

# IN THE HIGH COURT OF SINDH AT KARACHI

**Miscellaneous Appeal No. 26 of 2024**  
[Shreemati Sarswati Devi vs. Shreemati Janki Bai]

Appellant : Shreemati Sarswati Devi through  
Mr. Anand P. Kamrani, advocate

Respondent No.2 : Shreemati Janki Bai through  
Ms. Sadaf Gul, Advocate

Date of Hearing : 17.02.2025

Date of Decision : 05.03.2025

## **J U D G M E N T**

**Jan Ali Junejo, J. ---** The appellant has challenged the Order dated 29.01.2024 (hereinafter referred to as the *Impugned Order*) passed by the learned District Judge, Karachi-South in S.M.A. No.336 /2024 whereby granted the share of the Respondent No.2 Shreemati Janki Bai to be deposited with the Nazir till arrival/appearance of the Respondent No.2.

2. The essential facts leading to the filing of this Miscellaneous Appeal are that the Appellant filed SMA No. 336/2023 before the District Judge South, requesting the issuance of a Letter of Administration for a 2016 Mehran car (Registration No. BEY-652) and a Succession Certificate for an amount of Rs. 1,45,00,000 left by her late husband, Khemchand, who passed away on December 24, 2022, in Karachi. The deceased was survived by three daughters, two sons, and a widow. The Appellant claimed that, under Hindu law, married daughters cannot inherit from their father's estate during life time of their mother. Two daughters, Shreemati Hardevi and Shreemati Rajkumari, filed affidavits of no objection, but the third daughter, Janki Bai, residing in the Philippines, was listed as an objector. Notices were served, and an

advocate appeared for Respondent No. 2 but did not file a Vakalatnama. The Trial Court, after hearing the Appellant's advocate, passed an order on 29.01.2024, granting the deceased's daughters a share in the estate, contrary to the Appellant's claim under Hindu law. One of the sons, Sudesh Kumar, died on 07.02.2024, leaving behind three legal heirs (Rahul, Hunesh Kumar, and Liza Kumari). The Appellant asserted that Sudesh Kumar's heirs should inherit his share, as he had separated from his wife in 2009, and she remarried. The Appellant contended that the Trial Court erred by:

- Ignoring Hindu inheritance laws and traditions.
- Referencing irrelevant constitutional articles, international conventions, and Indian amendments to Hindu law, which are not applicable in Pakistan.
- Misapplying Mitakshara law, which pertains to joint family property, whereas the deceased's property was exclusive.

The Appellant further asserted that Janki Bai's objection holds no legal weight under Hindu law, as married daughters cannot inherit from their parents' estate. The Appellant seeks to set aside the Trial Court's order and requests the issuance of a Succession Certificate for Rs. 1,45,00,000 (instead of Rs. 1,34,00,000) and a Letter of Administration, limiting inheritance to the sons, widow, and grandchildren of the deceased.

3. On being noticed, the Respondent No.2 entered her appearance and filed objections wherein it is stated that Respondent No. 2, being the daughter of the deceased Khemchand, is entitled to her rightful share of inheritance under the law. As a widow and daughter, her rights are protected by the Constitution of Pakistan, 1973, which ensures equality without discrimination based on sex, caste, creed, or race. Any law that conflicts with the Constitution of Pakistan is considered "*ultra*

*vires*" (null and void). The Constitution is the supreme law, and it guarantees equal rights to men and women, including the right to inherit property. The appeal is contended to be unsustainable as it seeks to deprive Respondent No. 2 of her legal inheritance share. The District Court has thoroughly examined the inheritance laws, traditions, and customs relevant to the case. The court's decision aligns with constitutional provisions that protect the rights of women, including Respondent No. 2. The Constitution of Pakistan explicitly prohibits gender discrimination (Articles 25, 27, 34, and 38). These provisions ensure that women, including Respondent No. 2, are entitled to equal protection under the law. The courts have a duty to uphold these constitutional guarantees. The Supreme Court of India's interpretation of the Hindu Succession (Amendment) Act, 2005, is cited as a precedent. This amendment granted daughters equal rights to inheritance as sons, eliminating gender-based discrimination in Hindu law. The Pakistani courts are urged to adopt a similar approach to ensure gender equality in inheritance matters. The Mitakshara system, which historically favored male heirs, is criticized for its discriminatory treatment of daughters. However, modern interpretations and amendments, such as the 2005 Hindu Succession Act, have rectified this by granting daughters equal rights. Any law or custom that contradicts constitutional principles of equality is deemed invalid. The appellant is accused of having ulterior motives to deprive Respondent No. 2 of her rightful inheritance. The appeal is asserted to be based on distorted facts and should therefore be dismissed. Respondent No. 2, living abroad, was unable to travel to Pakistan immediately after her father's death due to logistical challenges. Her rights should not be compromised due to her absence. In conclusion, the objections emphasize that Respondent No. 2's inheritance rights are protected under the Constitution of Pakistan and relevant laws. The appeal is seen as an attempt to undermine these rights,

and this Court is urged to dismiss it in favor of upholding gender equality and constitutional principles.

4. The learned counsel for the Appellant has argued that, under traditional Hindu law as practiced in Pakistan, married daughters do not inherit from their father's estate during life time of their mother. He emphasized that established customs and traditions should prevail. The learned counsel contends that the Trial Court erred by referencing: Constitutional articles, international conventions, and Indian amendments to Hindu law, which he asserts are not applicable in Pakistan. The learned counsel for Appellant argues that the Trial Court misapplied Mitakshara law, which pertains to joint family property. It is asserted that the deceased's property was his exclusive property, not joint family property. The learned counsel for Appellant claims that Janki Bai's objection has no legal standing under traditional Hindu law, as married daughters are excluded from inheritance. The learned counsel for Appellant seeks:

- A Succession Certificate for Rs. 1,45,00,000 (correcting the Trial Court's amount of Rs. 1,34,00,000);
- A Letter of Administration that limits inheritance to the sons, widow, and grandchildren of the deceased, excluding the married daughters.
- The Appellant's counsel argues that Sudesh Kumar's children should inherit his share of the estate.

5. Per contra, the learned counsel for the Respondent No. 2 has argued that the inheritance rights of the Respondent No.2 are protected by the Constitution of Pakistan, 1973, which guarantees equality without discrimination based on sex. She argues that any law or custom conflicting with the Constitution is "ultra vires"

(null and void). The learned counsel for Respondent No. 2 highlights constitutional provisions (Articles 25, 27, 34, and 38) that prohibit gender discrimination and ensure equal rights for women. The learned counsel for Respondent No. 2 cites the Supreme Court of India's interpretation of the Hindu Succession (Amendment) Act, 2005, as a precedent for granting daughters equal inheritance rights. It is argued that Pakistani courts should adopt a similar progressive approach. The learned counsel criticizes the Mitakshara system for its historical discrimination against daughters. She argues that modern interpretations and amendments have rectified these discriminatory practices. The learned counsel for Respondent No. 2 urges the Court to dismiss the appeal and uphold constitutional principles of gender equality and equal protection under the law.

6. I have considered the arguments advanced by the learned counsel for both the parties and perused the material available on record with utmost care and caution. Upon careful consideration of the arguments and the record, this Court finds that the learned District Court's order cannot be sustained. The learned District Court's reliance on constitutional articles, international conventions, and Indian amendments, which are not applicable in Pakistan, is misplaced. The laws and customs applicable to the Hindu community in Pakistan must be interpreted within the Pakistani legal framework. The appellant correctly pointed out the misapplication of Mitakshara law. Mitakshara law pertains to joint family property, whereas the deceased's property was his exclusive property. The learned District Court failed to differentiate between these two distinct types of property, leading to a flawed decision. The central issue in this appeal is the inheritance rights of married daughters under Hindu law as applicable in Pakistan. The appellant contended that according to traditional Hindu law and customs in Pakistan, married

daughters do not inherit from their father's estate during life time of their mother. This Court finds merit in this argument. The established customs and traditions of the Hindu community in Pakistan, which have been consistently applied and recognized, should prevail. The learned District Court's decision to grant a share to Janki Bai, a married daughter during life time of her mother, is contrary to the traditional Hindu law applicable in Pakistan. The learned District Court's reliance on the Indian amendment of 2005 is irrelevant in the Pakistani context. Under the Mitakshara system of Hindu Law, daughters are not entitled to inherit from their father's estate during the lifetime of their mother. Their right to inherit only arises after the death of their mother. This principle is rooted in the traditional framework of the Mitakshara system, which prioritizes the rights of the mother as the immediate female heir. It is further clarified that the rule of survivorship applies exclusively to joint family property, where the property passes to the surviving coparceners by virtue of their birthright. In contrast, the rule of succession governs property held in absolute severalty by the last owner, meaning it is treated as separate and self-acquired property. In this case, since the deceased was the last full owner of the property, the rules of succession would apply to determine its distribution. Under these rules, a widow does not acquire absolute ownership of her husband's estate but instead holds a limited interest, known as the widow's estate. This interest is a life estate, allowing her to possess and enjoy the property during her lifetime but restricting her from alienating it except under specific conditions. Upon her death, the estate does not pass to her own heirs but instead devolves upon the next heirs of her husband, as determined by the rules of succession under Hindu Law. This ensures that the property remains within the husband's lineage, aligning with the principles of the Mitakshara system, which emphasize the preservation of family property within the paternal line.

7. In the matter of *Mrs. Ratna Devi, W/o. Justice (Retd.) Rana Bhagwandas (PLD 2016 Sindh 197)*, this Court held that under the Mitakshara system of Hindu Law, daughters during the lifetime of their mother are not entitled to inherit from their father's estate. This right accrues to them only after the death of their mother. This Court clarified that the rule of survivorship applies to joint family property, while the rule of succession applies to property held in absolute severalty by the last owner. In this case, the deceased was the last full owner of the property, and therefore, the rules of succession would apply. This Court also held that a widow takes only a limited interest in her husband's estate, known as the widow's estate, and upon her death, the estate devolves upon the next heirs of her husband.

8. For the foregoing reasons, this Misc. Appeal is allowed. The Impugned Order dated 29.01.2024, passed by the learned District Judge, Karachi-South, in S.M.A. No.336/2023, is hereby set aside. Consequently, the Succession Certificate shall be issued for Rs. 1,45,00,000, letters of administration in respect of Suzuki Mehran car bearing registration No.BEY-652, Model 2016, Engine No.PK13637110, Chassis No.SB308K01175600 in the name of deceased Khemchand and the inheritance shall be limited to the sons, widow, and grandchildren of the deceased, excluding the married daughters. The parties are left to bear their own costs in relation to these proceedings.

**JUDGE**