

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
II - Appeal No. 192 of 2020

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

Priority

1. For hearing of CMA No.7974/2020
2. For hearing of Main Case

24.01.2024.

M/s. Abdul Razzak and Asim Amin, Advocates for the Appellants.

Ms. Arjumand Khan, Advocate for Respondents No.1 to 3.

Mr. Ghulam Haider Shaikh, Advocate for Respondent No.4.

Muhammad Faisal Kamal Alam, J: - This Appeal is preferred against the conflicting findings. Learned Appellate Court has modified the finding of the learned Trial Court on Issue No.2 with regard to the Apartment and the Legal Dues, payable by Respondent No.4 [Telenor].

2. Mr. Abdul Razzak, Advocate, along with Mr. Asim Amin, Advocate, has argued that Judgment is erroneous as it is the case of Appellants [Plaintiffs] that the subject Apartment bearing No.101, Koh-e-Noor Centre, Marshal Street, Jubilee Market, Karachi [the “**Subject Apartment**”] was the property of the Late Father of Appellants No.2 and 3 and husband of Appellant No.1 and thus it should be distributed as such.

3. On the other hand, Ms. Arjumand Khan, Advocate, for Respondent Nos.1 to 3 has argued that during the lifetime of deceased Mirza Anwer Baig, the latter had purchased the Subject Apartment by paying out share to the Appellants.

4. Succinctly, the Appellants preferred a Suit No.394 of 2014 for distribution of the estate [both moveable and immovable] left by their Son and brother, respectively, viz. Mirza Anwer Baig [the “**Deceased**”] who was in the employment of Respondent No.4 – Telenor Pakistan. The Suit was resisted by Respondents No.1 to 3 being widow and minor daughters of the said Mirza Anwer Baig.

5. At present two contentious Issues exist, viz. the Subject Apartment and distribution of Group Insurance.

6. Arguments heard and record perused.

7. Mr. Abdul Razzak, Advocate for the Appellants, has contended that since Respondents are relying on a Deed of Family Settlement [at page-211, *Exhibit No.D/1*], therefore, onus is on Respondents to prove that Subject Apartment was purchased by the Deceased from his father and Appellants No.2 and 3 being sisters have no share in it. In this regard, he has referred to the evidence so also Indenture of Sub-Lease [at page-207] showing that it was sub-leased in the name of Mirza Ilyas Baig, who was the Father of the above-named Deceased, Appellants No.2, 3 and the husband of the Appellant No.1. In this regard, he has also referred to the testimonies recorded in the Suit proceeding.

8. *Whereas*, the learned counsel for the Respondents No.1 to 3 has referred to the pleadings of both the Parties, in particular, Paragraphs-9; for the sake of reference Paragraph 9 of the plaint is reproduced herein under_

“9. That, the deceased was the owner of above mentioned Flat by virtue of an Oral Family Settlement, the said flat is still in the name of father of deceased and occupied by a tenant. The Original Title Documents of the Said Flat, is in possession of the Defendant No.1. Besides, the defendant No.1 is also in possession of articles, personal belongings, household stuff of deceased, details mentioned in Schedule A hereinafter, worth of it comes around Rs.500,000/- (Five Hundred thousand Only).”

9. The above paragraph-9 of the plaint is quite clear, wherein, it is stated that the above deceased [son and bother of the Appellants] was the owner of the Subject Apartment by virtue of Oral Family Settlement. This averment is accepted by the Respondents in their corresponding Paragraph-9; however, with an addition that it was purchased by the said deceased in his lifetime and the Appellants were paid their shares. Even if the second portion of the stance and testimonies adduced in favour and contra to this fact is excluded, being disputed by the Appellants' Counsel, the admission about the ownership of the Subject Apartment will remain intact; thus, the discussion on the testimonies as done in the Impugned Judgment is not required. Consequently, the finding [Determination] of the learned Appellate Court is correct that the Subject Apartment was in the ownership of the above-named Deceased, and not his Father [Mirza Ilyas Baig], therefore, the Subject Apartment is to be **distributed as the estate left by the Deceased and not his [Late] Father [ibid].**

10. Adverting to the Group Insurance dispute.

11. Learned counsel for the Appellants contends that this amount is also ‘Tarka’, as correctly held by the learned Trial Court and erroneously over-ruled by the First Appellate Court. In support of his stance he has referred to the Judgment reported in 2005 S C M R 512 [*Mst. Ameeran Khatoon versus Mst. Shamim Akhtar and others*], wherein, it is specifically held by the Hon’ble Supreme Court that Group Insurance has to be distributed as ‘Tarka’ amongst all legal heirs; whereas, the learned Advocate while disputing this contention and supporting the Impugned Judgment, wherein, the entire amount of Group Insurance [‘Insurance additional amount, as per the impugned Judgment’] has been given to the Respondent No.1; to augment her arguments she has cited the leading Judgment reported in P L D 1991 Supreme Court [Shariat Appellate Bench] 731 [*Wafaqi Hakumat Pakistan versus Awamunnas*].

12. Both the above Judgments have been considered. In the subsequent Judgment of Mst. Ameeran Khatoon, although the Honourable Supreme Court has based its *ratio decidendi* on the earlier Judgment of Wafaqi Hakumat Pakistan case (*supra*), but came to a different conclusion about the group insurance by holding it to be ‘Tarka’. Following Judgments of this Court have also been perused_

- i. **P L D 2019 Sindh 01**
[*Muhammad Javed and another versus Mst. Roshan Jahan and 2 others*];
- ii. **P L D 2015 Sindh 360**
[*Erum versus Mst. Aameena and 5 others*];
- iii. **P L D 2010 Karachi 153**
[*In the matter of: SUCCESSION OF THE ASSETS, SECURITIES, PROPERTIES AND ACCOUNTS OF LATE JAVED IQBAL GHAZNAVI*]; and
- iv. **P L D 2023 Sindh 321**
[*Mst. Naz Bibi through L.Rs. and others versus Wahid Bux through L.Rs. and others*];
- v. **Unreported Judgment by learned Division Bench in High Court Appeal No.384 of 2022**
[*Ms. Nusrat Fareed versus Haji Ahmed Mujahid and others*].

13. The judicial consensus is, that Group Insurance benefit payable after the death of an employee is not heritable by all the legal heirs of an

employee but ought to be distributed to those, who are entitled to it under the Rules and Regulations of service.

14. Learned Division Bench in an unreported Judgment in the case of Ms. Nusrat Fareed Case (*supra*), has elaborated the concept of Group Life Insurance, *inter alia*, by relying on another Judgment handed down by this Court reported in 2022 P L C (C.S.) 1182 [*Karim Bux versus Province of Sindh*]. The learned Division Bench has also discussed the above two Judgments of the Honourable Supreme Court – Wafaqi Hakumat Pakistan and Mst. Ameeran Khatoon, and has come to the conclusion that the view of the Honourable Supreme Court in the Wafaqi Hakumat (*supra*) is correct, by holding that group insurance proceeds of deceased did not fall within the definition of estate and cannot be distributed amongst the legal heirs.

15. In view of the above discussion, the answer to the second dispute about Group Insurance is, that it is not an estate of the above named Deceased [Mirza Anwer Baig] and the proceeds whereof is to be distributed as per Service Rules and Regulations of Respondent No.4 [Telenor], therefore, in this regard finding of the Appellate Court is correct.

16. Similarly, with regard to the other Issues, no interference is required in the Judgment of the Appellate Court and same is maintained, subject to what is discussed in the foregoing paragraphs. Consequently, in the above terms this Appeal stands disposed of along with all pending application(s), if any, with no order as to costs.

17. All the Advocates for the Parties have provided able assistance. Legal Research Cell [LRC] of this Court has also provided research work in an expeditious manner, which is appreciated.

Judge

Riaz / P.S.