

IN THE HIGH COURT OF SINDH KARACHI

S.M.A. No. 241 of 2017

**[Ms. Barbara Halena Philomina - Petitioner
In the matter of the estate of Marina Caroline Bond - Deceased]**

Date of hearing : 18-10-2018
Date of decision : 18-10-2018
Petitioner : Ms. Barbara Helena Philomina through
Mr. Muhammad Aqil, Advocate.

ORDER

ADNAN IQBAL CHAUDHRY J. -

Per the order dated 22-03-2018 passed by the Deputy Registrar (O.S.), he has satisfied himself that all requisites to the hearing of the main petition, including its publication, have been fulfilled, and that no objection thereto has been received. I therefore proceed to deal with the main petition.

This petition under Section 372 of the Succession Act, 1925 is for a Succession Certificate for movables left behind by late Marina Caroline Bond daughter of late T.E. Bond (hereinafter 'the Deceased'), who passed away intestate at Karachi on 12-10-2016 where she ordinarily resided. Per learned counsel, the Petitioner is the sister of the Deceased and a citizen and resident of the United Kingdom; and that being of old age the Petitioner appointed an Attorney to file this petition. The petition is signed by the Attorney; both the Power of Attorney and the petition were notarized at London; the power of Attorney and the certificate of the Notary are on record. Pursuant to order dated 09-08-2018, Mr. Muhammad Aqil Advocate submitted today a Certificate dated 11-09-2018 issued by the Notary at London, affirming that the Petitioner is the sister of the Deceased and the sole surviving legal heir of the Deceased.

Per learned counsel, the Deceased was a 'Pakistan Christian' as defined in Section 2(d) of the Succession Act, 1925, and since she had her domicile in Pakistan at the time of her death, succession to her movables would be governed by the Succession Act, 1925 as per Section 5(2) of the Succession Act, 1925. Per learned counsel, the parents of the Deceased passed away before her; that the Deceased never married; that the

Petitioner is the only sibling of the Deceased; and therefore in the circumstances, succession would be as per Section 47 of the Succession Act, 1925, making the sister (the Petitioner) the sole legal heir.

It is settled law that notwithstanding any custom, matters of inheritance/succession relating to Pakistani Christians are to be dealt by applying the Succession Act, 1925 [see the cases of *Inayat Bibi v. Issac Nazir Ullah* (PLD 1992 SC 385) and *Lilian Sen v. Mrs. Phyllis Merlin Xavier* (PLD 2003 Karachi 270)]. Chapter II of the Succession Act, 1925 deals with cases of intestates other than Parsis and therefore would include cases of Christian intestates. Section 32 of the said Chapter provides that :

“32. Devolution of such property. The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased in the order and according to the rules hereinafter contained in this Chapter.

Explanation.”.

The rules for distribution referred to in Section 32 *supra*, in cases where after the spouse the intestate is survived by lineal descendants, are set-out in Sections 37 to 40 of the Succession Act, 1925; whereas the rules in cases where there are no lineal descendants, are set-out in Sections 42 to 48 of the Succession Act. The manner for determining degrees of kindered is provided for in Section 28 of the Succession Act.

Since it is claimed that the Deceased is not survived by a lineal descendent nor by any other kindered except the Petitioner, distribution of the subject properties would be as per Section 47 of the Succession Act, 1925 making the Petitioner the sole beneficiary. Section 47 of the Succession Act, 1925 reads as under:

“47. Where intestate has left neither lineal descendant, nor father, nor mother. Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate’s death”.

The properties of the Deceased for which this petition is filed is mentioned in the Schedule at page-159 to the petition. Copies of the saving certificates and bank statements are on record. As regards the

jewelry which was discovered from the locker of the Deceased opened under the supervision of the Nazir of the District Court Karachi (East) in SMA No. 529 of 2017, an inventory of the same is also on the record. The Attorney of the Petitioner had appeared in person before this Court on 22-05-2018. The Petition is also supported by affidavits of third-party witnesses who had also appeared before this Court on 22-05-2018. Therefore, since none has come forth to object to this petition, the petition is allowed. Succession Certificate be issued to the Petitioner in accordance with Rules.

JUDGE

*SHAABAN/PA**