

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

SMA No.440 of 2020

In Re: Yasin Hasan (Deceased)

Mr. Shamsuddin (Petitioner)

Date of hearing : **02.06.2022**

Petitioner : **Through Mr. Saleem-uz-Zaman,
Advocate.**

ORDER

Muhammad Faisal Kamal Alam, J: Through this SMA, Petitioner has sought issuance of the Letter of Administration in favour of legal heirs of (Late) Yasin Hassan son of Syed Tassadaq Hussain [**the Deceased**], in respect of sole Immovable Property mentioned in the Schedule of Property (*at page-21/A*), viz. Plot No.141-H-1, Block-2, P.E.C.H.S. Karachi, admeasuring 500 Square Yards.

Learned counsel for the Petitioner has stated, so also mentioned in the Petition, that the above Deceased (*Yasin Hassan*) passed away on 16.02.1994 (*Death Certificate is available at page-15*); he was not married, hence did not have any issue. He was survived by the two brothers, namely, Mr. Siddique Hussain and Mr. Ahmed Hassan. Mr. Siddique Hussain died on 28th July 1957 [Pre-deceased brother], that is, before the demise of the Deceased Yasin Hassan.

Learned counsel has also referred to a Notification dated 29th July, 1957 (*at page-17*), issued by Government of Pakistan Ministry of Finance, regarding death of Mr. Siddiq Husain, who was a senior officer

of the General Administrative Reserve (*Special Wing*) and an acting Deputy Secretary in the Ministry of Finance, to show that this fact was also mentioned in the official document about the demise of predeceased brother (Siddique Hussain).

The other brother Mr. Ahmed Hassan was thus the sole surviving legal heir at the relevant time and was entitled for the entire estate as children of pre-deceased brother would be excluded from the inheritance of the Deceased in terms of the applicable rule of Hanafi Fiqh. However, in the intervening period the latter [Ahmed Hassan] also passed away, on 17th January 1997 (*Death Certificate is available at page-19*), that is, after the demise of the Deceased. Late Ahmed Hassan survived by his daughter [the sole heir] Mrs. Amina Fahim. Averred that due to this development in the matter the above Property/estate is to be distributed amongst the daughter Mrs. Amina Fahim and the children of the Pre-deceased brother in the following manner_

S.No.	Legal heirs of the Deceased after demise of Mr. Ahmed Hasan	Legal heirs respective share in the estate of the deceased
1.	Ms. Amina Fahim D/o. late Ahmed Hasan (brother of Yaseen Hasan/Deceased)	50%
2.	Mr. Suleman Akhter S/o. late Siddique Hussain (nephew of late Yaseen Hasan/Deceased)	25%
3.	Ms. Naseem Yousuf D/o. Siddique Hussain (niece of late Yaseen Hasan/Deceased)	12.5%
4.	Ms. Shamsa Shams D/o. Siddique Hussain (niece of late Yaseen Hasan/Deceased)	12.5%
		100%

In the intervening period on 13th January, 2010, above named Shamsa Shams (wife of present petitioner) had also passed away (*Death*

Certificate is available at page-21), who is succeeded by the following persons:

1. Shamsudeen (Husband)
2. Shaheena Khurram (daughter)
3. Shehla Adnan Shahid (daughter).

It is, therefore, prayed that the estate be distributed amongst the above mentioned legal heirs. Learned Advocate has cited the following Case Law.

- i. **PLD 2014 Supreme Court 779**
[Waris Ali and others vs. Rasoolan Bibi]
- ii. **PLD 2014 Supreme 783**
[Province of Punjab through Collector and others vs. Muhammad Saleem and others]
- iii. **PLD 2018 Sindh 129**
[Khawaja Rashidullah and another vs. Khawaja Faridullah]

The reported Decision handed down in **Waris Ali** and **Rashidullah (*ibid*)** are relevant. Rule propounded is that children of pre-deceased sister and brother fall under the category of distant Kindred and will only inherit share when there are no sharer and residuary. When brothers and sisters of an unmarried and issueless deceased have also died, being sharer and residuary, respectively, distant Kindred can inherit. Consequently, since Ms. Shamsa Shams has also died, her legal heirs as mentioned in the preceding paragraphs will also get their proportionate inheritance in the above estate, along with persons mentioned in the above Table.

It is relevant to mention, as disclosed in the Petition that way back in the year 1980 a litigation was instituted in respect of above property by one Dr. Aftab Shah, but the Suit was dismissed and the subsequent High Court Appeal No.3 of 2005 was also dismissed for non-prosecution

vide Order dated 13.11.2019 [Judgment and Order in the above *Lis* and Appeal are available in the Record at pages-33 and 67, respectively].

On 27.082021 Petitioner, who is also the Attorney of other legal heirs was present along with third party witnesses, namely, Syed Omar Hassan and Rabia Omar Hassan.

The Deputy Registrar (*O.S*) has submitted his Report dated 26.08.2021, confirming that Publication was made in Daily Jang, Karachi in its issue of 21.06.2021 and copy whereof is placed on record, but no objection by any individual is filed against present proceeding.

In these circumstances, at present the matter has throughout remained non-contentious, thus, this Petition is accordingly granted, but strictly as per applicable provisions of Succession Act, 1925 as well as Rules.

JUDGE

Karachi
Dated : 12.08.2022.
Javaid.P/A