

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

R.A. No. 179 of 2016

Date of hearing: 21.10.2019
Date of decision: 25.10.2019
Applicants: Mst. Azeema Khatoon and others through Mr., Faisal Nadeem Abro, advocate.
Respondent 1: through Mr. Zahid Mallah, Advocate
Respondents 5 to 10: through Mr. Wali Muhammad Jamari, Asstt: A.G.
Respondents 11: Present in person

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Basically, the Applicants are asking for setting aside the Judgments and Decrees dated 16.11.2015 & 23.11.2015 passed by the learned Senior Civil Judge Matiari, in Suit No. 190 of 2012 (re-Mst. Hakimzadi v. Federation of Pakistan and others) as well as Judgment and Decree dated 16.05.2016 and 18.05.2016 passed by the learned Additional District Judge, Hala, in Civil Appeal No. 9 of 2015 (re- Mst. Azeema Khatoon and others v. Mst. Hakimzadi and others).

2. Brief facts of the case as per pleadings of the parties are that on 23.1.2012 the Respondent No.1 / plaintiff filed Suit No.190 of 2012 for Declaration to the effect that she being one of the legal heirs of Late Muhammad Malook is entitled her due share in the inheritance, in the movable and immovable properties left behind by the deceased. In the meanwhile she also claimed her entitlement of Rs.1,50,000/- to be recovered from the private and official

respondents / defendants. The learned Trial Court in order to adjudicate the matter between the parties framed following issues:-

1. Whether the suit is not maintainable and barred by any law?
2. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?
3. Whether the plaintiff has no cause of action?
4. Whether plaintiff is entitled for relief claimed?

3. The learned trial court after careful examination of the parties and evidence decided the aforesaid issues in favour of Respondent No.1 vide impugned judgment and decree. The Applicants being aggrieved by and dissatisfied with the aforesaid Judgment and Decree preferred statutory Appeal which too was dismissed vide Judgment and Decree dated 16.05.2016 and 18.05.2016. The Applicants have now filed the instant Revision Application before this Court on 20.6.2016.

4. Mr. Faisal Nadeem learned Counsel for the Applicants has heavily relied upon the oral gift regarding the subject land purportedly made by their deceased father during his life time but failed to substantiate their claim through cogent evidence, however, he has contended that the impugned Judgments passed by the learned Courts below are full of errors based upon misreading and non-reading of evidence; that the findings of learned Courts below are arbitrary and perverse; that the averments of Applicants made in the affidavits in evidence / examination in chief were not considered in the impugned Judgments; therefore both the Judgments are nullity in the eyes of law; that both the learned Courts below have failed to appreciate the material aspects of the matter; that learned trial Court as well as Appellate Court have failed to appreciate that deceased father during his life time gifted the subject property to the

Applicants, therefore the impugned Judgments are illegal and against the law, thus are liable to be set aside; that both the learned Courts below have failed to appreciate the law involved in the matter; that learned Appellate Court failed to consider the grounds of Appeal agitated by the Applicants ; that both the learned Courts below have failed to appreciate that the very suit of the private Respondent No.1 was not maintainable before the learned trial Court, therefore both the Judgments cannot be sustained on this score alone, and are thus liable to be set aside; that the Private Respondent No.1 has failed to prove her case through cogent evidence that she is entitled in inheritance though there was no inherited property left behind by the deceased, therefore, learned trial court had no jurisdiction to entertain the lis between the parties. He lastly prayed for setting aside both the Judgments rendered by the learned Courts below.

5. Conversely, Mr. Zahid Mallah learned Counsel for the private Respondent No.1 has supported the impugned Judgments passed by the learned Courts below and contended that the captioned Revision Application is liable to be dismissed; that there are concurrent findings recorded by the competent forum under the law and the grounds raised in the instant Revision Application are untenable; that both the aforesaid Judgments are passed within the parameters of law; that the instant Revision Application is frivolous, misleading as there are concurrent findings by the Courts below and this Court has limited jurisdiction under Section 115 CPC to dilate upon the evidences led by the parties; that aforesaid action of the Applicants was absolutely illegal, therefore, Private Respondent No.1 in Suit raised her grievance which is still not redressed, therefore, she had no alternate except to approach the learned trial Court for the aforesaid remedy and relief(s); that learned trial Court after recording

evidences passed just, proper and fair Judgments in the case holding entitlement of the Private Respondent No.1; that learned Appellate Court after hearing learned Counsel for the parties passed the Judgment in favour of Respondent No.1 however the Applicants have now approached this Court. He lastly prayed for dismissal of the instant Revision Application.

6. Respondent No.11 present in person has adopted the arguments of learned Counsel representing the Respondent No.1

7. Mr. Wali Muhammad Jamari learned A.A.G. has supported the impugned Judgments and Decrees passed by both the Courts below and argued that under Muslim law, the rules of inheritance are rather strict. A son takes double the share of a daughter; on the other hand, the daughter is the absolute owner of whatever property she inherits. If there is no brother, she gets half a share. He next added that the father is well within his rights in Islam to make or dictate a will and bequeath an absolute maximum of up to 1/3rd of his wealth to anyone he wills and pleases except his legal heirs, if indeed he wishes to do so but because his daughter is amongst his legal heirs whose share is prescribed in Shariah, it would not be lawful for the father to add or subtract to the share of his daughter or any of his other legal heirs.

8. I have heard the parties at considerable length and also reviewed the record available before me. Though at the very outset, I have not observed any jurisdictional defect, which could enable the Applicants to exhaust the jurisdiction of this Court under Section 115 CPC, however on the legal question i.e. right of inherence in the property, parties have been heard.

9. Record reflects that the Respondent No.1 / Plaintiff filed Suit for declaration with regard to her due share from the property left by her father claiming herself as one of the legal heir. The learned trial Court held in the impugned judgment that she has cause of action to file the present Suit and the Private Respondents/defendants have failed to demonstrate that the Suit is barred under any law, however the factum of being legal heir was admitted in evidence with denial that the entire suit property was gifted out by their father among his all sons during his life time excluding her. However, learned trial court deliberated on issue No.2 and held that since the status of Respondent No.1 / Plaintiff as legal heir of Late Muhammad Malook has been admitted by Private Respondents/defendants in their pleadings, as well as, in evidence, therefore, the question of mis-joinder and non-joinder of the parties is not fatal to the case of Respondent No.1 / Plaintiff. The learned trial Court also took exception of the issue No.4 and dilated upon it with the findings that as per plaintiff's evidence, her father Muhammad Malook after his death, left agricultural land viz. 16-00 acres which was inherited by his legal heirs and her father has given one acre land to her. The defendant Ali Sher was examined at Ex-58 who has stated that Plaintiff Mst. Hakimzadi is his real sister and his father namely Muhammad Malook owned suit property admeasuring 16 acres situated deh Tarrah, Taluka Hala, which was orally gifted by him in his life time in the year 1992 to him and his other three brothers' in equal O4 shares. Since the defendant has admitted the status of plaintiff as one of the legal heir of deceased Muhammad Malook, but has further claimed that deceased in his life time gifted his property to all his four sons in equal share basis, therefore, the burden was upon the defendants to prove that such property was gifted out by late Muhammad Malook. The defendant Ali Sher in his cross

examination has admitted that his father passed away on 11.03.2009 and he does not know in whose presence his father gifted the land to him and his brothers, and he also does not remember the day, time and place of such gift. He has further stated that he was not present at the time when his father gifted the suit property to him and his brothers. One Wahid Bux was produced by defendant as witness who though, has stated in his examination in chief that late Muhammad Malook in his life time gifted the land viz. 16 acres to his four sons namely Gulsher, Ali Sher, Ghulam Nabi and Ali Gul but he in his cross examination, admitted that such property was not gifted in his presence and has further voluntarily said that he heard that he had gifted the suit property to his sons. He also stated that he does not know the share of donee owners that to what extent they were gifted the suit land. The evidence of defendant and his witness explicitly show that both were not present at the time of gift and the defendant has failed to state the date, time and place when such oral gift was made by deceased Muhammad Malook, thus he has failed to establish that late Muhammad Malook father of plaintiff and private defendants gifted his property to his all four sons. The learned trial court finally reached the conclusion that the plaintiff is entitled to her due share as per Muhammadan Law from the property of her father late Muhammad Malook viz.16 acres. However, the learned trial Court declined the relief to Respondent No.1 / plaintiff to extent of recovery of Rs.1,50,000/-.

10. The learned trial Court after recording the evidence and hearing the parties gave decision against the Applicants. The learned Appellate Court concurred with the decision of learned trial Court on the same premise.

11. Undoubtedly, Revision is a matter between the higher and subordinate Courts, and the right to move an application in this respect by the Applicants, is merely a privilege. The provisions of Section 115, C.P.C., have been divided into two parts: First part enumerates the conditions, under which, the Court can interfere and the second part specify the type of orders which are susceptible to Revision. In numerous judgments, the Honorable Apex Court was pleased to hold that the jurisdiction under Section 115 C.P.C., is discretionary in nature.

12. I have scanned the evidence available on record and found that concurrent findings arrived at by the Courts below cannot be lightly interfered with unless some question of law or erroneous appreciation of evidence is made out.

13. I am of the view that the learned trial Court has dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidence of the parties. The Appellate Court has also considered every aspect of the case and thereafter passed an explanatory Judgment, therefore no ground existed for re-evaluation of evidences, thus, I maintain the Judgments and Decrees dated 16.11.2015 & 23.11.2015 passed by learned Senior Civil Judge Matiari in Suit No. 190 of 2012 (re-Mst. Hakimzadi v. Federation of Pakistan and others) as well as Judgment and Decree dated 16.05.2016 and 18.05.2016 passed by learned Additional District Judge, Hala in Civil Appeal No. 9 of 2015 (re- Mst. Azeema Khatoon and others v. Mst. Hakimzadi. I am fortified by the decisions rendered by Hon'ble Supreme Court of Pakistan in the cases of Dilshad Khan Lodhi v. Allied Bank of Pakistan and other (2008 SCMR 1530) and General Manager National Radio Telecommunication Corporation

Hariपुर 10 District Abotabad v. Muhammad Aslam and others (1992 SCMR 2169).

14. In the light of above facts and circumstances of the case, I am of the view that this Court in its Revisional Jurisdiction cannot interfere in the concurrent findings recorded by two competent forums below and I also do not see any illegality, infirmity or material irregularity in their Judgments warranting interference of this Court. Hence, the instant Revision Application is found to be meritless and is accordingly dismissed along with listed application(s).

JUDGE

Karar_hussain/PS*