

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

J.M. No. 02/2013, 24/2013 and 06/2015 and
Suit No.54 of 2013

Date	Order with signature of Judge
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Date of hearing: 31.03.2015, 01.04.2015, 03.04.2015, 09.04.2014

Mr. Ali Almani for petitioners in JM No.2/2013, 24/2013 and 06/2015.

Mr. Owais Ali Shah for plaintiff in Suit No.54 of 2013.

Mr. Raashid Anwar along with Mr. Murtaza Ali for respondent No.16 in JM 02/2013 and for respondents No.1, 11 and 15 in JM 06/2015.

Mr. Obaid-ur-Rahman for respondent No.16 to 18 and 20 to 23 for in JM 06/2015.

Mr. Jam Asif Mehmood for respondents No.23 in J.M. No.2/2013.

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Mohammad Shafi Siddiqui, J.- These are bunch of petitions, which relates to managing affairs of the company by three groups. JM 2 of 2013 relates to the impugned notices for cancellation of shares; JM 24 of 2013 relates to the impugned notices for resolving affairs of the company; JM 6 of 2015 relates to the issue of 12% shares which is claimed to have been cancelled by the respondents whereas Suit No.54 of 2013 is for declaration to the effect that the shares of deceased brother Mian Nasir Ahmed have already been gifted by him in favour of plaintiff No.1 and subsequently transferred to plaintiff No.2. Since common facts and connected questions are involved in all these matters, I would like to dispose of JMs and pending injunction applications in suit in terms of this order. For convenience since petitioner mainly argued on the basis of record available in JM 24 of 2013 therefore it is being referred as leading case only for convenience.

Mr. Ali Almani, learned counsel appearing for the petitioners, submitted that Ahmed Fine Textile Mills Limited is a company, which was incorporated in November, 1989. It is claimed that the said company is a textile manufacturing concern having one spinning unit at Rahim Yar Khan and two weaving units at Bahawalpur and Khanewal respectively whereas it is claimed that these three units are owned by it (Company) through its subsidiary i.e. Fazal Rehman Fabrics Limited, (for convenience Ahmed Fine Textile Mills Limited will be referred as "AFTM" whereas Fazal Rehman Fabrics Limited as "FRFL"). It is the case of the petitioner that the shareholding in the company AFTM is almost equally divided between three families i.e. (i) petitioner No.1 to 5 (hereinafter referred to as "Zafar Family") with 30.005% shares, (ii) respondent No.2 to 10 (hereinafter referred to as "Nasim Family") having 33.99% shares and (iii) respondents No.11 to 13 (hereinafter referred to as "Umer Farooque Family") with 33.99% shares. All three i.e. Zafar, Naseem and Umer Farooq are brothers.

It is contended by the learned counsel that since the company is a family owned entity and it has always been operated in the form of a quasi-partnership and before the dispute in the present form it has been run by Ashar Fazal of Zafar Family and Rehman Naseem of Naseem Family while Umer Farooq Family has remained a silent/sleeping partner. It is contended that in the year 2012 in order to resolve the dispute that occurred between them, they have decided to separate the units into three parts to enable them to run independently and the memorandum of understanding in that regard was signed between the representatives of three families which memorandum of understanding is subject matter of J.M. No.49 of 2012.

It is urged that through aforesaid Memorandum of Understanding dated 23.04.2012 assets of the company were divided into three parts/ packages approximately i.e. Package 'A', Package 'B' and Package 'C' and Zafar Family was given the first right to choose the option. Learned counsel submitted that though this Memorandum of Understanding is not subject matter of these present cases as it is separately agitated in JM 49 however a brief background of Memorandum of Understanding is relevant to understand the nature of controversy involved herein to resolve issues involved in these cases.

In terms of Memorandum of Understanding it is urged that the parties agreed that the liabilities would be audited after 30.04.2011 in order to determine exact payment, if any, to be made by one family to other, which is a cut-off date before resuming such packages independently. In pursuit of their option, the petitioner claims to have decided to opt for package 'B' which includes two weaving units whereas Naseem and Umer Farooq Family decided to remain together and opted to operate and manage the assets of Package 'A' and 'C'. Since then it is contended that the Zafar Family is operating and managing two weaving units and thus claim that the Memorandum of Understanding has been implemented in the letter and spirit. Learned counsel submitted that in order to implement and act upon terms of MoU the families continued to negotiate and relevant documents and formalities were completed including shareholding agreement and engaging counsels and audit of the current assets and liabilities of the company, including but not limited to passing of Board Resolution dated 24.05.2012 and since then the petitioner/Zafar Family are managing the affairs of these two weaving units of the company.

Learned counsel further added that though it is not relevant for present proceedings but in order to act upon the MoU a new entity in

the name of Ahmed Fine Weaving Unit was incorporated for transfer of the assets of the two weaving units of the company i.e. Package 'B' and that a substantial amount after the audit was conducted was transferred to other families, in addition to the loan of Standard Chartered Bank that was paid off by the Zafar Family. Counsel submitted that thus much activities already been undertaken/ concluded regarding bifurcation of the company.

The dispute developed on 06.12.2012 when the two families i.e. Naseem and Umer Farooq convened a board meeting without providing an opportunity to Fazal Family wherein a resolution was passed removing Imtiaz Fazal and Afzal Mujahid as authorized signatories for the purpose of operating company bank account, and were replaced by Umer Farooq family members. Learned counsel submitted that such resolution is invalid since notices for such board meeting were not issued to directors of the company. He further added that the newly six authorized signatories belongs to Naseem and Umer Farooq Family and their chosen secretary whereas one belongs to Zafar Family and such course was adopted only to reverse the situation which has taken place in pursuance of MoU and also an attempt was made to take physical control of the two units, which are in physical and managerial control of Zafar Family. Hence, learned counsel submitted that in compliance of such MoU and to act upon terms thereof JM 49 of 2012 was filed wherein Board Resolution dated 06.12.2012 was also challenged which was suspended.

Learned counsel submitted that with this background present JMs, which are likely to be disposed of through this order, were filed. Learned counsel submitted that since Naseem and Umer Farooq families could not get control of the two weaving units, they opted to cancel shareholding of Zafar Family and in pursuit of such desire on

05.01.2013 both the groups/families i.e. Naseem and Umer Farooq issued notices to petitioner No.1 and petitioner No.5 threatening them to cancel transfer of 455,820 shares (hereinafter referred to as "subject shares"), which is approximately 12% of the shareholding of the company. The only reason assigned in the notice was that it never belonged to petitioner No.1 and was never a property, which was transferred to him. It is contended that originally in the year 2003 Zafar Iqbal, petitioner No.1, owned 75970 shares of the company and subsequently on 17.02.2004 his brother Mian Nasir Ahmed gifted subject shares to him. He further executed three transfer deeds to transfer subject shares in three lots of 34080, 359,740 and 62000 respectively and such transfer deeds duly signed are available on record. Such transfer deeds were duly signed by Rehman Naseem, Chief Executive Officer of the company and duly stamped. Such transfer was further recorded on the share certificate on 18.02.2004 and was attested and confirmed by Umer Farooq as director of the company. It is contended that in their pleadings both the families have not denied to have signed and attested these documents and for the first time their denial came when the arguments were addressed on their behalf.

In view of such transfer the shareholding of the petitioner was increased to a total of 531,790 and Form 'A' was filed with SECP on 26.11.2005 and it claims to have been recognized by SECP w.e.f. 18.02.2004. These shares, after such gifts were recognized and acted upon were transferred in favor of Mr. Rayan Fazal and such transfer was again attested and confirmed by Umer Farooq on 19.01.2009, which is also endorsed by SECP and no objection from any corner was raised since 2004 to 2013 and they are being paid dividends on the basis of these shareholdings.

Learned counsel submitted that the cancellation notices issued by two families were on the basis of an order dated 20.10.2005 passed by Senior Civil Judge Multan who issued succession certificate to legal heirs of Mian Nasir Ahmed, which includes subject shares of the company. Those proceedings were initiated by Mr. Umer Farooq who himself attested and confirmed the transfer of shares in 2004 after sad demise of Mian Nasir Ahmed in March 2004. It is argued that it is a matter of record that initially in the list of assets provided to the Court which granted succession, these shares were not available as assets of the deceased and these were brought through subsequent and amended list filed in the year 2005.

It is contended that the cancellation notice was responded through letter dated 09.01.2013 also seeking further time to write a comprehensive reply however the company secretary on the next date i.e. 10.01.2013 cancelled these shares despite passing of interim order in JM 2 of 2013, challenging cancellation of notices. Such rectification, besides being, a contempt of Court, was claimed to have been done in violation of law and the letters were also addressed to the legal heirs of Mian Nasir Ahmed though one of the brothers namely Nishat Ahmed informed that it was nothing but fraud committed as these shares had already been transferred to petitioner No.1. In response to such cancellation, despite being unlawful and in violation of order, the petitioner filed CMA No.13 of 2015 in JM 2 of 2013 praying that the transfer of shares to legal heirs of Mian Nasir Ahmed be set aside/ suspended and also filed Suit No.54 of 2013 wherein the parties were directed to maintain status quo.

After having knowledge of such succession certificate, which included subject shares, a revocation application under section 383 of Succession Act, 1925 was filed which was dismissed.

It is further urged that while JM No.49 of 2012 and 2 of 2013 were pending, the company on the directions of other two groups/families issued notices of its Annual General Meeting to be held on 30.11.2013 to its members including the legal heirs of Mian Nasir Ahmed from whom other two groups collected proxies to create majority in their favour for using and passing Resolution to the detriment of the Zafar Family.

At this stage another J.M. No.24 of 2013 challenging aforesaid AGM was filed and this Court granted interim orders directing the parties not to exercise voting rights in pursuance of the subject shares. In pursuance of notice for Annual General Meeting for 31.03.2015 for election of directors, another JM No.6 of 2015 was again filed as the other two families collected proxies from legal heirs of Mian Nasir Ahmed to create a super majority for passing resolution. However, an interim order was passed directing the parties not to exercise voting rights on the basis of subject shares.

Learned counsel submitted that although the company is a public limited company but it is a family owned entity and there is no public participation and hence for all intent and purposes it is to be considered as a partnership concern as it has been operated on the basis of mutual representation and commitments. On this proposition learned counsel has relied upon *Pakistan State Oil Co. Ltd. v. Pak. O.P. Ltd.* (PLD 1993 Karachi 322) and *Ladli Prasad Jaiswal v. Karnal Distillery Co. Ltd.* (PLD 1965 SC 221).

It is urged that once company has recorded and registered transfer of shares from Mian Nasir Ahmed to Zafar Iqbal and later from Zafar Iqbal to Rayan Fazal, it could not object to its validity and rectify its share register hence the company and the directors are estopped from relying on their own wrong doing.

Learned counsel submitted that while deciding the revocation application on 18.03.2015, Sr. Senior Civil Judge at Multan observed that in issuing succession certificate Court exercised very limited powers and has no jurisdiction to determine title and that it can only review procedure which was followed for the purpose of obtaining succession certificate. It was further observed that no illegality to the extent of procedure was found. It was further observed by the learned Senior Civil Judge that the proceedings have already been initiated before this Court where the controversy could be resolved and that no gift deed was produced.

It is argued that these shares could never have formed part of the estate since Mian Nasir Ahmed before his death validly gifted and transferred these shares to Zafar Iqbal and that subject shares have already been transferred by other two groups/families.

Learned counsel further relied upon Section 76 of the Company Ordinance 1984 that once valid transfer deeds were provided to the company it was required to register the transfer and in the instant case it recorded transfer in Form 'A' and submitted to the SECP on 26.11.2005. Any objection in this regard in terms of section 77 of the Companies Ordinance, 1984 should have been raised within 30 days of receiving the deeds. Learned counsel submitted that reliance in this regard is placed by respondent on section 76(5) of ibid law, which allows company to record any transfer, if shares have been transmitted by operation of law, hence the situation not being such is untenable.

Counsel for the petitioner has further relied upon Articles 22 and 23 of Articles of Association of the company, which expressly provide that the company may only transfer shares of deceased member or shareholder. It is urged that Mian Nasir Ahmed was not the shareholder in the year 2013 when the shares were unlawfully

transferred by the company and hence such action is in contravention of Articles of Association.

In support of application, keeping in view of the above arguments, Mr. Owais Shah, learned counsel for the plaintiff, argued almost on the same line as argued by Mr. Almani. He further argued that the company law provide a separate mechanism for the transfer of shares, which has been acted upon and hence there was nothing by operation of law, which could allow the company to transmit the shares accordingly since the same have already been transferred by virtue of gift. He added that in case the defendants/respondents of other groups are of the view that the gift was not valid or that it was ineffective on account of the application of the principle of "*marzal maot*" then the resort is/was to be made by initiating legal proceedings and the directors cannot act on their own nor they are competent to give such declaration.

In response to the above arguments, Mr. Raashid Anwar, learned counsel for the respondent/company, submitted that since MoU is not the subject matter of these proceedings/JMs therefore he would only raise arguments to the extent of shareholding and the issue of transfer of the subject shares.

Learned counsel submitted that respondent No.15 company acted and relied upon succession certificate submitted to it. He submitted that on 20.10.2005 when the Court allowed the succession application, the shares stood in the name of Mian Nasir Ahmed. It is contended that on the first occasion Form 'A' up to 31.01.2005 was filed on 25.02.2005 and the second form 'A' for the period up to 31.10.2005 was filed on 26.11.2005.

It is further contended that Ahmed Fine had already filed on 28.01.2005 a certificate with Senior Civil Judge Multan confirming that Mian Nasir Ahmed was owner of the subject shares as per company record. It was in pursuance of SECP letter dated 06.04.2006 that Ahmed Fine was asked to submit certain data including pattern of his shareholding. In compliance, letter dated 19.04.2006 was moved which still shows Mian Nasir Ahmed as owner of the shares. He argued that for the first time petitioner claimed that Mian Nasir Ahmed has gifted share to them prior to his death and in view of cordial relations their statement was accepted without corroboration and back-dated entry was made in the record hence revised form 'A' for 2005 was filed with SECP on 23.05.2006.

It is further urged that the petitioner has sought to have such succession certificate dated 20.10.2005 revoked to the extent of subject shares on the premise that such shares were fraudulently and surreptitiously included by the respondents however the Court declined to interfere into such succession certificate in terms of order dated 18.03.2015 and that they have already filed an appeal before learned District & Sessions Judge against such order.

It is further contended that the company relied upon provisions of Section 76(5) of Companies Ordinance which has a non-obstante clause and covers the case of transmission of shares i.e. transfer by operation of law. He submitted that hence by operation of law shares already stood transferred to Mian Nasir Ahmed's legal heirs prior to their transfer in petitioner's name, therefore, Ahmed Fine was entitled to reverse entries.

He further argued that no copies of transfer deeds were made available in the office record. It is further argued that such gift deed was not even presented before Senior Civil Judge Multan who decided

the revocation application. Learned counsel submitted that the reason that said gift was not filed was that it is a forged and fabricated document and it suffers from material defect and this is a matter of evidence which is to be recorded.

It is urged that the stamp paper was purchased from Karachi on 17.02.2004 by vendor in Karachi and on the same day alleged gift deed was executed in Multan. It is further argued that the stamp paper was issued to Mian Nasir Ahmed whereas admittedly Mian Nasir Ahmed at that point of time was seriously ill and was suffering from cancer.

Learned counsel further argued that even if this gift is said to be executed by Mian Nasir Ahmed it is inoperative under the law as gift on account of principle of "*marzal maot*" is not to be relied upon. Learned counsel in this regard has relied upon case of Mst. Hussain Jan v. Mst. Asmat Begum (PLD 1964 SC 173) and Muhammad Ajaib v. Mughal Hussain (2004 YLR 690). He further argued that in this regard Dr. M. Amjad Amin issued a certificate and so also the death certificate which confirms that Mian Nasir Ahmed was suffering from cancer. Learned counsel submitted that despite informing the counsel on earlier date of hearing that he would be relying on this principle of "*marzal maot*" no arguments were raised.

Learned counsel further submitted that it does not matter that the respondent/company has not taken the issue before the Court insofar as the principle of "*marzal maot*" is concerned. The reason being that if they had preferred to file petition under section 152 of the Companies Ordinance, instead of cancelling the shares, it would have come before the Court and that eventually they are before the Court to resolve this issue.

Mr. Obaid-ur-Rahman, learned counsel appearing for respondents No.16, 17, 18, 20, 21, 22 and 23 contended that they are the widows, sons and daughter of two brothers namely Mubarak Ahmed and Mian Rasheed Ahmed, who passed away on 10.10.2008 and 27.02.2007 respectively whereas the deceased namely Mian Nasir Ahmed is/was their real brother and hence after sad demise of Mian Nasir Ahmed his property devolved amongst all his surviving brothers. Learned counsel submitted that at the time of his death i.e. on 23.03.2004 his estate included the subject shares of Ahmed Fine Textile Mills Limited and a succession certificate was also granted by the Court at Multan which included the subject shares as well. It is contended that since the respondents were not part of the management, therefore, they were not aware of the proceedings in relation to the transfer of shares. He contended that the gift deed dated 12.02.2004 has been prepared on stamp paper issued at Karachi and despite the fact that both the donor and donee are/were residents of Multan, the stamp paper was purchased from Karachi and it bears same stamp date as appears on declaration of gift. It is contended that such gift deed was never produced before any forum. It is argued that even otherwise on account of possession the gift is not valid.

Learned counsel submitted that the application for revocation was dismissed by the Court at Multan which granted the succession and hence in view of orders passed by the Court at Multan, Section 76 of Companies Ordinance would come into play. He further argued that gift deed gives no reason as to why Mian Nasir Ahmed has gifted his share to only one of his brothers to the complete and utter exclusion of others.

In rebuttal firstly in response to the argument of Mr. Raashid Anwar in relation to the principle of "*marzal maot*", Mr. Almani

submitted that such principle is not relevant. It is for the respondents, if they were of the view that gift and transfer was not valid on the principle of "*marzal maot*" to apply to the competent Court of law to have the gift declared illegal and invalid and transfer be set aside. Hence, on the basis of a seriously disputed letter of a doctor, the respondents themselves cannot pass any declaration to the effect that such gift is not valid, more importantly when such gift was acted upon long time back.

In response to the arguments of Mr. Obaid-ur-Rehman, learned counsel for the petitioners submitted that no doubt stamp paper was purchased from the vendor at Karachi however this alone is not sufficient to invalidate the gift as the daily flights between Karachi and Multan were available in the year 2004.

In response to the other argument that on account of possession the gift was incomplete, it is contended that the possession of share certificate, which was object of the gift, was given immediately on execution of the gift and the transfer was recorded on the share certificates, which are on record.

I have heard the arguments of the learned counsel and with their assistance perused the material available on record.

After hearing all the learned counsel at length I am of the view that the core issue involved in all three JMs bearing No.02 and 24 of 2013 and 06 of 2015 and Suit No. 54/2013 is either transfer of the subject shares of Mian Nasir Ahmed in favour of petitioner or the action in relation to its purported cancellation of transfer deeds either independently or in view and in compliance of the succession certificate issued by the Court at Multan.

JM No. 02/2013 relates to the impugned notices dated 05.1.2013 issued to the petitioners in relation to shares which claimed to have been transferred by deceased Mian Nasir Ahmed during his lifetime and the company issued show cause notices that since the provisions of section 77 of the Companies Ordinance has not been complied and no transfer deed was submitted hence mandatory requirement has not been fulfilled. JM No.24/2013 relates to the impugned notice dated 08.11.2013 issued to the shareholders including the alleged shareholders being legal heirs of deceased Mian Nasir Ahmed whereas JM No.06/15 impugns the notice dated 04.3.2015 in relation to holding election of the Directors whereas Suit No.54/13 filed by the petitioners for declaration in relation to the shares which were allegedly gifted to the petitioners by deceased Nasir Ahmed during his lifetime.

The question to all these proceedings thus revolves around the shares which were at the relevant time held by deceased Nasir Ahmed constituting 12% of the total shares. The petitioners have questioned the Annual General Meeting for the purpose of holding elections on the basis of 12% shares being allegedly cancelled by the company and claimed to have been transferred in pursuance of section 76 of the Companies Ordinance and hence entitled to hold elections on the basis of such nomenclature.

Substantially there were three groups who were running the management of the company i.e. Naseem Group, Umer Farooq Group and Zafar Group. In terms of Memorandum of Understanding the assets of the company were divided into three units and Zafar Group was given the right to choose amongst the three options. Reference of MoU is provided only for convenience.

I would not like to go into much detail insofar as the merit in reaching the Memorandum of Understanding is concerned and it being

acted upon since it is not a subject matter of these JMs and suit as in these proceedings petitioners have challenged that respondents on the basis of collecting proxies from the legal heirs of Nasir Ahmed cannot hold elections and secondly in the presence of pendency of JM No.49 which involves the question of memorandum of understanding. The subject shares should not be dealt as being done by respondents. Instead of dilating upon all the questions raised by the petitioner, I intend to resolve the controversy by considering the reply of the respondents Counsel whereby they have limited the scope of litigation to the extent of two principles i.e. (i) the question of entitlement as being decided by the succession Court at Multan and (ii) that the gift being invalid on account of principle of "*marzal maot*"; the respondents have raised their arguments only on these two points. Rest of the arguments have not been replied. I believe respondent intends to resolve such controversies only on the basis of such defence.

I would deal with the first point insofar as the orders passed by the Senior Civil Judge, Multan is concerned. There is no denial to this effect that in the year 2003 Mr. Zafar Iqbal petitioner had owned 75,970 shares of the company. It is claimed by the petitioner that on 17.2.2004 his brother Mian Nasir Ahmed transferred 455,820 shares to him. It is further observed that three transfer deeds were executed by Mian Nasir Ahmed to transfer these shares in favour of petitioner No.1 in three lots which transfer deeds are available at pages 597, 601 and 605. The transfer deed available at page 597 appears to have been signed by one Rehan Naseem and a certificate to this effect was also issued on 18.2.2004 duly signed by Umer Farooq (who filed the succession application) and by Rehan Naseem. These shares were subsequently transferred to Rayan Fazal on 19.1.2009 which were also signed by Umer Farooq. The second transfer deed available at page

601 is also signed apparently by Rehan Naseem/Naseem Ahmed and the Chief Executive of the company and the share certificate is duly signed by the Chief Executive on 18.2.2004 and 19.1.2009 available at page 603. Similarly the last lot of the shares appears to have been transferred by transfer deed available at page 605 duly signed as above including the share certificate. It is not the case of the respondents that these documents have not been signed by them thus in pursuance of such transfer prima facie the total shares held by the petitioner No.1 in the company increased to 531,790 shares. None of the members/directors of the company since 2004 ever since the shares of Mian Nasir Ahmed deceased were transferred to the petitioner have objected. In addition the company paid dividends of these transfer shares to the transferees. Whether or not the Senior Civil Judge Multan while deciding the succession application was competent to consider subject shares without ascertaining the fact of the entitlement of the deceased as in absence of such transcript/share certificate which could show the entitlement of a shareholder, is a question which has to be addressed before Court granted succession or appellate forum now. It is the matter of fact that it is only an application of amendment that was subsequently filed by other two groups of company that this amended succession certificate was granted which includes the subject shares and I am of the view that had these share transfer certificates/transcript been placed before the Senior Civil Judge, he would have certainly questioned as to the entitlement of the deceased since at the relevant time the shares of the deceased as perused from share transcripts stood transferred by virtue of insertion made there, which are available on record.

In the cancellation notices the only ground raised was that on 20.10.2005 Senior Civil Judge Multan issued a succession certificate to

the legal heirs of Mian Nasir Ahmed. Surprisingly the succession application appears to have been filed by persons who are well aware of these transfers. It is very pertinent to note that initially list of assets provided to the Senior Civil Judge who granted succession certificate did not disclose the subject shares of the company may be for the reason that Umer Farooq who initiated succession proceedings knew that such shares have already been transferred in the name of petitioners.

It is trite law that any asset which does not belong to the deceased at the time of his death cannot form part of successions proceedings and no such succession certificate or letter of administration be granted unless such dispute is resolved by a competent Court of law.

It has been argued that on account of the application of principle of "*marzal maot*" the transfer of shares was void. I am afraid that once the company has recorded and registered transfer of shares from Mian Nasir Ahmed to Zafar Iqbal and later from Zafar Iqbal to Rehan Naseem it could not after eight years object to its validity and that too by simply rectifying shares register. They could have taken the grievance to a Court of law. The company itself by revoking or rectifying such transfer deeds cannot unilaterally decide the effects of gift deeds and transfer deeds particularly when they are acted upon until competent Court declares the gift and the transfer to be illegal.

Prima facie it is a burden upon the respondents to have approached the competent Court of law either to challenge the gift or transfer of shares. The validity or authenticity of such gift is not subject matter of these JMs however it may form part of Suit No.54/13, which is pending adjudication. Although a revocation application under section 383 has been filed by the petitioners in this

regard, however in my humble view it neither was nor at present form part of the assets which is left by the deceased to be included amongst the list of assets for consideration of Senior Civil Judge granting the succession certificate. Any purported action which is being taken by the respondents on the basis of such shares either by collecting proxies from all these claimants who claimed to have inherited such shares or otherwise is an effort which is to be curbed at least at this stage and if such is allowed, it would not only prejudice the rights and interest of the petitioners but could also operate as oppression to the petitioners. Even one minute act could have an effect which constitute oppression. In such a way if the respondents are allowed to act by utilizing 12% of the shares it may end up to oust the petitioners without its resolution.

A succession could only be granted if it is established that such assets were left by the deceased as in its absence the Court has no jurisdiction and justification to pass such order. Such Court do not enjoy jurisdiction to determine the title of any assets under succession laws. It was incumbent duty of the Court granting the succession certificate to have made at least minute scrutiny as to the entitlement of the deceased in respect of the property regarding which the succession certificate sought to be obtained. In this regard the Senior Civil Judge granting succession certificate could have asked the petitioners therein to have provided copies of the share transfer certificates to prima facie reach to this conclusion that the deceased was owner of the subject shares at the time of his sad demise.

In case of In-re New Monkhooshi Tea Co. Ltd & others reported in AIR Calcutta 196, it is observed that where the company registered and share certificates clearly showed that the shares are joint property, the succession certificate in name of single person would be

of no avail. In my view the succession certificate granted has several questions which are to be answered.

Insofar as the principle as laid down under section 76(5) of the Companies Ordinance, it only relates to an issue of registering of a person as a shareholder or debenture to whom the right of any share or of the company has been transmitted by operation of law. Section 76(5) of the Companies Ordinance reads as follows:-

“Nothing in subsection (1) shall prevent a company from registering as shareholder or debenture-holder a person to whom the right to any share or debenture of the company has been transmitted by operation of law.”

The above reasoning and findings are sufficient to establish that there was nothing to be transmitted by operation of law for the company to be acted upon. Such provision of law would have prevailed for the transfer of shares by operation of law, if either (i) the gift deed or such transfer deeds would have been declared as invalid by any competent Court of law or (ii) the deceased would have died without execution of such gift. Furthermore in terms of section 76(1) the application for registration and the transfer of shares /debentures in a company has been made by the transferors/transferees of the company had acted upon it by transferring such shares in the name of the petitioners and also by paying dividends to them. Section 76(1) of the Companies Ordinance are reproduced as under:-

“76. Transfer of shares and debentures.(1) An application for registration of the transfer of shares and debentures in a company may be made either by the transferor or the transferee, and subject to the provisions of this section, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application was made by the transferee.

Provided that the company shall not register a transfer of shares or debentures unless proper instrument of

transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with scrip.”

It is the power of the Court to have rectified such registry/transfer. Section 152 of the Companies Ordinance is read as under:-

“152. Power of Court to rectify register.- (1) if -

- a) The name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members or register of debenture-holders of a company; or*
- b) Default is made or unnecessary delay takes place in entering on the register of members or register of debenture-holders the fact of the person having become or ceased to be a member or debenture-holder;*

The person aggrieved or any member or debenture-holder of the company, or the company, may apply to the Court for rectification of the register.

- (2) The Court may either refuse the application or may order rectification of the register on payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.*
- (3) On any application under sub-section (1) the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or debenture-holders or alleged members or debenture-holders, or between members or alleged members, or debenture-holders or alleged debenture-holders, on the one hand and on the company on the other hand; and generally may decide any question which it is necessary or expedient to decide for rectification of the register.*
- (4) An appeal from a decision on an application under sub-section (1), or on an issue raised in any such application and tried separately, shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (Act V of 1908); - .*
 - (a) if the decision is that of a Civil Court subordinate to a High Court, to the High Court; and*
 - (b) if the decision is that of a Company Bench consisting of a single Judge, to a Bench*

consisting of two or more Judges of the High Court.”

It is not a question of embarking upon the jurisdiction, but a question which involves adjudication of issues before this Court. The question of overlapping is also not tenable as the title of these shares is not subjudice before Senior Civil Judge at Multan. I may however observe that the District Judge may pass its own independent order and any observation here shall not influence proceedings before any other forum including trial of Suit No.54 of 2013.

In view of the above facts and circumstances, the aforesaid JMs are allowed while injunction applications bearing CMA No.447 and 448 of 2013 in Suit No.54 of 2013 is also disposed of in the same terms.

Dated:

Judge