

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 200 of 2022
(*Hasnain Nawaz v. Muhammad Sharif & others*)

Civil Revision No. S – 202 of 2022
(*Hasnain Nawaz v. Muhammad Sharif & others*)

Date of hearing : **04.11.2024**

Date of decision : **04.11.2024**

Mr. Faisal Naeem, Advocate for applicant.
Respondent No.1, Muhammad Sharif, present in person.
Ghulam Abbas Kubar, Assistant Advocate General Sindh.

ORDER

Zulfiqar Ahmad Khan, J. – By this common judgment, I intend to dispose of both these Civil Revisions.

2. Civil Revision No. S-200 of 2022 challenges the remand order dated 07.09.2022, passed by the appellate Court (learned District Judge, Sukkur) in Civil Appeal No. 15 of 2022, filed by respondent No.1 (plaintiff), wherein he assailed the order dated 23.12.2021, passed by the trial Court (learned 1st Senior Civil Judge, Sukkur) in F.C. Suit No. 43 of 2021. The order impugned before the appellate Court was passed on the application moved by the applicant (defendant No.1) under Order VII Rule 11, CPC, whereby the said application was allowed, and the plaint filed by respondent No.1 was rejected.

3. Learned trial Court, while placing reliance on the judgment of the Hon'ble Supreme Court reported as *Laila Qayyum v. Fawad Qayyum and others* (PLD 2019 Supreme Court 449), concluded that the plaintiff (respondent No.1) had no cause of action to maintain the suit seeking a declaration that defendant No.1 (applicant) is the adopted son of his elder brother Rab Nawaz and his wife Mst. Ghulam Sarwar Khatoon, and the same was also barred under Article 128 of the Qanun-e-Shahadat Order,

1984. However, the appeal was allowed, and the matter was remanded to the trial Court for a decision on merits, after hearing the parties and allowing them to lead their evidence.

4. Learned Counsel for the applicant states that the learned appellate Court wrongly placed reliance on the judgment passed by the learned Peshawar High Court in the case of Mst. Jan Ara and others v. Muhammad Zubair and others (2012 CLC 1630), wherein the plaint of the suit filed for a declaration that the petitioner / defendant No.1 is not the real daughter of defendant No.3 was rejected. The order rejecting the plaint in the said suit was set aside, and the trial Court was directed to decide the case on merits. The judgment was later upheld by the Hon'ble Supreme Court.

5. The case of the applicant is that he is the undisputed son of late Rab Nawaz Soomro, who passed away on 05.11.1997, and his wife, Mst. Ghulam Sarwar Khatoon (the applicant's mother), who died on 21.08.2019. Therefore, under Article 128 of the Qanun-e-Shahadat Order, 1984, such a dispute could not have been raised before the Court.

6. To establish that the applicant is the son of the late Rab Nawaz Soomro, the plaintiff has produced a copy of the FRC, available at Annexure D-2, issued on 28.10.2019, which lists his mother's name as Ghulam Sarwar Khatoon. It is noted that his mother has already passed away. However, there is no document to show that the applicant, late Rab Nawaz and Mst. Ghulam Sarwar Khatoon were members of a joint family. Although a School Leaving Certificate has been submitted, no birth certificate has been provided to establish that the applicant was born into the family of late Rab Nawaz and Mst. Ghulam Sarwar Khatoon.

7. Respondent No.1 is present and states that the applicant is not, in fact, the biological son of his late brother Rab Nawaz or his wife, and even states his biological mother is still alive and when the applicant filed an

application before the proper forum to have property, previously registered in the name of late Rab Nawaz, transferred to his name, such move was resisted by the respondent, who contends that the applicant is not the son of his elder brother, late Rab Nawaz.

8. Learned Counsel for the applicant has also placed reliance on the cases reported as Laila Qayyum v. Fawad Qayum and others (PLD 2019 Supreme Court 449) and Munir Husain and others v. Riffat Shamim and others (2023 SCMR 6). In the first case of Laila Qayyum (supra), the Law Officer of NADRA appeared and stated that, in accordance with their applicable procedure, NADRA had verified Laila's matriculation certificate / secondary school certificate, which was issued long before the filing of the suit. The certificate listed Laila as the daughter of Abdul Qayum, and based on this, a Computerized National Identity Card (CNIC) was issued, showing her as Abdul Qayum's daughter, in compliance with his Family Registration Certificate. However, this is not the situation in the present case, as no document has been presented to the Court to support the assertion made by the learned Counsel for the applicant as no FRC of the whole family when the parents were alive is on the record.

9. A person who claims to have been born to a couple during their wedlock and seeks to inherit the property of a deceased person must produce adequate proof to support this claim. No such proof was brought on record in this case. In my view, the appellate Court rightly remanded the matter to the trial Court to consider the facts and decide the case on its merits, after hearing the parties and allowing them to lead their evidence. Consequently, this Civil Revision is **dismissed**.

10. Now, coming to Civil Revision No. S-202 of 2022, which has been filed against the order dated 07.09.2022, passed by the learned District Judge, Sukkur in Civil Misc. Appeal No.02 of 2021. Through which appeal, the order dated 23.12.2021, passed by the learned Senior Civil Judge-I,

Sukkur in F.C. Suit No. 161 of 2020, was challenged, whereby the application filed under Order I Rule 10, CPC, by respondent No.1 (defendant therein) to implead four persons — allegedly the real mother and siblings of the applicant (plaintiff therein) — was dismissed. The learned District Judge, Sukkur, set aside this order and allowed the application under Order I Rule 10, CPC, directing respondent No.1 to join the said named persons as defendants in the suit.

11. In view of the circumstances and the dictum laid down by the Hon'ble Apex Court, which emphasizes that matters should be decided on merits rather than on technicalities, this Civil Revision is also **dismissed**.

12. The trial Court is directed to proceed in accordance with the mandate of the appellate Court's orders, hear the matter and allow the parties to lead any evidence they may have. The learned trial Court is further directed to consolidate both suits and decide the matter in accordance with law, preferably within six months.

Office is directed to place a signed copy of this order in the captioned connected matter.

J U D G E

Shabir/P.S