

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Misc: Civil Appeal No.08 of 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For Katcha Peshi.
2. For hearing of C.M.A. 1510/2016

27.03.2018.

Mr. Bashir Ahmed Almani, Advocate for the appellant.

Mr. Ahsan Gul Dahri, Advocate for respondent No.2.

Mr. Abdul Hameed Bajwa, Advocate holds brief for Mr. Khadim Hussain Soomro, Advocate for respondents Nos.4 to 6.

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The heart of the dispute between the parties is that deceased Noor Muhammad Mango, who *inter alia*, left a sum of Rs.30,00,000/- (Thirty Lacs) deposited in National Saving Centre (in the year 2013) while making a nomination of his wife Mst. Bibi Nisa Noor. The deceased died issueless leaving behind the widow as well as his mother, two brothers and three sisters as legal heirs.

An application was moved for succession by Badaruddin, a brother of the deceased being Succession Application No.123 of 2015, wherein objections were filed by the appellant Mst. Bibi Nisa Noor on the ground that she was recorded as nominee with National Saving Centre as well as she claimed that the amount was orally gifted by her

husband to her before his death, therefore, she is the sole beneficiary of the sums lying in National Saving Centre. Per counsel of the appellant, these objections were not considered and by order dated 01.09.2016, the learned trial Court went ahead with distribution of the sums lying in National Saving Centre amongst all the legal heirs and a Commissioner was appointed to do the needful. This order is challenged in this appeal on the same grounds taken by the appellant before the trial Court that she has been declared as nominee as well as had oral gift from the deceased, therefore, she is entitled to all the benefits including the capital amount of Rs.30,00,000/- (Thirty Lacs) invested in National Saving Centre.

The counsel on the respondent side represent brothers, sisters and mother of the deceased, who vehemently contest this assertion and submit that by merely appointing as nominee does not give absolute title to any person, as nominee was only for the purpose of withdrawing profit from the investment made at National Saving Centre and as to the question of oral gift, it is being denied by these parties. To the contrary, learned counsel for the appellant submits that under Sections 13 and 16 of the applicable National Saving Scheme, it is the nominee, who is solely entitled to all the profits as well as capital investment made in saving scheme of National Saving Centre, as well as, on account of oral gift of a husband to wife, she is entitled for the said sums. Nevertheless counsel for both the sides seeks time to assist the Court on the following issue;

- (i) The effect of the oral gift from deceased husband to wife recorded in writing or not.
- (ii) The intention of legislature under Saving Scheme as to the rights and privileges of the nominee.

- (iii) Would in the presence of a nomination with the National Saving Centre as well as with a claim that an oral gift was made in favour of the widow by her late husband, would it still be appropriate to distribute the sums lying with National Saving Centre amongst all the legal heirs as mandated in the order of the Court below.

To come up on 10.04.2018.

Interim order granted earlier to continue till next date of hearing.

JUDGE

Asif.I.Khan