

# IN THE HIGH COURT OF SINDH AT KARACHI

S. M. A. No. 47 of 2017

[Raza Muhammad through his legal heirs Muhammad Jamal and 2 others]

Date of hearing : 02.12.2019.  
Date of Decision : 06.01.2020.  
Petitioner : Raza Muhammad through his legal heirs Muhammad Jamal and 2 others, through M/s. Irfan Aziz and Amir Sami, Advocates.

## ORDER

**Muhammad Faisal Kamal Alam, J:** - Initially the present petition was filed by one Raza Muhammad claiming to be the nephew of deceased Mst. Sony wife of (late) Bachoo Guddoo, who died issueless on 13.06.1980 at Karachi (as per averments of the petition). It is further stated that Parents of the deceased are not alive. In the intervening period, the original petitioner Raza Muhammad has also died and he was succeeded by his legal heirs, whose names are mentioned in the title of the petition and consequently an amended petition was filed in view of order dated 05.12.2018.

After perusal of record of this petition, following facts cannot be ignored\_

- i. The present proceeding was originally filed on 22.12.2011, but was registered as S.M.A 47 of 2017, that is, after six years;
- ii. No convincing and plausible evidence is available in record about the husband of above named deceased. When this query was raised as mentioned in the order dated 04.08.2012, it was simply stated that since husband of deceased passed away long time back, therefore the death certificate is not available;

- iii. The Report of the Deputy Commissioner, District Central, dated 20.01.2016, which has been sent to the Assistant Registrar (Execution and SMA) of this Court (flag-C) states, *inter alia*, that the certificates and documents produced in the petition are fake and forged. This Report though is objected to by the Petitioners' counsel, but the conclusion made in this Report, which is an official document, cannot be decided in this proceeding and at this stage.

The property about which the present petition is filed is a large area of land falling in Survey Nos.56, 57, 58, 59, 60, 63, 64, 65, 66, 67, 69 and 114 – Specially ST-14, Deh Kari Lakhi, Tapo Manghopir, North Nazimabad Town, Karachi, measuring 150 Acres approximately.

In view of the above facts, where whereabouts of deceased, her husband and other near relatives are not known, granting the petition in favour of present Petitioners would not be appropriate. **Secondly**, if at all, the above property belongs to the deceased, who has died issueless and is not survived by any legitimate surviving heir, then it is to be seen that whether to the above property / estate, doctrine of *Escheat* is applicable or not. In my considered view, this doctrine is envisaged in the Article 172 of the Constitution of Islamic Republic of Pakistan, 1973, *inter alia*, relating to an ownerless property situated in a Province.

The upshot of the above discussion is that the present Petition is not maintainable and is dismissed. The Office is directed to mark a Caution against this Case and if the Petitioners file some other proceeding including a Civil Suit, then the Court may be apprised of the present Order.

**Judge**

Karachi,  
Dated: 06.01.2020.

Riaz / P.S.