

## IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.07 of 2013

M. Ishaque and others

vs.

Muhammad Moosa and others

**Before: Mr. Justice Zulfiqar Ahmad Khan**

Date of Hearing : 20.10.2016.

Date of Announcement : 18.11.2016.

Appellants : Through Mr. Azizul Haque, Advocate for the Appellants.

Respondents : Through Mr. Kashan Ahmed Memon, Advocate for the Respondents

### **ORDER**

**Zulfiqar Ahmad Khan, J.:-** This second appeal has been preferred against the Judgment passed in Civil Appeal No.242/2009, wherein Judgment and Decree passed by learned Vth Civil and Family Judge, Karachi in Civil Suit No.661/2004 was impugned.

Counsel for the Appellants has made his arguments at some length and when the opportunity of hearing was given to the counsel for the Respondents he without going into the controversy, submitted that an appeal was filed against the said decree, which was dismissed vide Judgment dated 06.12.2012, against which this second appeal has been preferred. Counsel drew Court's attention to the typed page 6 of the Judgment in Civil Suit No.661/2004, wherein the Court has determined that the total value of all the amounts of all reliefs claimed falls below Rs.50,000/-, which fact was not denied by the Appellant's counsel. Learned counsel while making reference to Section 102 CPC, contended that in terms of the above section, no second appeal can lie when the amount of value of the subject matter of the original Suit does not exceed to Rs.50,000/- .

For the aforesaid reasons, to me, this is legitimate objection as to the very maintainability of this Second Appeal, where the trial Court made clear determination that the amount of the subject matter was under Rs.50,000/- is of fatal in nature. I, therefore, have no hesitation in holding that the instant second appeal is hit by Section 102 CPC. This Second Appeal is thus dismissed.

Judge

The brief facts of the case are that a piece of land was owned by Soomar Landha, who expired issueless leaving behind a widow Mst. Karima Soomar. At the time of his death he had left surviving neither his father nor grandfather nor mother nor grandmother nor any son or daughter nor any issue nor brother or sister nor any issue of the brother and sister, but had only a full brother's son namely Ilyas son of Abdullah, who is Respondent No.1. At the death of Soomar Landha, 1/4<sup>th</sup> undivided share of entire estate devolved upon his widow and the remaining 3/4<sup>th</sup> share devolved upon his full brother's son Abdullah who, as stated earlier, is the father of Respondent No.1 and at the death of Soomar Landha, his widow Mst. Karima Soomar occupied the entire aforesaid property, promising to the father of Respondent No.1 to partition the same in accordance with the provisions of Muhammadan Law, but she could not do so in her life and she died in 2003.

The legal dispute arose between the heirs of aforementioned, which gave rise to Suit No.661/2004, where Respondent No.1 Muhammad Moosa's relationship with Soomar Landha was not specifically challenged, the suit decreed as prayed by the Plaintiff declaring that Muhammad Moosa son of Ilyas Abdullah was the owner of 3/16<sup>th</sup> undivided share in the properties left by Late Soomar Landha. This Judgment and Decree was appealed by the Defendants No.1 & 2 of the Suit No.661/2004, where the Appellate Court came to conclusion that the Appellants have failed to make out any case and upheld the findings of the trial Court, the instant second appeal has been filed against the said dismissal, alleging that both the Courts below have failed to consider true facts of the case and rights of the present Appellants are not protected.

To start that a review of the documents show that Appellant No.1 Muhammad Ishaque son of Yaqoob is the son of another sister of Mst. Karima Soomar, who expired before Mst. Karima, thus under the Muhammadan Law sons and daughters of Mst. Rehmat are not entitled to any share.