

IN THE HIGH COURT OF SINDH, KARACHI.

CONST. PETITION No. D-3713 OF 2018

Present:-
Ahmed Ali M. Shaikh, CJ &
Yousuf Ali Sayeed, J

Petitioner : Dr. Rehana Ali Shah,
through Mr. Muhammad Ayaz Ansari, Advocate

Respondents No.1 to 5: Province of Sindh, Sindh Local
Government, District Central & others
through Mr. Abdul Jalil Zubedi, Assistant Advocate
General Sindh

Legal Heirs of : Mst. Asma Ali Shah and others
Deceased : through M/s. Zain A. Jatoi and
Muhammad Mustafa, Advocates

Dated of hearing : 23.09.2021

ORDER

AHMED ALI M. SHAIKH, CJ: Through these proceedings, Petitioner has sought following relief(s):-

- a. declare that letter dated 20.10.2017, and Divorce Confirmation Certificate issued by respondent No.3 and Divorce Certificate issued by respondent No.4 being Annexures A, B & C hereto are void, illegal and of no legal effect.
- b. direct all the respondents to expunge/delete/correct their manual and computerized records to that effect.
- c. suspend the effect/operation of letter dated 20.10.2017, Divorce Confirmation Certificate and Divorce Certificate being Annexure A, B & C till the disposal of the above petition.
- d. take lawful action against the persons involved in issuing of alleged letter dated 20.10.2017, Divorce Confirmation Certificate and Divorce Certificate being Annexures A, B & C hereto.”

2. The facts giving rise to this petition are that from pleading it appears that the Petitioner is a Professor of Medicine, serving as the Head of Orthopedic Department at Karachi Medical and Dental College and Abbasi Shaheed Hospital, City District Government Karachi. She contracted marriage with the late Dr. Syed Mohammad Ali Shah (hereinafter referred to as “the Deceased”) under Islamic Law and through such wedlock, one child namely Syed Mustafa Ali Shah was

born to them. As it transpires the Deceased was already married to one Mst. Asmat Riaz, from whom he had two children, namely Syed Imran Ali Shah and Syed Junaid Ali Shah. However, per the Petitioner, prior to the Petitioner's marriage with the Deceased, he had declared to her that he had already divorced his first wife. It appears that the Deceased breathed his last on 04.02.2013, leaving behind the following surviving legal heirs:-

- a) Prof. Dr. Rehana Ali Shah Widow
- b) Syed Imran Ali Shah son
- c) Syed Junaid Ali Shah son
- d) Syed Mustafa Ali Shah son

Per learned counsel for the Petitioner on 10.10.2014, one of the legal heirs, namely Syed Imran Ali Shah, filed SMA No. 160 of 2014, wherein Petitioner and her son were not impleaded. Besides, the proper inventory of the estates/assets left by the Deceased was not placed on record in the proceedings, however, on the basis of fraud and manipulated documents, the applicant obtained Letter of Administration and Succession Certificate in his favour. Petitioner challenged the grant and ultimately the proceedings of the said SMA were converted into a suit and assigned new number, being Suit No. 2486 of 2015, which is pending adjudication before this Court. The averments reveal that at present multiple litigations are going on amongst the Petitioner and off spring of the Deceased from his first wife and during such proceedings a Divorce Certificate issued by the Respondent No.4 was produced. That certificate has inter-alia been made the focus of these proceedings.

3. Learned Counsel for the Petitioner urged with vehemence that such Divorce Certificate and Divorce Certificate Confirmation shown to have been issued by the Respondents No.3 are fake and forged documents and the latter bears the forged signature of Syed Asif Hussain Jaffery, Ex-District Council Officer of the District Municipal, Karachi-Central, as such their documents ought to be declared void and of no legal effect.

4. On the other hand, while rebutting the contentions of Mr. Ansari, Mr. Zain A. Jatoi, learned counsel for Messrs. Syed Imran Ali Shah and Syed Junaid Ali,

Shah, who affected his appearance on Court notice, while affirming the filing of SMA No. 160 of 2014 and its conversion into Suit No. 2486 of 2015 contended that Petitioner has herself filed Suit No. 470 of 2017 before this Court, in addition to which she had also filed Suit No. 136 of 2018 before Xth Senior Civil Judge, Karachi for same relief. During the course of arguments Mr. Jatoi referred to prayer clause (a) of Suit No. 470 of 2017, and submitted that the Petitioner had already filed proceedings before the competent Court of law, with regard to the genuineness or otherwise of the Divorce Deed, hence this petition was not maintainable on that score alone.

5. We have considered the contentions advanced by the learned counsel for the Petitioner and perused the prayer clauses of Suit No. 470 of 2017. It would be conducive to reproduce prayer clause (a) of the aforesaid suit which reads as follows:-

“a. to declare that the plaintiff No.1 was the legally wedded surviving wife (now widow) of late Dr. Shah and that plaintiff No.2 is his legitimate and real son and they are also the next of kins, heirs and legal representatives of the deceased and further this Honourable Court may graciously be pleased to declare that the alleged divorce deed concerning the plaintiff No.1 is a bogus and fabricated document and be cancelled.”

6. In wake of the aforesaid proceeding and prayer, it is apparent that the subject matter and controversy involved in these proceedings, which revolves around the genuineness of Divorce Certificate/Deed and its legal effect is also substantially the subject matter of Civil Suit No. 470 of 2017, and we are clear in our mind that the same cannot be conclusively adjudicated in the constitutional domain and properly fall to be considered by the competent civil forum in the pending suit.

7. That being so, the petition stands dismissed alongwith listed application.

CHIEF JUSTICE

JUDGE