JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Second Appeal No. 22 of 2025

Jawed Ahmed **...Appellant**

Versus

Province of Sindh and others **...Respondents**

For the Appellant	:	Mr. Muhammad Nadeem Halepoto, Advocate
For the Respondents Nos. 1 to 4	:	Nemo
For the Respondent No. 5	:	Mr. Sagar Ali Sathio, Advocate (appeared on 21.10.2026) and Ghulam Hussain, Respondent No. 5 (a) present in person
Date of Hearings	:	19.10.2026, 28.10.2026 & 04.11.2026
Date of Judgment	:	16.11.2026

JUDGMENT

Muhammad Humayon Khan, J.: This is a second appeal against concurrent findings of fact recorded by two learned Courts below. The dispute is in relation to the inheritance left by deceased Noor Muhammad son of Allah Warayo and Mst. Qamarunnisa wife of Noor Muhammad in the form of agricultural land measuring 30-02 acres in Deh Ram Diyali Wassan, Taluka Tando Muhammad Khan as well as one house in Village Mir Muhammad Nizamani, Taluka Tando Muhammad Khan (hereinafter referred to as the "suit property;" described properly in the suit).

2. In the backdrop of this dispu te, the Respondent Nos. 5 (a) to (c) ("private Respondents") as legal heirs of, and acting through, the Respondent No. 5 (Mst. Gul Afroz) instituted F.C. Suit No. 20 of 2022

against the Appellant and the Respondent Nos. 1 to 4 for declaration, cancellation, partition, possession and permanent and mandatory injunctions pleading as follows:

i) Deceased Noor Muhammad owned 15 paisa and Mst. Qamarunnisa owned 4 ¼ paisa share in the suit property.

ii) Mst. Qamarunnisa died and left behind Noor Muhammad (husband), Appellant (son) and Mst. Gul Afroz (Respondent No. 5; daughter) as her surviving legal heirs.

iii) Noor Muhammad died and left behind the Appellant (son) and the private Respondents as the husband and children of his predeceased daughter, Mst. Gul Afroz (Respondent No. 5), as per legal heirs.

iv) Mst. Gul Afroz also died and left behind the private Respondents as her legal heirs.

v) After the death of the original owners, the suit property devolved upon the private Respondents and the Appellant as per their respective shares.

vi) About one month ago, the private Respondents approached the Respondent Nos. 2 and 3 for the foti khata badal of the suit property, whereupon they came to know that the khata of deceased Mst. Qamarunnisa had already been changed in the name of deceased Noor Muhammad (husband) and the Appellant (son) while depriving Mst. Gul Afroz who is the wife of the Respondent No. 5(a) and the mother of the Respondent Nos. 5(b) and (c), while the khata of Noor Muhammad had not been changed.

vii) Thereafter, the private Respondents again approached the Respondent Nos. 2 and 3 for the foti khata badal of deceased Noor Muhammad in favour of the private Respondents and the Appellant but they refused and

stated that the Appellant was the only legal heir of the deceased and that the private Respondents do not have any right over the suit property.

viii) The private Respondents being the legal heirs of Mst. Gul Afroz the daughter of Noor Muhammad and Qamarunnisa are entitled to inherit the share of Mst. Gul Afroz which was inherited by her from deceased Noor Muhammad and Mst. Qamarunnisa.

ix) The claim of the Appellant as the sole legal heir and owner of the suit property is illegal, *mala fide* and against natural justice.

3. The suit was contested by the Appellant by filing his written statement wherein he denied the case of the private Respondents and pleaded the following defence:

i) Deceased Noor Muhammad inherited 00-15 paisa share out of his father's 00-50 paisa share in the suit agricultural land.

ii) He further inherited 00-01 ½ paisa share out of the 00-06 ¼ paisa share of Mst. Qamarunnisa.

iii) At the time of his death, he left behind 00-16 ½ paisa share in the suit land.

iv) Deceased Mst. Qamarunnisa did not leave behind 00-04 ¼ paisa share but left behind 00-06 ¼ paisa share (01-35 acres) in the suit agricultural land.

v) Deceased Noor Muhammad and Mst. Qamarunnisa did not leave behind any house and flour mill in Village Mir Muhammad Nizamani.

vi) Mst. Gul Afroz being the predeceased daughter of deceased Noor Muhammad cannot inherit from the estate left by deceased Noor Muhammad under the Sharia law.

vii) The Respondent No. 5(a) divorced Mst. Gul Afroz (Respondent No. 5) verbally in her lifetime and she was maintained by her father along with her both minor children. Therefore, the Respondent No. 5(a) is not a legal heir of Mst. Gul Afroz.

viii) Later on, the Respondent No. 5(c) was adopted as son in tender age by one Khan Muhammad Khaskheli, a peasant of a landlord namely Ali Muhammad Nizamani.

ix) Respondent No. 5 (b) was again taken into custody by the Respondent No. 5 (a) after the death of Mst. Gul Afroz (Respondent No. 5).

x) The suit is time-barred.

xi) The suit may be dismissed.

4. From the pleadings of the parties, the learned Senior Civil Judge framed eight (8) issues. At the trial, the private Respondents as plaintiffs examined three (3) witnesses whereas the Appellant examined himself. After hearing the parties, the learned Senior Civil Judge passed Judgment and Decree dated 05.09.2023 whereby he decreed the suit of the private Respondents as prayed. His findings are summarised as follows:

i) The suit is maintainable and not barred under any law.

ii) Mst. Gul Afroz predeceased her father, Noor Muhammad.

iii) The Respondent Nos. 5(b) and (c) are proved to be the legal heirs of Mst. Gul Afroz.

iv) The Appellant failed to prove that the Respondent No. 5(a) had given oral *talaq* (divorce) to Mst. Gul Afroz.

v) Mst. Gul Afroz had not waived her right of inheritance and this plea taken in evidence was not proved by the Appellant.

vi) Mst. Gul Afroz is entitled to her share of inheritance from Mst. Qamarunnisa (mother).

vii) Mst. Gul Afroz is entitled to her share of inheritance from deceased Noor Muhammad as his predeceased daughter under s. 4 of the Muslim Family Law Ordinance, 1961 (hereinafter the "MFLO").

viii) The private Respondents are entitled to the relief claimed.

5. Against the Judgment and Decree of the learned Senior Civil Judge, the Appellant filed Civil Appeal No. 48 of 2023 which came up before the learned Additional District Judge-II, Tando Muhammad Khan. After hearing the parties, the learned Additional District Judge dismissed the appeal and endorsed the findings of the learned Senior Civil Judge by Judgment and Decree dated 24.12.2024. The concurrent findings recorded by the two learned Courts have now been challenged by the Appellant before this Court in this second appeal. I have heard the learned Counsel and perused the record of the case with their assistance.

6. Mr. Muhammad Nadeem Halepoto argued, inter alia, that the impugned Judgments and Decrees of the two learned Courts below are based upon misreading and nonreading of evidence. He contended that the issue relating to the inheritance rights of a predeceased child is still pending before the Supreme Court and consequently the Judgment of the Federal Shariat Court on the same issue is intact, whereby s. 4 of the MFLO has been declared repugnant to the injunctions of Islam, and has not been set-aside and as such the Respondent No. 5 as predeceased daughter of Noor Muhammad would not be entitled to inheritance from him. He stated that, in view of this position, the private Respondents being the legal heirs of the Respondent No. 5 would not inherit from their

grandfather and thus had no *locus standi* to claim inheritance from him. He stated that the impugned Judgments and Decrees are in violation of s. 42 of the Specific Relief Act, 1877. He stated that the private Respondents had wrongly filed their suit before the civil court although the matter was within the jurisdiction of the revenue authorities. He stated that the matter of divorce from Respondent No. 5(a) to Mst. Gul Afroz was wrongly settled. He finally prayed for the appeal to be allowed and for the suit of the private Respondents to be dismissed with costs.

7. On the other hand, Mr. Sagar Ali Sathio for the private Respondents had appeared on 21.10.2026 and filed his written synopsis and stated that the same may be deemed to be his arguments. The said written synopsis was taken on the record and the Respondent No. 5 (a), who appeared in person on 04.11.2026, referred the Court to the said arguments and prayed for the appeal to be dismissed.

8. I first attend to the argument that s. 4 of the MFLO has been declared repugnant to the injunctions of Islam and that, since the appeal against the said judgment before the Shariat Appellate Bench of the Supreme Court is pending and not yet decided, the judgment continues to remain in field. This argument was made with reference to the ruling of the Federal Shariat Court in *Allah Rakha and others v Federation of Pakistan and others* PLD 2000 FSC 1, wherein s. 4 of the MFLO, in its current form, has indeed been held repugnant to the Injunctions of Islam. For reference, s. 4(1) of the MFLO reads as follows:

> "**4. Succession. –** (1) In the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall *per stirpes* receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive."

9. However, the subsequent limb of the argument is in ignorance of the proviso to Art. 203D (2) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") which reads (emphasis added by italicisation):

> "**203D. Powers, jurisdiction and functions of the Court. –**
>
> (2) …
>
> Provided that *no such decision shall be deemed to take effect* before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, *where an appeal has been so preferred, before the disposal of such appeal*:"

It will be seen that against the decision of the Federal Shariat Court in *Allah Rakha*, the aggrieved parties have preferred appeals before the Shariat Appellate Bench of the Supreme Court being Civil Sh. Appeal No. 01 of 2000 (*Tanveer Jehan and others v Federation of Pakistan and others*). Accordingly, by virtue of the proviso to Art. 203D (2) of the Constitution, the decision in *Allah Rakha* remains suspended and consequently s. 4 of the MFLO is in force.

10. Even otherwise, and without meaning any prejudice whatsoever to the findings in *Allah Rakha* and to any effect of the proviso to Art. 203(D) (2), it will be seen that the Federal Shariat Court has itself proposed and "preferred" the alternative mode of creation of a mandatory bequest in favour of orphaned grandchildren to the extent of 1/3rd of a grandparent's property being the prescribed maximum for purposes of Islamic bequests. In the present case, the dispute remains as to the inheritance of deceased Noor Muhammad who left behind one son (Appellant) and one predeceased daughter (deceased Mst. Gul Afroz, Respondent No. 5) and as such the share to be inherited by his grandchildren through Mst. Gul Afroz would only be 1/3rd which is in any case within the proposed mode of

the Federal Shariat Court. Reference may be made to para 61(c) of *Allah Rakha* wherein it is held as follows:

> "61. (c) that a provision can be made that in case a propositus dies without creating a will the will to the extent of 1/3rd in favour of the grand children out of the estate with a ceiling that it does not go beyond the share of their predecessor shall be deemed to have been created by the grand parents in their favour."

Quite importantly, under the Enforcement of the Shari'ah Act, 1991, the Court is required to prefer interpretations of legal provisions that are consistent with the injunctions of Islam where two or more views are possible. In the present case, since the matter is one involving inheritance by a daughter who would have inherited 1/3rd share from her father had she been alive, and which is the same as the ceiling limit of 1/3rd provided for bequests under the injunctions of Islam, I am inclined to interpret, without prejudice to the outcome of the judgment in *Allah Rakha* in the shariat appeals, that s. 4 creates a mandatory bequest in favour of predeceased daughters to the extent of 1/3rd inheritance of the propositus. With this understanding in mind, I am of the view that the learned Courts below have correctly held that the private Respondents as children of Mst. Gul Afroz, the predeceased daughter of deceased Noor Muhammad, would be entitled to inheritance to the extent of her 1/3rd share in the inheritance left by Noor Muhammad. This consequentially negates the argument that the private Respondents did not have *locus standi* to seek their right in Noor Muhammad's inheritance.

11. The next argument was that the revenue authorities had jurisdiction over the matter and that the private Respondents had wrongly filed the civil suit. However, this argument is also misconceived for two reasons. The first reason is that the Respondents had sought declaration of title and raised intrinsic

questions of fact relating to calculation and determination of inheritance rights and as such the matter required evidence which could not have been recorded by the revenue authorities. Consequently, the jurisdiction of the civil court was attracted to the matter. It is by now well-established that where intrinsic questions of fact and determination of title are involved requiring evidence, the summary jurisdiction of revenue authorities is excluded and the party may file a civil suit. The second reason is that the private Respondents having become co-owners of the suit property according to their respective shares were deemed to be in constructive possession of the same along with the Appellant and as such they were also entitled to file a civil suit under s. 53 of the Sindh Land Revenue Act, 1967, for the declaration of their right. Reference may be made for both these propositions to *Rasta Mal Khan and others v Nabi Sarwar Khan and others* 1996 SCMR 78. In these circumstances, this argument is also misconceived and the suit was rightly found to be maintainable.

12. Learned Counsel for the Appellant further contended that the Respondent No. 5(a) had divorced Mst. Gul Afroz orally during her lifetime; and that Mst. Gul Afroz had waived her right of inheritance from Mst. Qamarunnisa (her mother) during her lifetime. I have gone through the evidence of the case in detail and I fully agree with the findings of the learned Courts below to the effect that the Appellant failed to adduce sufficient evidence to prove these claims. The Appellant examined only himself in evidence (DW-1; Exh-46; pp. 101 to 107 of the Trial R&Ps) wherein he admitted as follows during cross-examination:

i) Mst. Gul Afroz was his real sister.

ii) Mst. Naila and Muhammad Ameen are the children of Mst. Gul Afroz.

iii) He has not pleaded the date or names of witnesses in whose presence the Respondent No. 5 (a) had allegedly pronounced talaq to Mst. Gul Afroz nor he has produced any evidence, witness or proof of the same.

iv) As per record, the Respondent No. 5 (a) is the husband of Mst. Gul Afroz till today.

v) As per Entry No. 41 in the revenue record, Mst. Gul Afroz is not shown as the legal heir of Mst. Qamarunnisa, her mother.

vi) Mst. Gul Afroz waived her right of inheritance from Mst. Qamarunnisa.

vii) He has not produced any evidence or proof that Mst. Gul Afroz had waived her inheritance from Mst. Qamarunnisa.

13. The learned Senior Civil Judge has reproduced and discussed the evidence recorded at trial through and through and has given due weight to the personal admissions and concessions of the Appellant in holding that there was no evidence to prove that Mst. Gul Afroz had ever surrendered her right of inheritance or that she had been divorced by the Respondent No. 5(a). In fact, these claims are based upon vague assertions only. I have not been able to find any misreading or nonreading or misinterpretation of the law in the Judgments and Decrees of the learned Courts below who have rightly observed that the suit of the private Respondents ought to have been decreed as it rightly was.

14. I finally turn to C.M.A. No. 2617 of 2026 which is an application under r. 27 of O. XLI read with s. 151 of the CPC whereby

the Appellant has sought the production of the following additional documents into evidence:

i) Family Registration Certificate (FRC) of the Appellant.

ii) A photocopy of *iqrarnama*/declaration on stamp paper concerning the alleged adoption of deceased Mst. Gul Afroz (Respondent No. 5)

iii) Certified copies of an application under rr. 1 and 2 of O. XVI of the CPC along with its supporting affidavit and the Order dated 29.09.2022 passed thereon.

iv) Certified copies of the case diary dated 29.09.2022 in F.C. Suit No. 20 of 2022 and the evidence of Sharjeel son of Nazeer Hussain, Senior Executive, NADRA Centre, Tando Muhammad Khan (PW-2; Exh-44).

15. I have gone through the FRC of the Appellant as well as the documents from the record of the civil suit which are already a part of the R&Ps of the trial Court and as such I believe there is no need to separately taken them into additional evidence and to their extent the application is infructuous. On the other hand, as to the photocopy of the iqrarnama/declaration of adoption, the said document tends to show that Mst. Gul Afroz was allegedly adopted by deceased Noor Muhammad and Mst. Qamarunnisa. The said document is *ex facie* inadmissible in evidence for at least two reasons. Firstly, it is a photocopy and no explanation for the non-furnishment of the original thereof has been furnished. The said document being a photocopy is not primary evidence under Art.73 of the Qanun-e-Shahadat Order, 1984 but rather secondary evidence under Art. 74 of the QSO which can only be admitted subject to the procedure provided which is as follows:

i) Firstly, at least one (or more) of the conditions provided under Art. 76 of the QSO must exist and the same must

be specifically stated and explained by the party seeking the production of such a document in secondary evidence.

ii) Secondly, if a document qualifies to be produced as secondary evidence, then a notice under Art. 77 of the QSO must be given to the party for production of the said document according to the procedure and manner laid in Art. 77. Thereafter, the Court may allow such a document to be produced in secondary evidence. (However, subject to the proviso to Art. 77, such a notice may be dispensed with by the Court.)

The admissibility of secondary evidence was considered by the Islamabad High Court in *Muhammad Suleman v Muhammad Saad Naseem and 2 others* PLD 2023 Islamabad 124 and it was held as follows (para 6):

> "6. …Under Article 72 of the Qanun-e-Shahadat Order, 1984 ("the Order"), the contents of documents may be proved either by primary or by secondary evidence. Article 73 of the Order explains evidence to mean the document itself produced for the inspection of the Court, whereas under Article 74, secondary means and includes certified copies; copies made from the original by mechanical processes which in themselves ensure the accuracy of the copies; copies made from or compared with the original; counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it. Article 75 clearly and in unambiguous terms states that documents must be proved by primary evidence except in the circumstances as mentioned in the Order. The exceptional circumstances in which secondary evidence can be admissible are contained in Article 76 of the Order…Article 77 ibid, states that secondary evidence of the contents of the documents as mentioned in Article 76 would not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is or to his advocate such notice to produce as it is prescribed by law, and if no such notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances."

In *Province of Sindh through Secretary Forest Department and 2 others v Noor Muhammad and 12 others* 2016 YLR 773 (Sindh), this Court has observed that secondary evidence without any explanation for the non-production of the primary evidence is not worth

consideration. The Appellant has failed to plead the source of the said document or the details of the person in whose possession the original of the purported iqrarnama/declaration is and, furthermore, he has failed to serve any mandatory notice under Art. 77 of the QSO. As such, the document is entirely inadmissible and cannot be considered at this belated stage of second appeal. Even if hypothetically the said document is taken at face value, the same is negated by the own admissions of the Appellant under oath that Mst. Gul Afroz is his real sister. The Appellant had never pleaded or alleged that Mst. Gul Afroz was adopted and his consistent evidence has been that she was his real sister and hence he cannot be allowed to surprise the Respondents (and, quite frankly, even the Courts) with a belated claim to this effect. The application is therefore meritless and cannot be considered.

16. For these reasons, I dismiss this second appeal along with any listed applications. R&Ps may be returned. Parties shall bear their own costs.

JUDGE

Approved for reporting

Muhammad Danish