

IN THE HIGH COURT OF SINDH AT KARACHI**High Court Appeal No. 357 of 2023**

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial

Shamim Akhter & others**..... Appellants**through Fahad Alam Chohan, attorney of
appellant No.1

vs

Nazar Bhari & others**..... Respondents
(Nemo)**

Dates of hearing: 11.01.2024 and 25.01.2024

Date of short order: 25.01.2024

Date of reasons: 26.01.2024

JUDGMENT

OMAR SIAL. J: The appellant, Shamim Akhter, is the daughter of Ayub Ali. She claims a share in the estate of her paternal grandfather, Imam Bux. Ayub died (in 1948) before his father Imam Bux, who died in 1957. The appellant relied on section 4 of the Muslim Family Law Ordinance, 1961, and asserted that the children of a pre-deceased son were entitled to a share in the estate of Imam Bux. Suit No. 1592 of 2010 was filed in this Court by Shamim along with her brother Nisar Ahmed. On 10.08.2023, a learned Single Judge dismissed the suit on the ground that section 4 of the Ordinance of 1961 was not applicable because when Ayub Ali and subsequently Imam Bux died, i.e., in 1948 and 1957, respectively, the Ordinance of 1961 had not been promulgated and that it would not have a retrospective effect.

2. Shamim Akhter has challenged the decision of the learned Single Judge, on the same ground that was agitated before him. We have heard the appellant's son in person. The appellant and her son did not wish to engage a counsel. Our observations and findings are as follows.

3. It is an admitted position that Ayub Ali died before the death of his father, Imam Bux. When Imam Bux died, the children of a pre-deceased son or daughter did not have a right to inherit from the estate of Imam Bux. Section 4 of the Ordinance of 1961 perhaps would have entitled the children of Ayub Ali to inherit, but as held by the learned Single Judge, the law was not in force then. The legislation cannot be given a retrospective effect, as was also confirmed by the Supreme Court in **Sarwar Jan and others vs. Mukhtar Ahmad and others (PLD 2012 SC 217)**. We do not find any reason to interfere with the well-reasoned judgment of the learned Single Judge.

4. In her arguments, the appellant has also submitted that the learned Single Judge, irrespective of the legal position, had ordered that a share from the estate of Imam Bux still be given to the appellant. It is obvious from the judgment that the argument is misconceived. The learned Single Judge gave no such directions. All that the learned Single Judge observed was that the legal heirs of Imam Bux look sympathetically towards the appellant.

5. Above are the reasons for our short order dated 25.01.2024 in terms of which the appeal was dismissed.

JUDGE

JUDGE