

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Civil Revision Application No. 13 of 2020  
[Sohail Ahmed Ansari v. Irfan Ahmed Ansari and 4 others]

Dates of hearing : 06.03.2020 and 13.03.2020.

Applicant : Sohail ahmed Ansari, through Mr. Sartar Iqbal Panhwar, Advocate.

Respondent No. 1 : Irfan Ahmed Ansari, through Mian Taj Muhammad Keerio, Advocate.

Respondents No.2 to 5 : The Province of Sindh and 3 others, through Mr. Ghulam Shabbir Zardari, Assistant Advocate General Sindh.

**JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** - The Applicant has challenged judgment dated 19.12.2019 passed by the Appellate Court in Civil Appeal No.239 of 2019 preferred by the same Applicant and the judgment of 11.03.2017 passed in First Class Suit (“**F.C. Suit**”) No.668 of 2013, instituted by present Respondent No.1 and final decree of 18.09.2017.

2. The above suit was filed in respect of house property built at plot No.180, Block – D, situated in Unit No.7, Latifabad Hyderabad, measuring 267 Square Yards, consisting of three shops on ground floor, one big hall and a residential house, which for reference is referred to as “**Suit Property**” in which present Respondent No.1 (Irfan Ahmed Ansari), who is real brother of present Applicant, has claimed his equal share in the inheritance, because the Suit Property was owned by mother of present Applicant and Respondent No.1, namely, Mst. Farhat Begum, widow of Muhammad

Ahmed, and after her death, the same is to be inherited by both Appellant and Respondent No.1.

3. The above Suit was contested by Applicant, who filed his Written Statement.

4. Mr. Sartar Iqbal Panhwar, Advocate, appearing for the Applicant, has argued that the entire suit proceeding is *mala fide* and the plaint should have been rejected because the present Applicant and Respondent No.1 already agreed that the Suit Property exclusively belongs to present Applicant by virtue of 'Declaration of Surrender' dated 08.01.2011. He has referred to this document, which is one of the annexures with the Written Statement of Applicant and is available at page-205 of the Court's file, that present Respondent No.1 has clearly agreed to surrender his share in the Suit Property in favour of Applicant. Further contended that Respondent No.1 through deceptive tactics has disposed of other properties / estate of deceased father of Applicant and Respondent No.1 and usurped the entire sale proceeds to the exclusion of the Applicant, regarding which present Applicant preferred a subsequent F.C. Suit No.335 of 2017, which is still *sub judice*. Contended that both suits should have been consolidated and common evidence ought to have been led, in order to avoid conflicting decisions, but the above F.C. Suit No.668 of 2013 was decided without giving proper opportunity to Applicant to lead the evidence. Learned counsel argued that earlier against the preliminary decree, Applicant preferred Civil Appeal No.101 of 2017, but when the afore-referred Civil Appeal No.239 of 2019 was filed against the Final Decree (of 18.09.2017), earlier Civil Appeal No.101 of 2017 was withdrawn. The learned Appellate Court was required to consider this aspect of the case while dismissing the above Civil Appeal No.239 of 2019 only on the ground of limitation. He further argued that even the learned Trial Court has not appreciated the fact

that in such type of proceeding relating to inheritance, presence of other legal heirs is necessary. Learned Advocate for the Applicant to augment his arguments has relied upon the following case law\_

1. 2020 S C M R page-352  
[*Shabla and others v. Ms. Jahan Afroz Khilat and others*] – Shabla Case;
2. 2020 C L C Note page-1  
[*Mst. Zenab Bibi v. Ahmad Yar*];
3. 2018 Y L R page-1813  
[*Muhammad Ahsan Mushtaq Paracha v. Sheikh Arif-ur-Rehman*];
4. 2016 Y L R page-1667  
[*Aqleem Khan and others v. Government of Khyber Pakhtunkhwa and others*];
5. 2014 Y L R page-1193  
[*Mst. Shah Room and 5 others v. Mst. Khaista Bibi and 5 others*];
6. 2005 S C M R page-1217  
[*Muhammad Zubair and others v. Muhammad Sharif*] – Zubair Case;
7. 2014 C L C page-254  
[*Nisar Akbar Khan and 15 others v. Jamal Nasir Khan and 4 others*];
8. 2014 C L C page-134  
[*Siddik through Legal Heirs v. Mst. Fatima Bai through Legal Heirs*];
9. 2016 S C M R page-834  
[*Muhammad Ijaz and another v. Muhammad Shafi through L.Rs.*]; and
10. P L D 2016 Supreme Court page-872  
[*Khush Muhammad through L.Rs. and others v. Mst. Fazal Bibi and others*].

5. Mian Taj Muhammad Keerio, learned Advocate for Respondent No.1 has opposed this Revision Application and argued that the Applicant has not pleaded any plausible ground, to show that both impugned decisions of learned Trial Court and Appellate Court suffer from any material irregularity or illegality. It is stated that learned Trial Court has given the judgment after providing ample opportunity to present Applicant to lead the evidence, but he remained absent. He has read the relevant portion of the judgment of 11.03.2017 (of Trial Court) to fortify his arguments that Court considered the pleadings and evidence of the parties and gave its finding in accordance with the issues framed and thus

judgment is within the requirement of Rule 5 of Order XX of Civil Procedure Code, 1908 (“CPC”). Learned counsel for Respondent No.1 stated that against final decree of 18.09.2017, above Civil Appeal No.239 of 2019 was filed on 10.10.2019 and thus is hopelessly time barred and the learned Appellate Court has correctly dismissed the application of Applicant under Section 5 of the Limitation Act, 1908, by the impugned judgment. It is further contended that it is not the case of Applicant that he was never served, because once a party has filed Written Statement and contested the suit, then his / her absence from the evidence proceeding cannot be condoned. He has referred to the Affidavit of present Applicant filed in support of his application under Section 5 (*ibid*) to show that present Applicant himself has stated that earlier he has filed afore-referred Appeal No.101 of 2017 against the judgment and decree of 11.03.2017, but the Applicant was not in knowledge of final decree dated 18.09.2017, and he acquired knowledge when he received the notice of Execution Application No.75 of 2019 and then rushed to the Court to file above Appeal in which the impugned judgment was passed. Contended that above is a baseless ground for condonation of delay. Further stated that it is a matter of record that the earlier Civil Appeal No.101 of 2017 was withdrawn by the Applicant himself vide order dated 22.11.2019, available at page-145 of the Court’s file.

6. Arguments heard and record perused.

7. Crux of the case law relied upon by the Applicant’s Advocate is that no limitation runs against fraud, particularly involving inheritance rights of a female; revisional jurisdiction although has limited scope, but even concurrent findings can be interfered with by High Court under Section 115 of the Civil Procedure Code, if material irregularity in the impugned

decisions is obvious; no limitation runs against a void order; the term ‘sufficient cause’ used in Section 5 of the Limitation Act (1908) is not susceptible of any exact hard and fast rule and a party should not be deprived of from a fair trial on merit, except when there is positive evidence of negligence beyond explanation; right of succession would not be defeated by the law of limitation or the principle of rest judicata as no law or judgment can override the law of ‘Sharia’ which is superior law. An act of Court shall prejudice no man.

8. During course of arguments, it transpired that deceased father of Applicant and Respondent No.1 (Muhammad Ahmed Ansari) had contracted second marriage and his second wife resides in Karachi. Subsequently, learned counsel has filed a Statement through which he has brought on record suit filed by him, viz. F.C. Suit No.335 of 2017 (as referred above). Plaint of this F.C. Suit No.335 of 2017 is perused, which is in respect of another property, said to have been usurped by Respondent No.1. In paragraph-2 of the plaint, it is stated that above named deceased father of parties hereto (Applicant and Respondent No.1) when passed away on 23.01.1982, had left the following legal heirs\_

- |     |                   |         |
|-----|-------------------|---------|
| “1. | Mst. Farhat Begum | Widow   |
| 2.  | Mst. Husna Begum  | Widow   |
| 3.  | Irfan Ahmed       | Son     |
| 4.  | Suhail Ahmed      | Son     |
| 5.  | Nabib-ul-Hassan   | Father” |

9. Therefore, Mst. Husna Begum, step mother of Applicant and Respondent No.1, should have been made / impleaded as one of the parties in the F.C. Suit No.668 of 2013 filed by present Respondent No.1 as well as subsequent F. C. Suit No. 335 of 2017. Both learned Advocates did not dispute that the said Mst. Husna Begum is still alive, however, grandfather

of the Parties (Nabib-ul-Hassan) has died in the intervening period. In order to ascertain the factual position about all the legal heirs, who may become entitled to their respective shares in the inheritance, a Report was called from the National Database and Registration Authority (“NADRA”) through learned Deputy Attorney General on 28.02.2020, which was filed under the Statement dated 28.02.2020 by Mr. Humayoon Khan (learned Deputy Attorney General). To comply with the directions of this Court, both Applicant and Respondent No.1 have filed their separate Affidavits and have confirmed that afore mentioned persons were the legal heirs of their deceased father. Affidavit of Applicant further disclosed that grandfather, Nabib-ul-Hassan, has passed away, whereas, above mentioned lady Mst. Husna Begum was wife of their another uncle, who died before the death of the father of the parties hereto (late Muhammad Ahmed Ansari) and the said Mst. Husna Begum has four children, namely, Shakeel, Saleem, Saeed and Shaista. However, Respondent No.1 although has acknowledged that Mst. Husna Begum has been shifted to Karachi, but averred that since she has contracted second marriage, therefore, she is not the surviving legal heir of his father.

10. This important aspect is yet to be determined that whether above named Mst. Husna Begum will inherit something from the estate of deceased father of Applicant and Respondent No.1 or not. Although in the subsequent F.C. Suit No.335 of 2017 filed by present Applicant, names of legal heirs are mentioned, but the present Respondent No.1 did not even bother to mention the names of legal heirs of his deceased father in his F.C. Suit No.668 of 2013.

11. The documents including the allotment of another property – B/11, Block – E, which is the subject dispute of the above Suit filed by present Applicant, appended with the Statement of learned counsel for the

Applicant, are available in the record and a careful examination of the same shows that it is mentioned by the concerned officials that the above property was gifted to present Respondent No.1, while mentioning the names of other legal heirs, who are same persons as mentioned in the foregoing paragraphs and in the plaint of subsequent Suit No.335 of 2017. Such deceptive tactics adopted by Respondent No.1 cannot be ignored when it directly affects the distribution of the inheritance.

12. The reported judgments of Honourable Supreme Court handed down in *Shabla* and *Zubair* Cases (*supra*) are relevant to the facts of present case. In the *Shabla* Case, Apex Court has even observed that depriving a female from her inheritable right falls within the purview of Section 490-A of the Pakistan Penal Code; *whereas*, in *Zubair* Case, it was held that right of inheritance would not be defeated by the law of limitation. Entitlement of above named Mst. Husna Begum, step mother of both Applicant and Respondent No.1 has to be determined on merits, rather on oral assertion of Respondent No.1 as mentioned in his above affidavit, which was filed in compliance of the order dated 28.02.2020, because the right of inheritance in the estate of a deceased is protected by the Islamic Law of Inheritance, which is on a higher pedestal, *inter alia*, in view of the Enforcement of Sharia Act of 1991, which has declared that Injunctions of Islam as laid down in the Holy Quran and Sunnah as the Supreme Law of Islamic Republic of Pakistan.

13. Although to some extent, the arguments of learned Advocate for Respondent No.1, has merits, especially with regard to delay in filing Civil Appeal No.239 of 2019, but at the same time in view of peculiar facts involved in this proceeding, which directly relate to the distribution of inheritance and the above discussion, both impugned decisions cannot be sustained, as it would directly result in depriving a shareholder from the inheritance.

14. Consequently, both judgments are set-aside and case is remanded. Learned Trial Court will proceed with F.C. Suit No.668 of 2013 in accordance with law and after considering the following\_

- i) F.C. Suit No.668 of 2013 (filed by present Respondent No.1 – Irfan Ahmed Ansari) and subsequent F.C. Suit No.338 of 2017 (instituted by present Applicant – Sohail Ahmed Ansari) will be consolidated.
- ii) Above named Mst. Husna Begum, step mother of Applicant and Respondent No.1, will be impleaded as one of the Defendants **in both suits** and should be duly served by effecting service through all the modes including publication.
- iii) Issues will be framed / re-framed accordingly.
- iv) Opportunity to lead evidence will be given to all the parties, but no unnecessary adjournment will be allowed and in case if it appears that any party is trying to delay the matter, then learned Trial Court can pass any appropriate order.
- v) Evidence already recorded in both suits will remain intact but such testimony of Applicant and Respondent No.1 will be subject to cross-examination. However, if Applicant and Respondent No.1 request, then they may be allowed to lead evidence afresh.
- vi) It is expected that learned Trial Court will pass the judgment in both the Suits within two months from the date of receipt of copy of this Decision.

15. It is clarified that any observation in this judgment is of tentative nature and will not influence the above Suits proceedings. In the above terms this Civil Revision Application is allowed. Parties to bear their respective costs.

**JUDGE**

**Hyderabad**  
**Dated:** \_\_\_\_\_.