned District Judge erred in law in applying Section 4 of the MFLO “by analogy” to the children of the predeceased nephew Muhammad Ayoub. Once that erroneous extension is excised, the matter reverts to the classical Hanafi scheme, under which the three nephews, being sons of the deceased’s real brother, constitute the residuaries entitled to the entire estate and the four nieces, being distant kindred, stand excluded in their presence.

19. For completeness, it may be observed that nothing has been brought on record to suggest the existence of any other heir, such as a surviving parent, grandparent, spouse or child of the propositus, who would alter this distribution. The reports obtained by the District Judge from NADRA, the Mukhtiarkar, the SHO and the concerned banks, as well as the affidavits of no-objection filed by the respondents, all proceed on the basis that the nephews and nieces are the only heirs in the relevant line. There is thus no factual impediment to giving effect to the classical rule as supplemented, but not displaced, by the limited statutory reform embodied in Section 4.

20. In view of the foregoing discussion, I am of the considered opinion that the present appeal raises a pure question of law of some importance, namely the proper scope of Section 4 of the MFLO and its relationship with the classical Hanafi law of

inheritance in respect of collateral heirs. Guided by the binding pronouncement of the Supreme Court in the case of Hassan Aziz and by the settled principles of Muhammadan Law, the answer is that Section 4 cannot be extended beyond the children of a predeceased son or daughter of the propositus and that the children of a predeceased nephew do not acquire any right of representation thereunder.

21. Consequently, the appeal is allowed and the impugned order dated 28-09-2020 passed by the learned District Judge, Mirpurkhas, is set aside to the extent that it accords inheritance rights to the legal heirs of the predeceased nephew Muhammad Ayoub by invoking or analogizing Section 4 of the MFLO. It is declared that, under the applicable Muhammadan Law (Hanafi School), as read with the un-amended classical scheme and the limited statutory reform of Section 4, the entire estate of the deceased Saeed-ur-Rehman (and of his predeceased wife Mst. Aneesa Bano Rajput, to the extent of her estate devolving upon him and thereafter upon his heirs) shall devolve upon the three nephew's sons of his real brother in equal shares, each taking one-third as residuary (asaba). The four nieces' daughters of the same brother, being distant kindred (zaw-il-arham), stand excluded from inheritance in the presence of these residuaries. The succession certificate already issued, if any, shall be corrected or reissued by the learned District Judge, Mirpurkhas, in accordance with this declaration, after verifying the identities of the three nephews as per the record.

The office shall transmit a copy of this judgment to the learned District Judge, Mirpurkhas, for information and necessary compliance.

JUDGE

Adnan Ashraf Nizamani