

**IN THE HIGH COURT OF SINDH KARACHI**  
**Misc. Appeal No. 80 of 2025**

Farha Nasreen. .... Appellant

Versus

Public at Large and another. .... Respondents.

**Mr. Raza Abbas, advocate for the appellant.**  
**Mr. Ali Zardari, Assistant Advocate General, Sindh.**

**Date of hearing** : 19.11.2025.

**Date of Order** : 25.11.2025.

**ORDER.**

**MIRAN MUAHAMMAD SHAH, J.:-** Through this Misc. Appeal, the applicant namely Farha Nasreen wife of Syed Adnan Feroz has filed the instant Misc. Appeal under Section 299 and 384 of Succession Act, 1925 being aggrieved and dissatisfied with the orders dated 27.09.2024 and 19.04.2025, passed by the learned X<sup>th</sup> Additional District Judge, Karachi (East) in S.M.A. No.747 of 2023.

2. The learned counsel for the appellant contends that the appellant is a legal heir of the deceased and also an attorney of the other legal heirs of deceased namely Hyderi Bano widow of Tahir Hussain. She has filed a petition under Section 372 of the Succession Act, 1925 in respect of the moveable property belonging to the deceased. At the time of her death, the deceased left behind four daughters, out of whom, two have expired, one died issueless and the other is survived by three daughters. There was no male heir among the deceased. However, the succession petition that was filed and was dismissed by the learned trial Court. She thereafter, filed a Revision Application under Section 114 Cr.P.C, which was also dismissed on the ground that section 114 Cr.P.C does not apply to proceedings under the Succession Act. The learned counsel further submits that petition under the Succession Act was disposed of on the ground that the surviving heirs of the deceased (All are daughters) shall share equally 2/3 of the total assets of the deceased. The remaining 1/3 shall be distributed within the siblings of the deceased. The learned trial Court further observed that the petition was completely silent about mentioning the siblings of the

deceased. The petitioner through her counsel has now challenged the impugned order on the ground that the deceased belonging to the Shia sect and so do the legal heirs, in support of which a statement was also filed before the learned trial Court, which is annexed here as annexure D-I at page No.105. However, the learned trial Court failed to appreciate the fact that according to Mohammadan Law, there are two schools of thought and the deceased belonged to the Shia sect. After her death, the shares were required to be distributed in accordance with Shia law, which was not done so; instead the distribution was made according to Sunni principles. Under Shia law of inheritance as recognized in Mohammadan Law, the paternal and maternal uncles and aunts of the deceased are excluded, leaving only the parents and children and thereafter, heirs in the direct line of precedence, if alive. He further elaborates that under Shia law of inheritance, in the absence of son, the daughter inherits the remaining share as a residuary and no share can be distributed to anyone else. He further states that these such basic requirements of the Shia law of inheritance were ignored and the learned trial Court failed to appreciate the facts of the case, particularly that the deceased belonged to the Shia sect, therefore, her property could not be distributed under the Sunni law of inheritance. He has also challenged the Revisional Order of the trial Court and states that CPC is a procedural law and is applicable to proceedings under the Succession Law.

3. On the other hand, the learned assistant Advocate General, Sindh raises no objection to the grant of the instant Misc. Appeal.

4. I have heard the learned counsel for the appellant as well as learned Assistant Advocate General, Sindh and have gone through the Mohammad Law. The rule 96 elaborates share among the persons, who are first entitled to succeed to the Estate of the deceased of Shia Mohammadan Law. For the understanding, rule 96 is reproduced as under:-

**“96. Rules of succession among heirs of the first class. The persons who are first entitled to succeed to the estate of a deceased Shia Muhammadan are the heirs of the first class along with the husband or wife, if any [S.92(2)]. The first pass of heirs comprises parents, children, grandchildren, and remoter lineal descendants of the deceased. The parents inherit together with children, and failing children, when grandchildren, and failing grandchildren, with remoter lines**

descendants of the deceased, the nearer excluding the more remote [S.88] Succession in this class is governed by the following rules:--

(1) **Father.** The father takes  $\frac{1}{6}$  as a Sharer if there is a lineal descendant as a Residuary, if there be no lineal descendant [See Tab. of Sh., No.3].

(2) **Mother-**The mother is always a Sharer, and her share is  $\frac{1}{6}$  or  $\frac{1}{3}$  [See 58 Tab. of Sh., No.4].

(3) **Son.** The son always takes as a Residuary.

(4) **Daughter.** The daughter inherits as a Sharer, unless there is a son in which case she takes as a Residuary with him according to the rule of the double share to the male [See Tab. of Sh., No.5]."

5. In the absence of a son, the daughter has been declared as a sharer. Under Shia law of inheritance, it is further elaborated that after the passing of the parents and grandparents, the children are next in line for inheritance. In the absence of a son, the entire share goes to the daughter(s). According to the table provided, no other sharer exists, which is reproduced as under:-

**TABLE OF SHARES-SHIA LAW [Section 90]**

(Baillie, II, 271, 276, 381)

Sharers	Normal Share		Condition under which the shares is inherited When there is a lineal descendant.	Shares as varied by special circumstances
	Of one	Of two or more collectively		
1. Husband	$\frac{1}{4}$	$\frac{1}{8}$		$\frac{1}{2}$ when no such descendant.
2. Wife	$\frac{1}{8}$			$\frac{1}{4}$ when no such descendant
3. Father	$\frac{1}{6}$			{If there be no lineal descendant, the father inherits a residuary.}
4. Mother	$\frac{1}{6}$			$\frac{1}{3}$ in other cases
5. Daughter	$\frac{1}{2}$	$\frac{2}{3}$	When no son When no parent, or lineal descendant. (See S.88)	{With the son she takes as a residuary}
6. Uterine brother or sister	$\frac{1}{6}$	$\frac{1}{3}$		

6. In the absence of daughters, uterine children are considered the next in line; hence, the question of further distribution among the siblings does not arise. The line of succession is specifically provided under the law. It is further elaborated by D.F. Mullah in *Principles of Mohammad Law* through the following table. The Relevant **legal provisions for each sharer under**

Shia Law are listed once, with direct reference to *Mulla's Principles of Mahomedan Law as under:-*

<b>Sharer</b>	<b>Legal Provision/Share</b>	<b>Reference (Mullah)</b>
<b>Husband</b>	¼ if child or descendant exists. ½ if none.	Rule 59
<b>Wife</b>	⅛ if child or descendant exists. ¼ if none.	Rule 59
<b>Father</b>	Sharer if lineal descendant exists. Residuary if none.	Rule 63
<b>Mother</b>	1/6 if child exists, or 2+ brothers, or 1 brother + 2 sisters, or 4+ sisters. Otherwise 1/3.	Rule 63
<b>Son</b>	Male takes double the share of a female.	Rule 64
<b>Daughter</b>	Half of male child's share (if alone and no son, she becomes residuary).	Rule 64
<b>Grandchildren/ Great-Grandchildren</b>	Inherit share of predeceased parent; male gets double of female.	Rule 65
<b>Full Brother</b>	Takes double the share of full sister.	Rule 67
<b>Full Sister</b>	Takes half the share of full brother.	Rule 67
<b>Consanguine Brother / Sister</b>	Same double male share.	Rule 67
<b>One Uterine Sibling</b>	1/6 (whether male or female).	Rule 67
<b>Two or More Uterine Siblings</b>	1/3 collectively, equally shared.	Rule 67
<b>Paternal Uncles &amp; Aunts</b>	Collectively inherit 2/3 (male double of female).	Rule 69(2)
<b>Maternal Uncles &amp; Aunts</b>	Collectively inherit 1/3 (equal shares unless otherwise stated).	Rule 69
<b>Children of Uncles/Aunts</b>	Inherit share of their deceased parents.	Rule 70
<b>Doctrine of Return (Radd)</b>	If no residuary, residue reverts to sharers proportionately.	Rule 71
<b>General Exclusion Rule</b>	"Nearer excludes more remote."	Rule 62
<b>No Agnatic Preference</b>	Cognates equal to agnates. Nearest inherits.	Shia Principle
<b>Priority Rule</b>	Husband or wife is allotted share first before others.	Standard application

*Note: Mahomedan Law by D.F. Mulla is shared separately.*

7. It is fairly clear that the learned trial Court failed to appreciate the basic question of law while deciding the succession petition. The Mohammadan Law provides for two separate sets of inheritance laws. One

is being the Hanfia law of inheritance and the other Shia law of inheritance. The distribution of property is to be made according to the sect followed by the deceased. It was categorically brought to the attention of the trial Court that the deceased in this case followed the Shia sect. Under such circumstances, it was incumbent upon the trial Court to apply Shia law of inheritance while deciding the estate of the deceased. Since the law is silent about further sharing the daughter takes the entire share, as described in the table of sharer of Shia law (Baillie II, 271, 276, 381). In such table, Section 91 categorically provides that when there is no son, the entire share is to go to the daughters. Hence, the learned trial Court further erred in keeping the remaining one-third of the estate to the siblings of the deceased, which is neither required nor provided for under the law. Accordingly, the inheritance amount/property should remain entirely with the surviving daughters, as they are entitled to the full share under Shia law of inheritance in the absence of a son. I place my reliance upon reported case law as 1989 SCMR 1142 (Re-Faiz Ahmed and others v. Mst. Sahiban and others), which also have reached the conclusion that, if the deceased has died as Shia then the daughter will get the whole property as only heir of the deceased.

8. In the light of the above discussion, the impugned order dated 19.04.2025 passed in SMA No.747 of 2023 by the learned X<sup>th</sup> Additional District Judge, Karachi (East) is hereby set-aside and the instant Misc. Appeal is hereby allowed. Since the main question of law point has been decided, the observation made in the Revisional order, also impugned in this appeal do not require any further deliberations.