

HIGH COURT OF AZAD JAMMU & KASHMIR

Civil Appeal No.87/2008.
Date of institution 28.06.2008.
Date of decision 17.10.2023.

1. Abdul Rasheed S/o Madad Ali caste Jatt, R/o Miana Gorah, Tehsil and District Mirpur.
2. Masood Ahmed.
3. Zahid Mehmood, sons.
4. Nasreen Akhtar, daughter of Hafiz Muhammad Sadiq R/o Miana Gorah, Tehsil and District Mirpur.

....Appellants

VERSUS

1. Dildar Hussain S/o Muhammad Sadiq (deceased), R/o Miana Gorah, Tehsil and District Mirpur.
....Real-Respondent
2. Muhammad Rasheed.
3. Abdul Latif.
4. Muhammad Sharif.
5. Muhammad Saddique.
6. Abdul Aziz, sons of Madad Ali.
7. Farman Begum.
8. Farzand Begum daughters of Madad Ali.
9. Anayat Ali.
10. Khariat Ali.
11. Kafayat Ali.
12. Muhamamd Iqbal.
13. Muhammad Azam., sons of Faiz Ali.
14. Sultan Begum.
15. Bibi laias Sarwar Jan, daughters of Faiz Ali.
16. Fazal Karim S/o Abbas Ali.
17. Jan Begum D/o Gul Muhammad.
18. Zafar Ali.
19. Irshad Ali.
20. Akhtar Ali, sons of Dr. Mohabat Ali.
21. Raqia Begum.
22. Anwar Begum.
23. Zubaida Begum, daughters of Dr. Mohabat Ali.
24. Sultan Begum widow Nazir Ahmed.
25. Khalid Hussain.
26. Wajid Hussain, sons of Nazir Ahmed.
27. Fahmida Bi.
28. Kali.
29. Rukhsana daughters of Nazir Ahmed (son Sakhi Muhammad).

30. Bashir S/o Sakhi Muhammad.
31. Muhammad Iqbal.
32. Abdul Karim, sons.
33. Dewan Begum.
34. Anayat Begum.
35. Bibi, daughters of Muhammad Afsar.
36. Abdul Razzaq.
37. Abdul Majeed.
38. Muhammad Younas sons of Muhammad Hussain, R/o Miana Gorah, Tehsil and District Mirpur.

....Proforma-Respondent

CIVIL APPEAL

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Sardar Muhammad Azam Khan and Khalid Mehmood Khan, Advocates for the appellants.

Mr. Muhammad Shamraiz Minhas, Advocate for the respondent No.1.

Judgment:-

This civil appeal is preferred by the appellants against judgment and decree passed by the District Judge, Mirpur dated 31.03.2008 through which the judgment and decree of Senior Civil Judge, Mirpur dated 10.08.2006 was upheld.

Factual matrix in brevity is that Allah Ditta and Karam Allahi were two real brothers, who were owners of the suit land, while Inayat Begum was widow of Allah Ditta. Karam Allahi was insane and made. Inayat Begum after death of his husband Allah Ditta, contracted second marriage with respondent Muhammad Sadiq, and successfully got recorded the entire property in her favour and thereafter gifted the same in favour of Muhammad Sadiq. Appellant herein are claiming themselves as

legal heirs of the Karam Allahi as appearing the category of Distant Kindred who were accordingly arrayed as party in the lis before trial Court.

In the first round of litigation the case was remanded by the High Court on 11.05.1999 with a direction to decide the lis in pursuance of the infra issue after taking evidence:

“who are the legal representative of Karam Allahi deceased plaintiff ”

In light of above remand order the trial Court proceeded the matter, court summoned the revenue record pertaining to (قلمی شجرہ) of the deceased Karam Allahi and resultantly the same was submitted/produced whereupon objection were offered by the Court instead of decide the same decided the entire lis in hasty manner and failed to adjudicate the supra sole pivotal issue as per previous direction of this Court.

Under the law of land particularly Islamic Law order of succession is clearly provided under Section 44 of Muhammadan Law¹, the estate devolves on the heirs at the movement of the death of the deceased, they are at liberty to divide at any time after the death of the deceased. The distribution is not liable to be suspended until payment of the debts.

Instant matter is pertaining to the class of legal heirs called distant kindred, which appears in the screen if there be no

¹ . Muhammadan law. M. Mehmood.

shares or residuaries, in such like eventuality the inheritance is to be divided amongst distant kindred and distant kindred are divided into four classes namely;

- (1) descendants of the deceased another than sharers and residuaries;
- (2) Ascendants of the deceased other than sharers and residuaries;
- (3) Descendants of parents other than sharers and residuaries;
- (4) Descendants of ascendants how highsoever other than residuaries.²

The following is a list of Distant Kindred comprised in each of the four classes:--

I. Descendants of the deceased:--

1. Daughter's children and their descendants.
2. Children of son's daughters h.l.s and their descendants.

II. Ascendants of the deceased:--

1. False grandfathers h.h.s.
2. False grandmothers h.h.s.

III. Descendants of parents:--

1. Full brothers' daughters and their descendants.
2. Con. Brothers' daughters and their descendants.
3. Uterine brothers' children and their descendants.
4. Daughters of full brothers' sons h.l.s. and their descendants.
5. Daughters of con. brothers' sons h.l.s and their descendants.
6. Sisters' (f.,c., or ut.) children and their descendants.

IV. Descendants of immediate grandparents (true of false):--

1. Full pat, uncles' daughters and their descendants.
2. Con. pat. Uncles' daughters and their descendants.
3. Uterine pat, uncles and their children and their descendants.
4. Daughters of full pat. uncles' son h.l.s and their descendants.
5. Daughters of con. pat. uncles' son h.l.s and their descendants.

² . Mohammadan Law. M. Mahmood.

6. Pat. aunts (f., c., or ut.) and their children and their descendants.

and

descendants of *remoter ancestors* h.h.s (true or false).

(3) The order of precedence among Distant Kindred in each class and the rules by which such order is determined are given in sections, 69 to 79. They are not given here in order of succession.”

Proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it is essential to comply with them on ground of public policy.

The english system of administration of justice on which our ...is own based may be certain extent technical but are not to take from that system its defects.³

Lis in hand is pertaining to devolvement of property/ inheritance of a late lunatic person. Thus attributing execution of an instrument bestowing or conferring his power to anyone else bears no weight at all, particularly when in absence of residuaries the property has devolved to the distant kindred by operation of law, declaration to that extent by indicating the class of heirs is in the interest of justice, thus, leaving aside procedural polemics the trial Court is required to adjudicate the matter regarding

³. “Imtiaz Ahmed vs. Gullam Ali” PLD 1963 SC 382.

devolvement of the property of a Lunatic one strictly in accordance with law.

(underlining is ours)

From all angles and in term of any bench mark, the impugned judgment and decree is not sustainable.

During the course of arguments the counsel for the answering respondent straightforwardly conceded that the case is liable to be remanded.

By accepting the instant appeal both the judgment and decrees are hereby set aside and case is remanded to the trial Court to decide the lis on the specific issue pertaining to legal heirs of late Karam Allahi by arraying the public at large as party in view of Order 1 Rule 10 of CPC as well as in the interest of justice.

Appeal accepted. No order as costs. Files of trial Court and 1st appellate be returned. Instant file be kept in archive.

Muzaffarabad,
17.10.2023.

JUDGE

Note:- Judgment is written and duly signed. Deputy Registrar Circuit Mirpur is directed to intimate the parties or their counsel, accordingly.

JUDGE

Approved for reporting

JUDGE