

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA.

Civil Succession appeal : No. 06 /2021

Presented on
25 OCT 2021
Addl. Registrar

Mst: Farzana D/O Behram Khan, Wd/o Late Abdul Hameed,
Muslim, Adult, By caste Sanjrani,
R/O Sanjrani Muhalla, Khanpur
Road Shikarpur, District Shikarpur.....Appellant

Versus

1. Almas D/O Late Abdul Hameed
2. Muhammad Waqas S/O Late Abdul Hameed
3. Baby Farhana D/O Late Abdul Hameed
4. Shahbaz S/O Late Abdul Hameed

All Muslims, Minor by caste sanjrani
R/O Muhalla Sanjrani Khanpur Road, Shikarpur.
Through their maternal uncle Guardian ad litem
Azizullah S/O Behram Khan Sanjrani
R/O Muhalla Sanjrani Khanpur Road, Shikarpur.

5. Bibi Basran Wd/o Late Muhammad Ramzan
Muslim, Adult, By caste Sanjrani,
R/O Sanjrani Muhalla, Khanpur Road Shikarpur

6. Public in General.....Respondents



FIVE RUPEES
CANCELLED ON

SUCCESSION APPEAL U/S 384 SUCCESSION ACT, 1925

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Civil Succession Appeal No.06 of 2021

Appellant : Mst. Farzana D/o Behram Khan
through Mr. Waqar Ahmed Abro, Advocate

Respondent No.5 : Bibi Basran Wd/o Late Muhammad Ramzan
through Mr. Abdul Rauf Korai, Advocate.

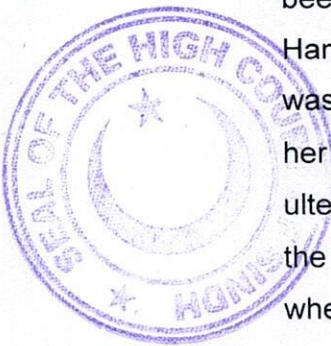
Date of hearing : 03.03.2025

Date of order : ~~23~~-04.2025

ORDER

KHALID HUSSAIN SHAHANI, J –Through the present succession appeal, the appellant seeks the intervention of this Court, being aggrieved and dissatisfied with the impugned order dated 24.09.2021, passed by the learned Ist Additional District Judge, Shikarpur, whereby her application for issuance of a succession certificate was declined.

2. The facts giving rise to the filing of the present civil succession appeal are that the appellant was lawfully wedded to Abdul Hameed, and the marriage was blessed with two sons and two daughters. During his lifetime, Abdul Hameed initiated divorce proceedings against the appellant. However, before the expiry of the Iddat period of ninety (90) days, reckoned from the date of service of the notice of divorce, Abdul Hameed was murdered. The appellant asserts that had her husband survived during this period, he remained legally entitled to revoke the divorce in accordance with the reconciliation mechanism stipulated under Section 7 of the Muslim Family Laws Ordinance, 1961, which had not yet been concluded at the time of his death. At the time of his demise, Abdul Hameed was serving as a Police Constable in the Special Branch and was posted at Shikarpur. Following his death, the appellant alleges that her brother-in-law maliciously implicated her in a criminal case with the ulterior motive of depriving her minor children of their lawful right to inherit the estate and service benefits of their deceased father. Furthermore, when the appellant approached the concerned department to obtain details pertaining to the service benefits of her late husband, her request was declined on the pretext that the deceased's brothers had created obstacles and were preventing the release of such information.



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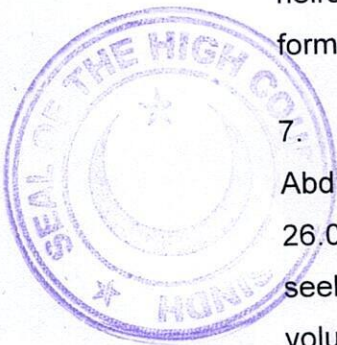
3. Upon receiving notice, Respondent No. 5, the deceased's mother, formally objected to the appellant's claim, primarily contending that: (1) the appellant was allegedly involved in her son's murder, thus disqualifying her from claiming any service benefits; (2) the marital union between the appellant and deceased had been legally dissolved through divorce during his lifetime, thereby nullifying her spousal rights; and (3) the appellant's claim constitutes an improper attempt to deprive the deceased's minor children of their lawful inheritance. The respondent accordingly prayed for rejection of the appellant's claims to protect the legitimate interests of the legal heirs.

4. It is pertinent to note that Respondent No. 5 had previously challenged the subject matter in Civil Succession Appeal No. S-05/2021 (Bibi Basran vs. Mst. Farzana and others), which was ultimately dismissed as withdrawn by this Court vide order dated 03.03.2025. Significantly, on the said date, Respondent No. 5 appeared before the Court through her duly appointed counsel and expressly recorded her no objection to the grant of the appeal, thereby abandoning her earlier stance on the matter.

5. Heard and perused the material placed on record.

6. Upon perusal of the impugned order, it is evident that the learned trial court dismissed the succession application by adjudicating the following three substantive issues against the petitioner: (i) whether the marital union between the petitioner and the deceased Abdul Hameed subsisted until his demise, particularly in light of the alleged pronouncement of triple talaq by the deceased and the attendant question of iddat observance; (ii) the implication of the petitioner's status as a prime accused in the murder case of Abdul Hameed on her inheritance rights; and (iii) the determination of lawful custody of the minor children (legal heirs) of the deceased. The court's findings on these issues collectively formed the basis for rejecting the appellant's claims.

7. The record establishes that the appellant's marital relationship with Abdul Hameed was first terminated through divorce pronounced on 26.05.2016, where after the appellant instituted Family Suit No. 62/2016 seeking maintenance, dower, and dowry articles; however, the suit was voluntarily withdrawn during pretrial proceedings upon marital reconciliation. Subsequently, the deceased pronounced a second divorce on 03.11.2020, following which he was murdered, leading to the registration of Crime No. 249/2020 at PS New Foujdari, Shikarpur, against

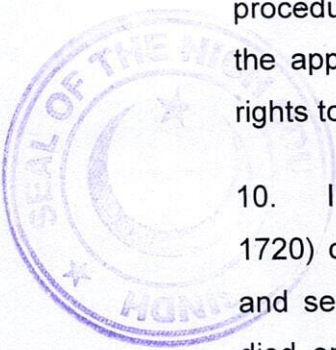


the appellant and four others. The criminal proceedings culminated in the acquittal of all accused persons by the learned 1st Additional Sessions Judge, Shikarpur, vide judgment dated 22.11.2023, which has attained finality as confirmed by the appellant's counsel, no appeal having been preferred against the acquittal order.

8. The record establishes that while the second pronouncement of talaq occurred on 03.11.2020, the deceased Abdul Hameed's demise on 11.12.2020, a mere 39 days thereafter, preceded the completion of the mandatory 90-day iddat period required for the divorce's finalization under Islamic law. Consequently, at the time of death, the marital bond remained legally extant, as succession rights crystallize immediately upon death and cannot be prejudiced by an inchoate divorce. The appellant therefore retains her status as the lawful widow and is entitled to inherit from the deceased's estate and claim all attendant service benefits, the incomplete divorce proceedings having no legal efficacy to extinguish her inheritance rights under the applicable succession laws.

9. Even ex-hypothesis that the talaq was properly pronounced on 03.11.2020, such pronouncement could not legally deprive the appellant of her inheritance rights absent full compliance with the mandatory procedural requirements under Section 7 of the Muslim Family Laws Ordinance, 1961, which necessitates: (i) immediate submission of the divorce notice to the Chairman of the relevant Union Council; (ii) proper notification to the wife; and (iii) initiation of statutory reconciliation proceedings during the 90-day period. The record contains no evidence of such compliance, nor any assertion that the prescribed procedure was followed. Critically, the deceased's demise on 11.12.2020, occurring before the expiration of the statutory 90-day period, rendered the divorce procedurally incomplete and substantively ineffective, thereby preserving the appellant's status as the lawful widow with unassailable inheritance rights to the deceased's estate and service benefits.

10. In the case of Mushtaq Ahmed vs Mst Sat Bhari (1994 S C M R 1720) one Gheba Khan divorced his wife Mst. Sat Bharai on 19-5-1969 and served notice under the Muslim Family Laws Ordinance, 1961. He died on 14-6-1969 before the 90-day notice period expired. The Union Council Chairman certified on 21-9-1969 that the divorce had not taken effect during Gheba Khan's lifetime. The petitioners filed a suit on 22.01.1970, challenging the Chairman's order and seeking to exclude Mst.

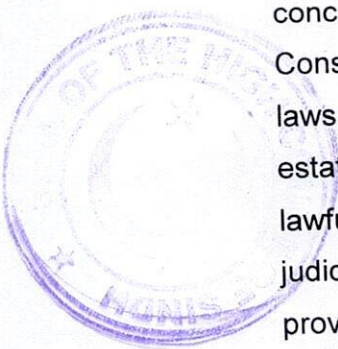


Sat Bharai from inheritance, which was rejected. They filed another suit claiming ownership of Gheba Khan's land and denying Mst. Sat Bharai's inheritance rights, which was dismissed by the trial court (6-5-1971), affirmed in first appeal, and finally rejected in second appeal through the impugned judgment. Division Bench of Hon'ble Supreme Court refusing leave to appeal held as under:

"Besides this the case is governed by section 7(3) of the Ordinance, which provides that save as provided in subsection (5) Talak unless revoked earlier expressly or otherwise shall not be effective until the expiration of 90 days from the date on which notice under subsection (1) is delivered to the Chairman. The present case does not fall under subsection (5) which is irrelevant for this controversy. However, in view of subsection (3) Talak shall not be effective till the expiry of 90 days from the date of service of notice to the Chairman. Reference can be made to Muhammad Salahuddin Khan v. Muhammad Nazir Siddiqui and others (1984 SCMR 584). From the facts narrated above it is clear that Gheba Khan died much before the expiry of 90 days. During this period, if he would have been alive, he would have had the option to revoke the divorce pronounced by him. There is a procedure provided under law under which reconciliation proceedings are initiated and it is only on expiry of 90 days of service of notice that the Talak becomes effective. On the date Gheba Khan died, Talak had not become effective in terms of section 7 of the Ordinance. Therefore, the respondent continued to be his wife. In these circumstances, she was entitled to inherit the property of her husband."

11. The ratio of the said case is identical to legal reasoning involved in the present case. The Division Bench of this Court in the case of Roheela Yasmeen vs Neelofer Hassan (2017 CLC 516 Sindh), followed the same view.

12. With respect to the second issue, the appellant's acquittal in the referenced murder case (FIR No. 249/2020) by the competent court of jurisdiction through its final judgment dated 22.11.2023 operates as a conclusive determination of her non-involvement in the alleged offense. Consequently, no legal impediment exists under the applicable succession laws or service regulations that would disqualify her from inheriting the estate of the deceased or receiving the attendant service benefits as his lawful widow. The principle of presumption of innocence, fortified by the judicial acquittal, coupled with the absence of any contrary statutory provision, affirmatively establishes her entitlement to the claimed benefits. For this view reliance is placed upon the case of Zaib-un Nisa vs Safina Bibi (PLD 3008 Peshawar 129) in which it was held that, "There is no cavil with the proposition that any person committing patricide or matricide or any homicide of his predecessor in interest disentitles him to the

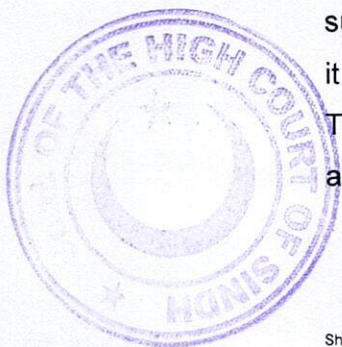


inheritance under Muhammadan Law. But the proposition is subject to the condition that when charge of homicide is proved and he is convicted of the murder of the *prepositus* and the conviction is finally maintained by the Courts of law. Till then, 'no heir can be deprived of the inheritance, merely because he is only charged for the offence.' Same view was taken in the case of *Mehmood Bibi vs Sirajuddin* (2006 CLC 1855, Lahore).

13. So far as the third issue is concerned the custody of the deceased's minor legal heirs, the record demonstrates that Respondent No. 5 has expressly consented to the current arrangement, as evidenced by: (i) withdrawal of Civil Succession Appeal No. S-05/2021, and (ii) her personal appearance before this Court to formally record no objection to the present appeal. It is pertinent to note that Respondent No. 5's opposition was specifically limited to challenging the appellant's share in the estate, and did not extend to contesting the inheritance rights of the legal heirs collectively, thereby leaving the matter of the minors' custody undisputed.

14. In view of the above, the appellant is entitled to receive the inheritable service benefits or TARKA of her deceased husband.

15. For the aforementioned reasons the impugned order dated 22.11.2023 passed by the learned 1st Additional District Judge, Shikarpur, suffers from legal infirmities warranting judicial intervention. Consequently it is hereby set aside. The succession application stands allowed. Learned Trial Court is directed to issue the succession certificate in favor of the appellant. All listed application[s] stand disposed of.




Shahbaz/PA

Certified to be True Copy


Assistant Registrar

JUDGE

Announced by me.


23/4/2025

Justice JAN ALI JUNEJO