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

*Civil Revision Application No. S-113 of 2023*
*(Bahadur and others Vs. Qaimuddin and others)*

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| Applicants | : | Bahadur and others *through* M/s. Ghulam Dastagir A. Shahani and Abdul Rehman A. Bhutto, Advocates. |
| Respondents | : | Qaimuddin and others *through* Mr. Muhammad Qasim Khan, Advocate and Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh. |
| Date of Hearing | : | 20.10.2025. |
| Date of Decision | : | 20.10.2025. |
| Date of Reasons | : | 23.10.2025. |

## ***JUDGMENT***

***Ali Haider 'Ada'.J:-*** Through the instant Civil Revision Application, the applicant has assailed the judgment and decree dated 07.12.2022, passed by the learned Senior Civil Judge, Kandhkot (trial Court) in F.C. Suit No.57 of 2021, instituted by the respondent as plaintiff, wherein the suit was decreed in favour of the respondent. Being aggrieved by the said decision, the applicant preferred a civil appeal before the learned Additional District Judge-II, Kandhkot (appellate Court), which, after hearing the parties and reappraising the evidence, maintained the findings of the trial Court. The applicants, have now invoked the revisional jurisdiction of this Court through the present Civil Revision Application, calling in question the concurrent findings of the Courts below.

2. Briefly, the respondents, namely Qaimuddin and others, instituted a Civil Suit for Declaration, Possession, Mesne Profits, and Permanent Injunction, asserting that they, being the grandsons of the common ancestor Nehal Khan and cousins of the applicants/defendants, have inherited ownership rights in the suit property through succession in respect of property bearing Survey No.322 and 315/2, situated in Deh Rehmat Abad, Kandhkot (Suit Property). It was contended that the applicants/defendants unlawfully denied the respondents/plaintiffs their rightful possession over the said property. Consequently, the respondents/plaintiffs sought mutation

of the record of rights in their favour under inheritance, partition of the property according to their legal shares, and delivery of possession thereof. Upon service of summons, the applicants/defendants filed their written statement, wherein they contested the claim and asserted that the suit property exclusively belongs to them by virtue of a will deed executed by the ancestor, namely Nihal, in favour of their father, Ramzan. On this basis, they denied the respondents/plaintiffs' claim of co-ownership under inheritance. Subsequently, the respondents/plaintiffs filed an amended plaint, specifically challenging the validity, genuineness, and execution of the said will deed relied upon by the applicants/defendants.

3. After completion of the necessary legal formalities and proceedings, the learned trial Court framed the following issues for determination:

*i) Whether, the suit of plaintiff is not maintainable and barred by law, does not disclosed cause of action against defendants?*

*ii) Whether, plaintiffs entitled to the extent of their shares from suit land left by late Nihal Khan?*

*iii) Whether, the defendants No.1 to 3 have illegally dispossessed the plaintiffs from the suit property and occupied the same agricultural land?*

*iv) Whether, the grandfather of plaintiffs namely Nihal Khan had given the suit property to his grandson Muhammad Ramzan, the father of defendant No.1 to 3 through registered will deed No.36, dated 21.02.1983?*

*v) Whether, the defendants have manipulated a deed of will bearing Jiryan No.36, dated 21.02.1983 and same is liable to be cancelled?*

*vi) Whether, the plaintiffs are entitled for mesne profit?*

*vii) What should the decree be?*

4. After framing of the issues, the learned trial Court recorded the evidence of the plaintiffs/respondents, followed by the evidence of the applicants/defendants. Upon completion of the trial and hearing the arguments advanced by the learned counsel for the respective parties, the learned trial Court decreed the suit in favour of the respondents/plaintiffs. The Court also declared the impugned will deed as cancelled and ordered partition of the suit property according to the respective shares of the legal heirs, directing that the parties may approach the competent revenue authorities for mutation and implementation of the decree in accordance with law. The applicants/defendants, being aggrieved by the said judgment and

decree, preferred an appeal before the learned appellate Court. However, the learned appellate Court, after reappraisal of the evidence and material available on record, upheld the findings of the trial Court and dismissed the appeal. The applicants, have filed the present Civil Revision Application.

5. Learned counsel for the applicants submitted that, according to the record, the father of the applicants, namely Ramzan, had duly established his legal character and ownership by virtue of a will deed executed by the original owner of the suit property in his favour. He contends that after a lapse of almost seventeen (17) years, the respondents have now raised a claim of ownership over the property, which is barred by law and limitation. It is further argued that the matter of partition of property falls within the exclusive domain of the revenue authorities, and therefore, the respondents ought to have approached the competent revenue forum instead of filing a civil suit. The learned counsel maintained that the will deed was validly executed and has attained finality, having remained unchallenged for many years, hence the respondents have no lawful claim over the suit property by way of inheritance, as the ancestor had already decided the ownership question during his lifetime in favour of the applicants' father. In support of his submissions, learned counsel placed reliance upon the cases reported as PLD 1977 SC 220, 1968 SCMR 214, NLR 1989 SCJ 811, PLD 1986 Karachi 73, 2021 MLD 531, and 2007 CLC 1790.

6. Conversely, learned counsel for the private respondents submits that the possession of the property was never disturbed, hence they had no prior knowledge of any alleged will deed. However, upon the filing of the civil suit, when the applicants produced the will deed through their written statement, the respondents promptly amended their pleadings and challenged its validity before the learned trial Court, which rightly framed a specific issue regarding the same. Learned counsel further argued that the impugned will deed is not only contrary to Shariat principles but also inconsistent with the law, as the document purports to transfer the entire share of the deceased ancestor, Nihal Khan, exclusively in favour of the applicants' father. He submits that, under the settled principles of Islamic law, a testator cannot bequeath more than one-third of his estate in favour of any heir without the consent of the remaining heirs; thus, the will deed in question is illegal, void, and ineffective to the extent beyond one-third share. It is argued that the will was fabricated with the intent to deprive the rightful legal heirs of their

inheritance. Learned counsel supported the concurrent findings of the Courts below and placed reliance upon PLD 1967 SC 200, 2007 SCMR 497, 1999 SCMR 971, 1992 SCMR 2182, 2022 CLC 1700, 2002 CLC 808, 2015 CLC 298, 2001 CLC 1323, 1988 CLC 931, 1997 CLC 2012, 1991 MLD 145, 1995 SCMR 1489, 2022 CLC 692, 2004 SCMR 877, 2010 SCMR 1868, 1991 MLD 145, and PLD 2023 Sindh 231.

7. Learned Assistant Advocate General, appearing for the official respondents, also supported the findings of the learned Courts below and contended that no illegality, irregularity, or jurisdictional defect has been pointed out by the applicants to warrant interference by this Court. He further submitted that the learned trial Court has already referred the matter to the competent revenue authority for effecting partition of the suit property in accordance with law.

8. Heard the learned counsel for the parties and perused the material available on record.

9. First and foremost, the entire claim of the applicants rests upon the will deed in question. A will, according to various schools of thought, is indeed a recognized instrument through which a person expresses his intention regarding the disposition of his property. However, such intention and disposition are not absolute in nature but are subject to certain legal limitations prescribed by the law. Therefore, while interpreting or relying upon a will deed, it must be examined strictly within the framework of the legal and religious parameters governing testamentary dispositions.

10. As, defined and elaborated in various legislative enactments and judicial interpretations across jurisdictions, the concept of a will has been consistently recognized as a testamentary disposition expressing the intention of a person regarding the distribution of his property after death. According to **F. B. Tyabji** in his authoritative treatise ***Muslim Law*** **(4th Edition, 1968)**, that: A "Will" is a legal declaration of intention of a Muslim with respect to his property which he desires to be carried into effect after his death. It is also defined as: A transfer of ownership for no consideration to take effect after death. **(Al-Abiani Muhammad Zaid, A brief commentary on the Sharia Provisions on Personal Status (Edition 1924), Cairo).** Another definition is: "A gift made by a person to another of a substance, a debt or a usufruct, in such a way that the beneficiary shall take possession of the gift after the death of the

testator. **(Sadiq As Sayyid, The Sunni Jurisprudence (Edition 1946), Cairo).** Yet another definition of Will is: "The will is an act by which the author thereof creates on the third of his property a right which becomes exigible on his death. **(Article 173 of the Personal Status Law of Morocco).** However, Egypt, Syria and Kuwait have adopted a simpler definition reproduced as "A disposition of the estate to take effect after death. **(Egyptian Article 1 of Act No.25/1929, Syrian Article 209 of Decree No.59/1953 and Article 213 of Act No.51/1984 of Kuwait).** Iraq has added implying transfer of ownership for no consideration to the said definition. **(Article 64 of the Personal Status Law No. 188/1959 as amended by Act No. 11/1963).** Tunisia has further added whether the property bequested is a substance or a usufruct. **(Article 171 of Personal Status Code Decree of 13/8/1956).** The Tunisian definition is the most comprehensive one. It includes a discharge of debt, or a right linked to property, like the deferment of a debt falling due. By "estate" is meant everything left by the deceased to devolve on heirs, including property, usufruct or any other right related to property. According to another definition, "estate" means all the property that a deceased Muslim owned at the time of his death, after his funeral expenses have been paid and his debts discharged. **(Jamal J. Nasir, The Islamic Law of Personal Status (2nd Edition 1990). Graham and Trotman, London).**

11. Now, in our country, the **Muhammadan Law** also explains the concept of will (wasiyyat) on almost the same footing as recognized in other jurisdictions. The principles governing bequests and testamentary limits are well defined under Islamic jurisprudence. Under the settled injunctions of Muhammadan Law, a Muslim may validly bequeath only up to one-third of his estate, and such bequest in favour of a legal heir shall not take effect without the consent of the remaining heirs given after the death of the testator. For ready reference, the relevant provision is reproduced as under:

> **117. Bequests to heirs.—***A bequest to an heir is not valid unless the other heirs consent to the bequest after the death of the testator. Any single heir may consent so as to bind his own share.*
>
> *Explanation—In determining whether a person is or is not an heir, regard is to be had, not to the time of the execution of the will, but to the time of the testator's death.*
>
> **118. Limit of testamentary power.—***A Mahomedan cannot by will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts. Bequests in excess of the legal third cannot take effect, unless the heirs consent thereto after the death of the testator.*

12. The pivotal question that arises for consideration is whether a will executed by a Muslim in favour of one of his legal heirs can take legal effect without the consent of the remaining heirs. Under the settled principles of Islamic jurisprudence and as recognized by the superior Courts of Pakistan, a bequest (wasiyyat) made in favour of any legal heir is not valid unless the other legal heirs expressly consent to such bequest after the death of the testator. In the present case, there is nothing on record to demonstrate that any of the other legal heirs of the deceased, namely Nihal, had ever given their consent to the will deed allegedly executed in favour of the applicants' father, Ramzan. In the absence of such consent, the said will deed cannot be given legal effect. The law does not permit one heir to be favoured over others through a one-sided testamentary disposition, as doing so would contravene the principles of equity and justice enshrined in the Islamic law of inheritance.

13. In the present case, the stance of the plaintiffs/respondents was that they were unlawfully deprived of their legitimate shares in the suit property on the basis of an alleged will deed purportedly executed in favour of the applicants' father. It is by now a well-settled proposition of law that the right to execute a will cannot be exercised to the detriment or exclusion of other legal heirs, as such a disposition would directly infringe upon their vested rights of inheritance. It is also a settled legal principle that a co-owner or co-sharer cannot alienate or transfer more than his own entitlement in a joint property. Reliance be made in the case of **Rab Nawaz and another v. Akbar Ali and others (1989 SCMR 93).** Further reliance may be placed on the judgments reported as **Ali Gohar v. Sher Ayaz (1989 SCMR 130)**, **Muhammad Hussain v. Wahid Bux (2004 SCMR 1137)**, and **Muhammad Shamim through legal heirs v. Nasir Fatima through legal heirs and others (2010 SCMR 18).**

14. Furthermore, once the legal heirs of the deceased have not consented to the alleged will, rather have specifically contested the same and termed it as being contrary to the principles of Muhammadan Law, the bequest cannot be given any legal effect. Under the settled injunctions of Islam and the consistent view of the Superior Courts, a testamentary disposition made by a Muslim in favour of any person: whether an heir or otherwise cannot exceed one-third of the estate, unless all the legal heirs consent to such bequest after the death of the testator. In the absence of such consent, the property of the deceased devolves upon his heirs strictly in accordance with the law of inheritance, and

any will executed beyond the permissible one-third limit stands invalid to that extent. Accordingly, since in the present case the other legal heirs neither assented to the will nor accepted its validity, the estate of the deceased was rightly ordered by the learned Courts below to devolve upon all heirs under the principles of inheritance, rendering the alleged will deed ineffective in law beyond one-third of the property. In Case of **Mahomed Hussain Haji Ghulam Mahomed Alam v. Alshabai and others (AIR 1935 Bombay 84),** the principle, that a bequeath to the heir can only be rendered valid by consent of the other heirs was followed. Similarly in case of **Muhammad Aslam Rashid and 2 others v. Dr. Muhammad Anwar Saeed and 4 others (1997 CLC 2012)**, held that if a Will had been executed in favour of one of the legal heirs, the assent of remaining heirs were essential after the death of Testator. In the absence of consent of all legal heirs, the Will was held not capable of enforcement. In the case of **Ihsan Ilahi and others v. Hukam Jan (PLD 1967 SC 2000), t**he same principles were authoritatively affirmed by the Hon'ble Supreme Court of Pakistan. It was held that in order to make a Will enforceable in favour of an heir consent of other heirs was imperative and more than 1/3rd share could not be bequeathed by testator. In another case **Abdul Razzaq and eight others. v. Shah Jehan and 5 others (1995 SCMR 1489).** The same principle was affirmed and followed. In the case of **Zakirullah Khan and others v. Faizullah Khan and others (1999 SCMR 971)** in the said case the Hon'ble Supreme Court held as under:-

> *Under the Islamic law, Saadullah Khan could not make any will in favour of any heir unless the other prospective heirs had consented such will and despite the Islamic law of inheritance being clear on this point, as the Appellate Court had illegally confirmed the will made by Saadullah Khan in favour of the appellants to the extent of 1/3rd of the suit land, the Appellate Court's illegal finding to the effect could be corrected by the High Court.*

15. Now, so far as the question of partition is concerned, the record reflects that the learned trial Court has already directed the matter to be referred to the competent revenue authorities for effecting partition of the property in accordance with law. Therefore, once the jurisdiction of the revenue hierarchy has already been invoked through the judgment of the learned trial Court, there remains no necessity for this Court to render any further findings on the question of jurisdiction or partition. Additionally, under Section 53 of the Land Revenue Act, 1967, the jurisdiction of the revenue authorities is confined to matters relating to declaratory issues concerning title or ownership. In the present case, the declaratory aspect has already been adjudicated upon by the

civil court of competent jurisdiction, and the partition proceedings have rightly been left to the revenue hierarchy to be carried out in accordance with law. Hence, no legal infirmity is found in such direction. For ready reference the **Section 53 of Land revenue Act** is read as under:

> **53. Suit for declaratory decrees by persons aggrieved by an entry in a record.** *If any person considers himself aggrieved by an entry in a record-of-rights or in a periodical record as to any right which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act 1 of 1877).*

16. Once the will deed is brought on record and it appears to be contrary to the principles of Muhammadan Law or the statutory requirements, it becomes the judicial duty of the Court to examine its legality, as the same directly affects the rights of other legal heirs. Any outlook that seeks to deprive lawful heirs of their rightful shares under a void or invalid will cannot be overlooked or allowed to stand. Reliance is placed upon the case of **Akram v. Vakeel Muhammad and others (2022 CLC 1700)**

17. Keeping in view the foregoing reasons and discussions, this Court finds no illegality, irregularity, or infirmity in the concurrent findings recorded by the learned Courts below warranting interference in revisional jurisdiction. Consequently, the instant Civil Revision Application being devoid of merit is hereby dismissed, with no order as to costs. The impugned judgment and decree of learned Courts below shall hold the field. These are the detailed reasons for the short order dated 20.10.2025.

***JUDGE***