

*Judgment Sheet*

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Rev. Application No.S-101 of 2020**

Applicants : Haji Ghulam Hussain through his LRs  
through Syed Jaffar Ali Shah, Advocate

Respondents No.1to4 : Mst. Akmal Khatoon and others, through  
Abdul Basit Shaikh, Advocate

Respondents No.5 to 7: Mukhtiarkar (Revenue) Kandiaro & others  
Through Mr. Ghulam Abbas Kubar, AAG

Date of hearing : 04.12. 2023

Date of Decision : 12.01.2024

**JUDGMENT**

**ARBAB ALI HAKRO, J.-** Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("**the Code**"), the applicants have impugned Judgment and Decree dated 19.3.2020, passed by Additional District Judge(MCAC), Kandiaro ("**the appellate Court**") in Civil Appeal No.70 of 2016, whereby; the Judgment and Decree dated 27.6.2016 and 30.6.2016 respectively, passed by Senior Civil Judge, Kandiaro ("**the trial Court**") in F.C Suit No.26 of 2014, through which the suit of applicant/plaintiff was decreed, has been set-aside, by dismissing his suit.

2. The case of the applicant/plaintiff before the trial Court was that deceased Haji Dost Muhammad was the lawful owner of agricultural land measuring 86-18 ½ Acres situated in Deh Gul Shah and Deh Halani, Taluka Kandiaro District Naushahro Feroze, as well as two residential houses and one shop. The deceased Haji Dost Muhammad died about 15 years back (of the institution of suit) and left behind applicant and respondent No.1 to 4 as surviving legal heirs. The applicant, after the death of the deceased, got *Foti Khata Badal* of the deceased in respect of the above property vide entry No.733,

whereby he became the owner of a 22-Paisa share in agricultural land and 22-Paisa share in the above two houses and one shop (“**suit property**”). It is asserted that the respondent No.1 to 4 had filed F.C Suit No.85 of 2000 against the applicant for Declaration and Cancellation for above entry, which was contested by the applicant and same was finally decreed, which was challenged by the applicant before the appellate Court which was allowed and judgment and decree of the trial Court were set-aside, declaring the applicant as also one of the legal heir of deceased HaJi Dost Muhammad, hence filed suit seeking relief of partition, possession and mesne profit.

3. Upon service of summons, Respondents No. 1 to 4 contested the suit and filed their written statements, wherein they denied the claim of the applicant by asserting that the trial Court declared them as the only legal heirs of deceased Haji Dost Muhammad and excluded the applicant from inheritance. Though the appellate Court set aside the judgment of the trial Court, they challenged the said judgment and decree of the appellate Court by filing a Civil Revision before this Court, which is pending.

4. Out of the divergent pleadings of the parties, the trial Court framed all 06 (six) issues on which both the parties led their respective evidence. On conclusion of trial, the trial Court decreed the suit of plaintiff to the extent of prayer clause (a) and (b) except mesne profit. Respondent No.1 to 4 challenged the judgment and decree of the trial Court through appeal. The appellate Court, through impugned judgment and decree dated 19.3.2020, allowed the appeal and dismissed the suit of the applicant, hence the instant revision application.

5. The arguments have been heard at length, and the available record has been carefully evaluated with the able assistance of the learned counsel for the parties, including case law relied upon by them.

6. In the present case, the claim of the applicant is mainly based on the Judgment and Decree dated 07.12.2013 and 14.02.2013, passed by the appellate Court in a Civil Appeal No.60 of 2010, whereby he was declared as one of the legal heir to inherit the suit property being "Distant Kindred". It is the well-settled proposition that the distant kindred is only entitled to the inheritance should the first two categories not exist; that is to say, the first two categories take priority over the last category. So, the fixed sharers take the first priority alongside the residuaries. There are also cases where the legal heir becomes both sharer and residuary. Should there be no fixed sharer or residuaries, only then will the distant kindred be entitled to the inheritance. In the Case of **Muhammad Kasim v. Khair Muhammad and others (1987 SCMR 1560)**, it was held by the Apex Court that:

*“According to Syed Ameer Ali in his book on Mahomedan Law under the Hanfi Law of Succession the heirs connected to the deceased by the tie of blood are divided into three classes, namely, sharers, I agnates and uterine relations. The agnates are called residuaries and the uterine relations are called the distant kindred. According to the learned author and this is well-established the sharers take their specified portions and the residue is then divided among the agnates. If there should be no agnates but only uterine relations, the residue would revert or return to the sharers in proportion to their shares except in the case of the husband or wife. It is only when there are neither "sharers" nor "agnates" that the estate is divided among the uterine relations. From these established rules governing the succession under the Hanfi Law, it is clear that in the presence of an heir belonging to the category of "residuaries" no one falling in the class known as distant kindred can inherit the property of the deceased. In view of this clear legal position the appellant would exclude the respondents who fall within the category of distant kindred being related to the deceased through the intervention of a female”.*

However, the said Judgment and Decree were assailed before this Court in Revision Application No.S-18 of 2014 and the above judgment and decree were passed during the pendency of the above Revision before this Court. Now, the above R.A. No.S-18 of 2014 has been allowed by this Court, declaring the applicant being Distant Kindred, is not entitled to inherit a share of the estate left by the deceased Haji Dost Muhammad in presence of the sharers and residuaries and in such eventuality, the estate of the deceased would

not devolve upon the collateral/distant kindred. For the sake of convenience, the relevant observations are reproduced hereunder: -

*“Considering the above position, according to Muhammadan Law, a father's cousin's son (Respondent No.1) is not entitled to inherit a share of the estate of the deceased Haji Dost Muhammad unless there are no other closer relatives from the paternal or maternal side. The father's cousin's son (Respondent No.1) belongs to the “Distant Kindred” category and is only eligible for inheritance if there are no fixed heirs or agnates. Fixed heirs are close family members who inherit a fixed share of the estate, such as the spouse, children, parents, grandparents, and siblings. Agnates are relatives who are connected to the deceased through a male link, such as the father, grandfather, son, grandson, brother, nephew, uncle, etc. Respondent No.1 is an agnate, but he is excluded by the presence of nearer agnates, such as widows and daughters (applicants). Therefore, he can only inherit if no one else is from the fixed heirs or the agnates. In this regard, I am fortified with the case of Abdul Khaliq vs. Fazalur Rehman (PLD 2004 Supreme Court 768), wherein the Supreme Court of Pakistan has laid it down as follows:—*

*"It is a decided fact that if a sharer or a residuary exists, the distant kindred are completely ousted from the inheritance. In the instant case, Mst. Roshnai, the donor, was the real sister of Abdul Ghafoor, who died issueless. She would, therefore, inherit 1 /2 share in the property of her brother Abdul Ghafoor as sharer and as of her own right. As the sharer is in existence and as in the presence of sharer no distant kindred is entitled to inherit, the entire residue under para-66 of the text aforesaid and under the Principle of Return (radd.), would revert to the sharer.*

*(Emphasis supplied)”*

7. For the forgoing reasons, since the applicant has been declared as distant kindred and not entitled to inherit any share from the estate left by the deceased Haji Dost Muhammad in the presence of the sharers and residuaries and in such eventuality, the estate of the deceased would not devolve upon the collateral/distant kindred while passing Judgment in Revision Application No.S-18 of 2014, therefore, the present Revision Application becomes infructuous. Therefore, the same is hereby **dismissed**, with no order as to cost.

**JUDGE**