

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

Suit No.2037 of 2021

Natasha Malik  
Versus  
Naeem Malik & others

Date	Order with signature of Judge
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1. CMA No.6815/2020 (Section 94 CPC by plaintiff)
2. CMA No.12271/2020 (U/o 39 R 4 CPC by defendants No.1&2)
3. CMA No.12272/2020 (U/s 476 Cr.P.C. by defendants No.1&2)
4. CMA No.5617/2021 (U/s 151 CPC by defendants No.1&2)
5. CMA No.17588/2021 (U/o 6 R 17 CPC by plaintiff)
6. CMA No.12775/2022 (U/o X R 1A&2 CPC by defendants No.1&2)
7. CMA No.12776/2022 (U/s 476 Cr.P.C. by defendants No.1&2)

**Dates of hearing: 18.10.2022, 20.10.2022, 01.11.2022, 03.11.2022, 04.11.2022, 07.02.2023, 21.02.2023, 07.03.2023 and 10.04.2023**

M/s. Salahuddin Ahmed, Shahzad Nizam, Nadeem Ahmed and Muhammad Rizwan for plaintiff.

Mr. Anwar Mansoor Khan, Ms. Umaima A. Khan, Mir Muhammad Ali Talpur and Mr. Zeeshan Bashir Khan for defendants No.1 and 2.

Mr. Salman Ahmed and Mr. Asif Khawaja for defendant No.3.

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**Muhammad Shafi Siddiqui, J.**- In the instant suit, plaintiff primarily seeks a declaration that the amount transferred from the Account<sup>1</sup> (hereinafter referred to as Account No.1) of plaintiff's mother, is part of the estate of her mother and she, the plaintiff, being the only legal heir is exclusively entitled to inherit the same and that a succession in this regard be issued with direction to defendants to transfer the said amount lying in their (defendants No.1 and 2's) individual accounts, to plaintiff's benefit with further declaration that transfer of the amount from the accounts of plaintiff's mother was a fraudulent act and achieved through undue influence and false pretext of maintaining the

<sup>1</sup> 06-01-01-20614-714-568759 at Habib Metro Bank Limited, Main Branch

mother of the plaintiff who at the relevant time was seriously suffering from cancer.

2. Brief facts of controversy, culminated into the instant suit are that the plaintiff claimed to be the only child of late Jehangir Malik and Shahla Khanum Malik, father and mother respectively. Plaintiff's father pre-deceased the plaintiff's mother on 02.11.2006 whereas the later died on 11.02.2020. It is urged that plaintiff is the only daughter of her late parents and since the mother professed Shia Faith and followed Fiq-e-Jafria, plaintiff for all intent and purposes is entitled to inherit entire estate of her parents as being sole beneficiary. Plaintiff presented a declaration of her mother to establish that she had been following Fiq-e-Jafria.

3. It is pleaded by the plaintiff that somewhere in June 2019 her mother was diagnosed with stage-4 lung cancer and for treatment including chemotherapy and since close relatives of her mother were at Karachi, living in houses adjacent to her mother's, it was thought convenient and desirable that plaintiff's mother would move from Lahore to her sister i.e. defendant No.2 at Karachi for the purpose of her treatment at Agha Khan Hospital.

4. It is pleaded that somewhere on 01.02.2020 approximately a month before plaintiff's mother's death, aforesaid account No.1 had a balance of Rs.416,859,558/- and in order to cater for her medical expenses, her living and that before she could be rendered completely incapacitated, a reasonable amount was desired to be provided to defendants No.1 and 2, being brother and sister, in a joint account of defendants No.1 and 2 with plaintiff's mother so that the funds could be withdrawn as and when required for her treatment and living. With this understanding a joint account<sup>2</sup> (hereinafter referred to as Account No.2)

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<sup>2</sup> No.06-01-01-20614-714-0582316 with HMBL

was opened with same bank i.e. Habib Metropolitan Bank Limited in the names of (i) plaintiff's mother, (ii) defendant No.1 and (iii) defendant No.2 on 20.01.2020.

5. It is urged that while the medical assistance was being provided to plaintiff's mother, her health continued to deteriorate inasmuch as at one point of time her physical and mental condition was not satisfactory leaving her semi-lucid in conversation and with impair cognition. It was under those circumstances that on 01.02.2020 a cheque from plaintiff's mother's cheque book was obtained and the amount was transferred and her (plaintiff's mother's) account was emptied while it was transferred to the aforesaid joint account which was established by her siblings, for a limited and specified purpose. Plaintiff's mother then died on 11.02.2020. It is this amount which is claimed to have been inherited by the plaintiff and the defendants No.1 and 2 fraudulently deprived her of such inheritance. It is urged that the amount in their respective accounts (described below) is actually the inherited amount, transferred subsequently after information forwarded to bank officials.

6. The bank was accordingly informed vide email dated 23.02.2020 of the death of plaintiff's mother, which could have eventually frozen all the accounts of her mother including the above joint account (Account No.2), that she was maintaining with her siblings (having therein her mother's money), however, the record reveals that on 04.03.2020 the funds held in the joint account of three individuals, identified above as Account No.2, were transferred to new joint account in the names of defendants No.1 and 2<sup>3</sup> (hereinafter referred as Account No.3). This was then further transferred along with profit accrued thereon between defendants No.1 and 2 on 07.04.2020 in the following form:

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<sup>3</sup> Being Account No.06-01-01-20614-714-0586399 with HMBL

- i) A sum of Rs.293,333,334/- in the account of defendant No.1 in HMBL Account<sup>4</sup> (hereinafter referred to as Account No.4);
- ii) A sum of Rs.146,666,666/- to the defendant No.2 in HMBL Account<sup>5</sup> (hereinafter referred to as Account No.5)

Lineage and itinerary disclosed that above are the amounts (two accounts), which are being claimed to have been inherited by the plaintiff being the only daughter of Shahla Khanum Malik and Jahangir Malik.

7. The plaintiff was denied from her right of inheritance by defendants No.1 and 2 on the count that she was an adopted daughter of late Jahangir Malik and Shahla Khanum Malik and have attached, in support thereof, documents to show that she was an adopted daughter and could not have inherited any amount except that which was intentionally and purposely paid to her by late Jahangir Malik and Shahla Khanum Malik during their life time. In support of their defence they (defendants No.1 and 2) have filed, with their pleadings, copies of certain documents indulging application form for adoption of plaintiff, medical report from Cromwel Hospital London that late Jahangir Malik absolutely had no chance to produce children of his own, the documents from Gehwara Rawalpindi, an institute for abandoned babies and destitute Children, Government of Punjab, disclosing process of handing over baby Natasha, while she was with the said institute.

8. Plaintiff on the other hand, has also attached with the plaint Family Registration Certificate of NADRA, which shows plaintiff Natasha Malik as being daughter of Jahangir Malik and Shahla Khanum Malik. With the rejoinder to the counter-affidavit to the application under section 94 CPC (CMA No.6815/2020) plaintiff has also filed municipal record of 1988

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<sup>4</sup> No. 06-01-52-20311-714-0121896

<sup>5</sup> No. 06-01-52-20311-714-242861

which disclosed Jahangir Malik son of Tufail M. Malik in the relevant column as being father of a female child born on 27.03.1988 and the child name identified was Natasha Malik (plaintiff) and the name of midwife was Zahida Durrani. Along with this municipal record plaintiff through her attorney also filed a copy of an extract from the Register of Births, NADRA record, which disclosed plaintiff Natasha Malik as daughter of Jahangir Malik and Shahla Khanum Malik, passport issued by the concerned ministry on the basis of record available, and other supporting documents including some educational certificates such as those issued by Inter Board Committee of Chairmen, National College of Arts etc.

9. In response to this rejoinder a surrejoinder was then filed with the consent of both the counsel wherein certain additional documents were filed by defendants such as sale deed in respect of a property of Lahore wherein, at one point, she (plaintiff) was described as daughter of Jahangir Malik whereas in the middle of the said sale deed she was described as adopted daughter/seller No.2 which fact, according to Mr. Anwar Mansoor Khan Advocate, cannot be denied as being outcome of a registered instrument. Since this surrejoinder was filed while the applications were being heard, with the permission of Court and with the consent of learned counsel appearing for both the parties, a reply to this surrejoinder in the shape of sur-rebuttal was filed and taken on record denying the assertions raised in the surrejoinder and/or written statement, contents whereof were, orally asserted by Mr. Anwar Mansoor Khan Advocate, to have not been denied (though this is disputed by Mr. Salahuddin Ahmed Advocate), which was also taken on record, as agreed by the counsels.

10. I have heard learned counsel for the parties and perused material available on record.

CMA No.17588/2021 (Fixed at Sr. No.5)

11. This application has been filed on behalf of plaintiff under order 6 R 17 CPC seeking certain amendments in the plaint. Indeed, perusal of the application reveals the plaintiff only intends to add Paragraph 13, which consists of events after filing of the suit. It only relates to legal proceedings, which are claimed to have been initiated by defendants No.1 and 2 after service of notice of this suit in respect to the estate of the deceased mother of plaintiff. Since this suit pertains to the very estate of the deceased mother of the plaintiff, placing material in respect of other proceedings in respect of the same subject would not cause any material change in the plaint. Furthermore, it will not affect the case of either parties, particularly that of defendants No.1 and 2. Hence, the objections as taken by defendants No.1 and 2 against this application are not tenable in law. The application as such is allowed. Let amended plaint be filed in two weeks' time whereafter amended written statement may be also filed by the defendants, if so required.

(1&2) CMA No.6815/2020 (Section 94 CPC by plaintiff) and CMA No.12271/2020 (under order XXXIX Rule 4 CPC filed by defendants No.1&2)

12. With serious assertions, defendants No.1 and 2 are denying the inheritance right as being claimed by the plaintiff on the count that she was not the real daughter of late Jahangir Malik and Shahla Khanum Malik. In fact it is attempted to establish that she was an adopted daughter and have also produced some traces to establish such assertion.

13. There is no cavil that both parties have filed their respective documents to establish their respective stands however it is to be kept in mind, while deciding the interim application for injunction that this is only interlocutory stage and appreciation and offset of supportive documents could only prevail to certain extent, subject to passing the

test of three ingredients i.e. (i) prima facie/arguable case (ii) balance of inconvenience and (iii) irreparable loss. Thus, a deeper appreciation of documents in the shape of their conclusivity may entangle with settled principle of law required for deciding interim application, referred above. Such corpus of the suit, has to be kept in mind and the same for the later stage, subject to prescribed test clearance while the suit would remain pending duly battened.

14. Plaintiff's claim is based on one set of documents against denial of such claim by defendants No.1 and 2 based on another set of documents. Defendants No.1 and 2 have not denied the documents filed in support of the plaint and the respective affidavits. Before me pleadings are available along with supportive solemn affirmation such as affidavit / counter-affidavit / rejoinder / sur-rejoinder / sur-rebuttal. Defendants stated without denying that those documents of plaintiff's concern were only obtained as a formality to recognize her as being daughter of Jahangir Malik and Shahla Khanum Malik. Whereas the plaintiff, while contradicting and opposing the defence that was taken by defendants No.1 and 2 and the documents filed in support of denial that such was never the case of an adopted daughter. She denied the documents, claiming them to be forged and fabricated and put defendants No.1 and 2 to strict proof thereof. Supportive documents of litigants where opposed is subject to their proof during trial and I cannot conclusively decide the issue in hand without them passing through trial and thus the corpus of the suit is to be saved since on the strength of documents<sup>6</sup> filed by plaintiff, an arguable case has been made out and that the transfer of amount from mother's account is also during the period when she was in her last days rather she was seriously suffering and as pleaded she was rendered physically and mentally incapacitated,

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<sup>6</sup> Family Registration Certificate, CNIC, passport, educational certificates issued by Inter Board Committee of Chairmen and National College of Arts etc.

which questions would definitely undergo trial. If at all, per defendants, plaintiff was an adopted daughter, why was there a necessity felt to surreptitiously transfer the entire amount. After all the amount could have been claimed by defendants on the above defence subsequently.

15. Linage of amounts lying and transferred in different accounts are as under:-

**Account No.1**

Account title	Amount	Date of last balance
Shahla Khanum Malik	Rs.416,859,558/-	01.02.2020

**Account No.2**

Account title	Amount	Date of transfer
1) Naeem Waris Malik	Rs.416,859,558/-	01.02.2020
2) Maneezeh Malik		
3) Shahla Khanum Malik		

**Letter/email served disclose date of death of plaintiff's mother/  
Shahla Khanum Malik as 23.02.2020**

**Account No.3**

Account title	Amount	Date of transfer
1. Naeem Waris Malik	Rs.421,837,326/-	04.03.2020
2. Maneezeh Malik		

**Account No.4**

Account title	Amount	Date of transfer
Naeem Malik	Rs.293,333,334/-	07.04.2020

**Account No.5**

Account title	Amount	Date of transfer
Maneezeh Malik	Rs.146,666,666/-	07.04.2020

16. The record shows that on the strength of a cheque which was signed by her (plaintiff's mother) on 01.02.2020, the amount was transferred on 01.02.2020 and her account was emptied whereas she passed away on 11.02.2020. Whether or not she was mentally and physically fit to sign the cheque and that she was conscious of the fact that she is transferring the requisite amount only, required for her



treatment or the entire amount in the account of defendants No.1 and 2, is yet to be established independently by defendants. If the defence of defendants No.1 and 2 with regard to status of plaintiff is taken to be correct, there is nothing that could have prevented them (defendants No.1 and 2) to inherit the amount as being the legal heirs and establishing that the plaintiff was not the legal heir rather an adopted daughter. The surreptitious transfer of the “entire amount” from the account of deceased mother followed by subsequent transfers, has raised eyebrows as to why, at such a critical time when the mother was on death bed, entire amount was being transferred when the account (per defendants No.1 and 2) could have been operated by survivors (although a different view is expressed). Nothing is being taken away, as far as defence of defendants No.1 and 2 is concerned, however, case has to undergo a trial before such could be conclusively surfaced.

17. As to the issue of operating the account by survivors (on the day of transfer), it is not the money of survivors lying in the account. It was for the purposes of her (plaintiff’s mother’s) health and living that it was entrusted to them, therefore, the operation/opening of the account is also to be seen with such understanding of facts.

18. Insofar as the crucial document of sale deed is concerned wherein plaintiff was described as adopted daughter in the middle of document, the plaintiff has out rightly denied to have gone through entire text of the sale deed as on the first page she was described as daughter of late Jahangir Malik. It is to be seen whether she has consciously read entire sale deed, as there is a possibility, as stated, that she might have glanced the top page of the document wherein she was described as daughter, followed by her next interest i.e. the amount of consideration that was being paid to her by the buyer.

19. The application of law i.e. Article 128 of Qanoon-e-Shahadat Order, 1984 and other relevant laws would precisely come into play once such issues and questions would evolve through evidence and placed on record for final consideration as an attempt of “adopted daughter” is presented claiming it to be beyond the frame of Article 128 of Qanoon-e-Shahadat.

20. As per Article 128 of the Qanoon-e-Shahadat Order, 1984 the only person competent to dispute the parentage of the plaintiff would be her putative father (and that too only if the father had refused to own the child from the outset). However, defendants No.1 and 2 contend that Article 128 is only applicable to cases where illegitimacy is being contended and not to cases of adoption. The approach of our superior courts in response to Article 128 covers both<sup>7</sup>.

21. In view of above, a prima facie case has been made out by the plaintiff in terms of the official documents attached. The application under section 94 CPC filed by plaintiff being CMA No.6815/2020 is allowed resultantly the interim order dated 03.09.2020 is hereby confirmed. In result whereof CMA No.12271/2020 under order 39 R 4 CPC filed by defendants No.1 and 2 is dismissed.

3&7) CMA No.12272/2020 and CMA No.12776/2022

22. These applications have been filed by defendants No.1&2 under section 476 Cr.P.C. for initiation of criminal proceedings against the plaintiff on produced documents, alleged to be false. Since I have deliberated upon the documents filed with the pleadings while deciding above applications, which require trial such applications are premature to be decided. I would rather adjourn the same sine die till evidence is recorded.

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<sup>7</sup> (i) PLD 2019 SC 449 (Laila Qayum v. Fawad Qayum), (ii) 2005 SCMR 401 (Asma Naz v. Muhammad Yunas Qureshi), (iii) 2020 CLC 1670 (Roshan Ara v. Abdul Karim), (iv) 2020 MLD 1441 (Saedulduddin Qureshi v. Waqar Saeed) and (v) PLD 2015 SC 327 (Ghazala Tehsin Zohra v. Mehr Ghulam Dastagir Khan)

4) CMA No.5617/2021

23. Through this application under section 151 CPC defendants No.1&2 seeks to have the DNA test conducted. Since plaintiff has contested this application, in the light of recent pronouncements of the Hon'ble Supreme Court<sup>8</sup>, this application is dismissed.

6) CMA No.12775/2022 (under order X Rule 1A&2 CPC filed by defendants No.1&2)

24. Adjourned as no arguments were addressed.

Dated:

**J U D G E**

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<sup>8</sup> (i) PLD 2019 SC 449 (Laila Qayyum v. Fawad Qayum) and (ii) unreported judgment in Civil Petition No.2414-L/2015 (Muhammad Nawaz v. Additional Distt. & Sessions Judge)