

## IN THE HIGH COURT OF SINDH AT KARACHI

**S. M. A. No. 315 of 2019**  
[Ms. Anam Jawed (Petitioner)]

Date of hearing : 03.10.2019.

Date of Decision : 06.01.2020.

Petitioner : Ms. Anam Jawed, through Mr. S. Aijaz Hussain Shirazi, Advocate.

### **ORDER**

**Muhammad Faisal Kamal Alam, J:** - This is a petition for grant of Letter of Administration and Succession Certificate in respect of immovable and movable properties mentioned in the Schedule of Properties, available at page-17, left by Mrs. Talat Jawed (the “**Deceased**”) wife of Syed Jawed Naseer. She died at Karachi on 16.04.2018, leaving behind the surviving legal heirs, whose names are mentioned in paragraphs-3 of the petition. Death Registration Certificate of Deceased issued by the Government of Sindh has been appended at page-13 (Annexure “A-1”). Petitioner has filed Family Registration Certificate issued by National Database and Registration Authority (“**NADRA**”) in order to substantiate the fact about names of the legal heirs as mentioned in paragraph-3 of the petition, who are entitled to their respective share of inheritance in the estate left behind by the Deceased.

Father of Petitioner (husband of above Deceased) and other legal heirs, namely, Javed Naseer, has also passed away and his Death Certificate

is at page-13-A, Annexure 'A/2' with the petition. The parents of the above deceased are not alive as per para-1 of the Petition.

Property documents, viz. (i) Conveyance Deed dated 21.06.2006, in respect of Single Storey Bungalow on Leasehold Residential Plot of Land Bearing No.112, measuring 530 Square Yards, situated at D.O.H.S.-I, Malir Cantt., Karachi, (ii) Sale Deed dated 16.06.2009 in respect of Flat No.10, 2<sup>nd</sup> Floor, project Known as "NATIONAL CENTRE", measuring 144.40 Square Yards, having 1/5<sup>th</sup> undivided share of Sub-Plot No.C-20/4, in Plot No.C-20, Block – 2, KDA Scheme No.24, Gulshan-e-Iqbal, Karachi, and (iii) Bank Account Statement issued by Habib Bank AG Zurich Branch, Sh Hamdan Street, Abu Dhabi, are available on record from pages-23 to 99 of the Court file.

Since all the legal heirs including the Petitioner are daughters, therefore, on 23.08.2019 a question was framed. Record shows that on 17.09.2019, attorney of the Petitioner and witnesses were present and their further attendance was dispensed with and the learned counsel was asked to assist the Court on the question framed earlier.

Mr. Aijaz Ahmed Shirazee, Advocate, has placed reliance on the following case law\_

- (i) P L D 2004 Supreme Court page-768  
[*Abdul Khaliq and another v. Fazalur Rehman and others*]
- (ii) 2014 S C M R page-1205  
[*Saadullah and others v. Mst. Gulbanda and others*] – Gulbanda Case
- (iii) 2005 S C M R page-1717  
[*Muhammad Khalid and others v. Mst. Noor Bibi and others*]
- (iv) P L D 2002 Supreme Court page-741  
[*Ibrahim and 4 others v. Rehmat Ali and 6 others*]
- (v) 2-13 C.L.R. page-472  
[*Jumma and another v. Abdul Majeed and others*]
- (vi) 2018 M L D page-2079  
[*Fahmina Butt (S. M. A. No.271 of 2017)*]

The gist of the rule laid down in the above reported judgments, particularly of the Honourable Supreme Court, is that under the Islamic Law of Inheritance, it is a cardinal principle that “*nearer relation excludes the remote one*”. In Gulbanda Case (*supra*) the Honourable Supreme Court has explained the Principle of Return (RADD), *inter alia*, by invoking the Table of Residuary as mentioned in various Books on Islamic Law of Inheritance applicable to Hanafi Muslims. In this reported case, the mother and sisters of the deceased person got the entire estate by excluding the share of consanguine brother.

Similarly, in the decision of Abdul Khaliq (*ibid*), the real sister of deceased (of the reported case) inherited the entire estate, being a direct sharer as well as residuary under the aforementioned Principle of Return (RADD) and the objection, which culminated into litigation, filed by other relatives, was dismissed. The relevant portion of the decision is reproduced herein under for a ready reference\_

“ *Would clearly suggest that the distant kindred inherit only when there are no sharers or residuaries. It is a decided fact that if a sharer or a residuary exists, the distant kindred are completely ousted from the inheritance. In the instant case Mst. Roshanai, the donor was the real sister of Abdul Ghafoor who died issueless. She would, therefore, inherit 1/2 share in the property of her brother Abdul Ghafoor as sharer and as of her own right. As the sharer is in existence and as in the presence of sharer no distant kindred is entitled to inherit, the entire residue under para-66 of the text aforesaid and under the Principle of Return (radd.), would revert to the sharer. The para. for convenience of reference is reproduced:--*

*"66. Return (Radd.)---If there is a residue left after satisfying the claims of Sharers, but there is no Residuary, the residue reverts to the Sharers in proportion to their shares. This right of reverter is technically called "Return" or Radd.*

*Exception.----Neither the husband nor the wife is entitled to the Return so long as there is any other heir, whether he be a Sharer of a Distant Kinsman. But if there be no other heir, the residue will go to the husband or the wife, as the case may be, by Return."*

*Secondly*, even after publication of Notice in daily 'Jang' in its issue of 01.09.2019, no objection / caveat by any individual is filed in the present proceeding.

Other compliances have been made and since this matter has throughout remained non-contention, therefore, this petition is granted as per the relevant provisions of Succession Act, 1925, and Rules.

**Judge**

Karachi,  
Dated: 06.01.2020.

Riaz / P.S.