

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ

Mr. Justice Jawad Akbar Sarwana

High Court Appeal No. 219 of 2024

Mst. Naila Shahbaz

Versus

Mrs. Amna Ashfaq & others

Date of Hearing: 28.01.2025

Appellant: Through M/s Asim Iqbal and Farmanullah Advocates.

Respondent No.1: Through Mr. Shujaat Ali Khan Advocate.

Respondents No.3 and 4: Through Mr. Nadeem Memon Advocate.

Respondents No.2, 5 & 6: Through Mr. Nadeem Memon Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, CJ.- Appellant, being aggrieved of and dissatisfied with the order dated 06.05.2024, passed in Succession Misc. Application No.99 of 2022, has filed this appeal.

2. Brief facts of the case are that a Succession Miscellaneous Application was filed in respect of assets left by deceased Noor Muhammad son of Jan Muhammad. The deceased was survived by a widow Amna Ashfaq and Noor Fatima, minor daughter, as being “sharers” whereas nephews, Muhammad Nouman and Muhammad Salman, of the deceased were shown as residuaries as being male descendants of deceased’s real brother. The appellant being real sister of the aforesaid residuaries i.e. niece of the deceased filed this appeal that since her brothers have qualified as being residuaries, therefore, she should have also been categorized as one of residuaries and hence be declared as eligible to inherit the assets left by the deceased Noor Muhammad for the leftover assets. Such objection/assertion was not

acceded to by learned Single Judge. The reasons have been provided by the learned Single Judge for not considering such objections in favour of the appellant hence this appeal.

3. We have heard learned counsel appearing for the parties and perused material available on record.

4. There are three classes/categories of legal heirs namely “sharers, residuaries and distant kindred”:

- i) “Sharers” are those who are entitled to a prescribed share of inheritance;
- ii) “Residuaries” are those who take no prescribed share but succeed to the “residue” after claims of sharers are satisfied; and
- iii) “Distant kindred” are all those relations by blood who are neither sharers nor residuaries.

5. The deceased was not survived by male descendant hence the sharers i.e. widow and daughter as female descendants qualify directly to a prescribed share of inheritance and left over devolved upon the residuaries. In the event that no “residuaries” are available the assets could have fallen in the pool of distant kindred but that is not the situation here. The only attempt made by the appellant was that the female descendant of the brother of the deceased i.e. niece/nieces of the deceased should also be qualified as residuaries, which we resolve as under.

6. The deceased belonged to Hanafi school of thought. No one has disputed to the inheritance of the sharers i.e. widow and the daughter of the deceased. Thus, the only question that requires consideration is whether the female descendant of the brother of the deceased could have fallen in the category of residuaries.

7. The table of the Residuarities in “Order of Succession” is provided in Para/Section 65 of Mohammadan Law. At Sr. No.9 the descendant frame under Mohammadan Law is shown as “Full Brother’s Son”, only. The articulation is “Full Brother’s Son”. The table of Residuarities in the “Order of Succession”, does not disclose the daughter of full brother of the deceased as Residuarities. The absence of mention of “daughter” in the category of Residuarities carries weight. This missing reference of “daughter” is then taken up in Para/Section 68 titled, “Four Classes”. Para/Section 68 describes (1) “distant kindred” is to be divided into four classes and picks up on the missing link in Class III, i.e. the deceased brother’s daughter. Deceased’s brother’s daughter and her descendants are described as “distant kindred” within the qualification of Third Class of inheritance. Therefore, unless the category of Residuarities to claim inheritance is/are not available, only then the “distant kindred” could have qualified for inheritance.

8. These objections of the objector (appellant herein) were rightly declared to have not been tenable hence the appellant being one of the nieces of the deceased does not qualify on the aforesaid analyses and hence the appellant and/or any other real sister is not held to be entitled to inherit any of the assets left by the deceased disclosed in the succession petition. The impugned order does not require any interference of this Court. The appeal thus merits no consideration and the same is hereby dismissed along with pending application.

Dated: 30.01.2025

Chief Justice

Judge