

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.789 of 2018**

---

<u>Date</u>	<u>Order with Signature of Judge</u>
-------------	--------------------------------------

---

Present: **Mr. Justice Nazar Akbar**

Plaintiff No.1 : Mst. Nadia Shakeel wife of Shakeel Ahmed.  
Plaintiff No.2 : Aliya Rasheed D/o Abdul Rashed Shahzada.  
Through Mr. Ameenuddin Ansari, Advocate.

**Versus**

Defendant No.1 : Shagufta Baqar Wd/o Baqar Rasheed  
Shahzada.  
Through Mr. Rafiq Ahmed Kalwar, Advocate.

Defendant No.2 : Defence Housing Authority. (Nemo).

Date of hearing : **21.05.2021**

Date of Decision : **04.06.2021**

**JUDGMENT**

**NAZAR AKBAR, J.** The plaintiffs on **16.04.2018** have filed this suit against the defendants for Declaration, Permanent Injunction, Cancellation of Gifts and Claim of Inheritance.

2. Brief facts of the case are that the plaintiffs are daughters of late Abdul Rasheed Shahzada and Mst. Anwer Rashid and their only brother namely Baqar Rasheed Shahzada had earlier died on **17.02.2013**. Both parents have died on **27.4.2015** and **20.02.2018** respectively. It is averred that plaintiff No.1 was in United States of America since 2001 and returned to Pakistan on **28.12.2017** and since then she is residing in Karachi. It is also averred in the plaint that plaintiff No.2 is mentally retarded person and she was residing with her father and mother and after death of mother of plaintiff No.2, she is living with plaintiff No.1. It was averred that father of plaintiffs was owner of the following immovable properties:-

- i. Plot No.9X/OL/006727 Defence Housing Authority Lahore Cantt: admeasuring 1 Kanal valued at Rs.40,00,000/-.
- ii. Flat No.202, 2<sup>nd</sup> Floor, No.08, C, 31<sup>st</sup> Commercial Street, Phase-V, D.H.A admeasuring 900 sq. ft. Karachi valued at Rs.35,00,000/-.

Mother of plaintiffs was owner of the following properties:-

- i. Flat No.3, 2<sup>nd</sup> Floor, Plot No.08, C, 31<sup>st</sup> Commercial Street, Phase-V, D.H.A admeasuring 900 sq. ft. Karachi valued at Rs.35,00,000/-.
- ii. 50% undivided share in piece and parcel of land bearing Plot No.114, measuring 600 sq. yds., together with Double Storied (Ground+One) Bungalow bearing No.114/A, Constructed thereon, situated at Block-2 KDA Scheme No.5 Kehkashan Clifton, Karachi, valued at Rs.14,000,000/- (The suit properties).

It was further averred that plaintiff No.1 on return from USA came to know that both (father and mother of plaintiffs) had gifted their above immovable properties to their son Baqar Rasheed Shahzada in the year 2012 without any reason and intimation to plaintiffs. On death of Baqar Rasheed Shahzada, his mother Mst. Anwer Rashid filed **SMA No.167/2013**. Thereafter on death of Abdul Rasheed Shahzada (husband of Mst. Anwer Rashid), SMA No.167/2013 was amended and filed in **September, 2015**, and according to plaintiffs the said SMA required further amendment on the death of their mother (petitioner in SMA No.167/2013) in the **year 2018**. All the properties documents have been filed in original in SMA No.167/2013.

3. The plaintiffs then on legal and Sharia advice claimed that the declaration of gifts of immovable properties made by father and mother of plaintiffs in favour of their son deceased Baqar Rasheed Shahzada (brother of plaintiffs) deprived the plaintiffs from their legitimate inheritance as per Sharia, therefore, the plaintiffs have filed the instant suit for Declaration, Permanent Injunction,

Cancellation of Gifts and Claim of Inheritance with the following prayer:-

- i. Declare the gifts made by the father and mother of plaintiffs in 2012 in respect of suit properties as illegal against Sharia and of no legal effect as per law laid down by the Supreme Court of Pakistan.
- ii. Declare that the plaintiffs as exclusively true and lawful beneficiaries of the immovable properties illegally and in violation of Sharia gifted to late Baqar Rasheed Shahzada who died in 2013 in the lifetime of his parents.
- iii. Allow permanent injunction/stay till the decision of suit.
- iv. Grant any other relief/relieves as this Hon'ble Court may deem fit and proper.

4. Notices of the instant suit were sent to the defendants. Defendant No.1 filed her written statement wherein she denied the allegations leveled by the plaintiff in the plaint and contended that the plaintiffs have no legal right over the suit properties and they have filed the present suit on the basis of false, baseless and self-designed story. She further stated that her husband late Baqar Rasheed Shahzada went to USA and was working there in Department of Justice and he earned lot of money and used to send the said amount to his deceased father and mother, who have no source of income and they have purchased the suit properties from the amount sent by their son (husband of defendant No.1). She further contended that her deceased husband had purchased the suit properties in the name of his parents only because he was unable to visit Pakistan time to time and it was decided between her husband and his parents that whenever husband of defendant No.1 will come to Pakistan permanently, his parents will transfer suit properties in his name and, therefore, when in the year 2012 he came back to Pakistan, his father and mother gifted the suit properties to him. She further contended that it is false that plaintiff No.1 came to

know regarding execution of gift deeds in favour of her husband in 2017 as in the year 2015 plaintiff No.1 had executed special power of attorney in favour of her mother when an application to amend SMA No.167/2013 was filed on the death of plaintiffs' father. It clearly shows that she was well within knowledge of gift deeds. She further contended that plaintiff No.1 only wants to delay in disbursement of 25% legal share of defendant No.1 from the properties of her husband, whereas 75% share has obviously gone to plaintiffs No.1 and 2 in the said properties.

5. Defendant No.2 (Defence Housing Authority) also filed their written statement wherein they stated that they have no concern with the suit properties as no cause of action accrued to plaintiffs against them and even no relief was sought against them by the plaintiffs in prayer.

6. On **14.10.2020** from pleadings of the parties, followings issues were framed:-

1. Whether the suit is maintainable in law?
2. Whether the oral gift deeds bearing registration No.4277, 4278 and 2832, executed by Mrs. Anwar Rasheed and Mr. Abdul Rasheed Shahzada, the deceased mother and father of the plaintiffs and mother-in-law and father-in-law of defendant No.1, in favour of Baqar Rasheed Shahzada, the deceased brother of the plaintiffs and husband of defendant No.1, with the office of Sub-Registrar-1, Clifton Town, Karachi on 28.09.2012, 28.09.2012 and 10.10.2012 in respect of suit properties are illegal being against the Sharia and therefore, of no legal effect?
3. Whether the plaintiffs are entitled to the relief(s) prayed for?
4. What should the order be?

7. Both the counsel for the parties at the time of framing of issues on **14.10.2020** suggested that the suit may be disposed of by

addressing legal issues only and, therefore, it was also ordered that “since the above issues are legal in nature, therefore, learned counsel for the parties state that no evidence is required to be recorded”. Therefore, the matter was fixed for final arguments.

8. I have heard learned counsel for the parties and perused the record as well as written arguments filed by the learned counsel for respective parties.

9. The one page contentions of learned counsel for the plaintiffs are so brief that the same are reproduced verbatim as follows:-

“The main issue which covers all the issues being summarized reads as: “Whether the oral gifts made by the father and mother in favor of Baqar Rasheed Shahzada the deceased brother of the plaintiffs and husband of defendant No.1 in respect of suit properties are illegal being against Sharia and therefore, of no legal effect.?”

Since, as per Article 2 of Constitution of Pakistan Islam is the State religion of Pakistan and injunction of Quran and Sunnah as per Enforcement of Sharia Act, 1991 are the Supreme law of Pakistan, the gifts made by the parents of Plaintiffs in favor of lonely son of Suit properties ignoring the other legal heirs i.e Plaintiffs are against Sharia hence ab initio VOID and of no legal effect on the basis of law and Ratio decidendi laid down by the Superior Courts of Pakistan in various decisions as under:-

- i) 1991 MLD 2707
- ii) 2002 SCMR 1938
- iii) PLD 1990 SC-1
- iv) 2021 SCMR 678 (page 683)

Therefore, there being no estoppel against Sharia and no Relinquishment by the Plaintiffs of their shares in the Suit properties coupled with consideration in favor of their deceased brother as such are entitled for their share of inheritance in the suit properties accruing and arising on the death of their parents.

10. Learned counsel for defendant No.1 in the first place has drawn attention of this Court towards the fact that **Mr. Aminuddin Ansari**, Advocate has filed SMA No.167/2013 as a counsel for legal heirs of deceased husband of defendant No.1 namely Baqar Rasheed

Shahzada who has died in 2013 and the properties mentioned in para-3 of the plaint were shown to be the properties of her deceased husband on the basis of registered gift from the parents in **2012**. Plaintiffs' mother and father were legal heirs and finally the properties were devolved on the parents and widow of deceased (defendant No.1) as follows:-

<b>S. NO.</b>	<b>NAME OF LEGAL HEIR</b>	<b>RELATION</b>	<b>SHARE</b>
<b>1.</b>	Shagufta Baqar Shahzada	Wife	¼ (25%)
<b>2.</b>	Anwer Rasheed	Mother	¼ (25%)
<b>3.</b>	Abdul Rasheed Shahzada	Father	½ (50%)

The subject properties were in the name of late Baqar Rasheed Shahzada. The said SMA has been disposed of by order dated **10.02.2014** in the lifetime of the parents of the plaintiffs and even a letter of administration has been issued on **27.11.2014** on furnishing the title documents as security for grant of letter of administration in respect of the properties of deceased husband of defendant No.1.

11. Then later on plaintiffs' father had died on **27.4.2015** and on his death instead of filing a fresh Succession Miscellaneous Application for letter of administration in respect of the share devolved on the deceased by virtue of the Letter of Administration dated **27.11.2014**, the same counsel **Mr. Aminuddin Ansari**, Advocate on **21.8.2015** filed an application under Order XXII Rule 2 CPC (CMA No.896/2015) in the disposed of SMA. Subsequently, on **19.11.2015** he presented amended succession application under **Section 278** of the Succession Act, 1925 in the already disposed of SMA No.167/2013 and requested to issue fresh succession certificate. In the said amended application, both the plaintiffs have filed their respective affidavits on **18.11.2015** as well as their

neighbors showing that the plaintiffs alongwith defendant No.1 are entitled to following share in the estate devolved on the deceased Abdul Rasheed Shahzada, father of the plaintiffs:-

<b>S. NO.</b>	<b>NAME OF LEGAL HEIR</b>	<b>RELATION</b>	<b>SHARE</b>
<b>1.</b>	Shagufta Baqar Shahzada	Wife	¼ (25%)
<b>2.</b>	Mrs. Anwer Rasheed	Mother	31.5%
<b>3.</b>	Nadia Shakeel & Aliya Rasheed	From share of father	43.5%

12. Learned counsel for defendant No.1 after giving the above background of the sequence of ownership of the properties in dispute has also contended that the gift deeds executed by the plaintiffs' parents was not hit by any sharia law or other law. The claim of the counsel for the plaintiffs Mr. Aminuddin Ansari, Advocate who was also lawyer of defendant No.1 in SMA No.167/2013 that on legal advice and sharia this suit has been filed is devoid of any support. The plaintiffs have not filed any Fatwa of any Mushtahid to claim that the gift deeds executed by the parents in favour of their son was not lawful nor the plaintiffs' counsel has referred to any provision of law that can nullify registered gift deeds. Learned counsel for defendant No.1 contended that case law referred by counsel for the plaintiff is totally irrelevant and in rebuttal has relied on the following case-laws:-

- i. Mst. Nusrat Zohra vs. Mst. Azhra Bibi and others (**PLD 2006 SC 15**);
- ii. Abrar Ahmed and another vs. Irshad Ahmed (**PLD 2014 SC 331**);
- iii. Hamid Hussain Paliwalla vs. Firasat Hussain Paliwalla and others (**PLD 2015 Sindh 304**).

13. The parties have not disputed maintainability of the suit and by consent the only issue to be decided in this suit is issue No.2. My findings on issue No.2 are as follows:-

14. The background of the instant suit is that defendant No.1 on **12.3.2018** after the death of her mother-in-law, Mrs. Anwar Rasheed filed an application (CMA No.598/2018) in SMA No.167/2013 and prayed for the following relief:-

“It is most respectfully submitted on behalf of the Applicant above named that this Hon'ble Court may kindly be pleased to pass an **order for compliance of the order dated 29.02.2016, and the share of applicant @ 25% from the properties of deceased may kindly deposit before Nazir of this Hon'ble court to the applicant**, as it is in the larger interest of justice.”

Then on **28.3.2018** she also filed two more applications in SMA No.167/2013 bearing **CMA No.719/2018** and **CMA No.720/2018**. In CMA No.719/2013 she has prayed for valuation of the properties of the deceased in which she has 25% share in view of the Letter of Administration lawfully issued by this Court on **27.11.2014** and in CMA No.720/2018 she has prayed for 25% share in the rent realized by the plaintiffs in the two flats in which she has share by way of inheritance. The plaintiffs had no defense nor they were willing to pay legitimate and lawful share of defendant No.1. Therefore, to stop the Court from passing order on merit on the said applications, the plaintiffs on **16.4.2018** filed the instant suit No.789/2018 after having received notice of the applications of defendant No.1. Then plaintiff during hearing of the said SMA on the strength of this suit got the proceedings of SMA stopped by order dated **05.09.2018** in the following terms:-

“.....a suit for cancellation of the Gift Deeds bearing No.789 of 2018 which ought to be considered first as that could have bearing on the distribution of shares under this **SMA and fix them together on all future dates**, unless otherwise directed by Court. Order accordingly.”



Therefore, while deciding the instant suit the pending applications, in the tagged SMA No.167/2013, too, have to be decided as both the SMA and the suit are listed together for hearing.

15. The plaintiffs have averred that they have filed the instant suit under legal advice of **Mr. Aminuddin Ansari, Advocate** and on some un-disclosed sharia advice to seek declaration that the gifts executed by the deceased parents way back in 2012 were illegal, against sharia. It was also averred that it has been held so by the Hon'ble Supreme Court in the case of Barkat Ali through Legal Heirs and others vs. Muhammad Ismail through legal heirs and others (**2002 SCMR 1938**). In the given facts of the case in hand the reliance placed by learned counsel on the case of Barkat Ali was totally misconceived. In the plaint no dispute has been raised about the proper execution of the registered gift and the intention to execute it. The only one liner excuse for filing of the instant suit in **2018** was that through the registered gifts in **2012**, the parents of the plaintiffs have illegally deprived them from their legitimate inheritance as per sharia. In 2012 obviously no legitimate inheritance was possible since the undisputed owners of the properties were alive and there was no embargo on their rights to handle their properties the way they like. In fact in **SMA No.167/2013** the plaintiffs' parents have re-affirmed their gift to their son in **2012** when on the basis of said gift deeds the donors (parents themselves) on the death of donee sought their share by way of inheritance in the suit properties. Thereafter even the plaintiffs themselves in **2015** have admitted that their father had only 50% share in these properties when they filed amendment in SMA No.167/2013 showing inheritance as under:-

<b>S. No</b>	<b>NAME</b>	<b>Relationship</b>	<b>SHARE</b>
<b>1.</b>	Anwer Rasheed	Widow	31.5%
<b>1.</b>	Shagufta Baqar Shahzada	Widow	25%
<b>2.</b>	Nadia Shakeel	Daughter of deceased Abdul Rasheed Shahzada	21.8%
<b>3.</b>	Aliya Rasheed	Daughter of deceased Abdul Rasheed Shahzada	21.7%

The plaintiffs did not dispute these gifts in **2015** at the time of death of their father who was donor of two properties and peacefully acquired **43.5%** share in the suit properties under the proceedings of Letter of Administration. Then in **March 2018** when defendant No.1 demanded her 25% share in the suit properties, the plaintiffs on **16.4.2018** filed the instant suit and on **17.4.2018** in counter affidavit raised the plea that gifts were illegal and under challenge in the civil suit.

16. Now I may examine the relevance of case law relied upon by learned counsel for either side. Unfortunately none of the case laws relied upon by the learned counsel for the plaintiff is relevant to the facts of the case in hand. In the case reported as **2002-SCMR-1938** the gift was not proved because the property was not handed over to the donee and the gift was not from father to his son it was allegedly from grandfather to grandson when possession of the corpse of the gift was with the son. The preposition in the case is not relevant to the case in hand. The Hon'ble Supreme Court in the case of Abrar Ahmed and another vs. Irshad Ahmed (**PLD 2014 SC 331**) has distinguished this case law and held that:

2. Heard. Learned counsel for the appellants by relying upon the judgment reported as Barkat Ali through Legal Heirs and others v. Muhammad Ismail through Legal Heirs and others (**2002 SCMR 1938**) has only raised one point i.e. that the gift without the delivery of physical possession was invalid and, therefore, no lawful right of ownership has been acquired by the respondent

on the basis of which he could initiate the suit for possession etc. However, from the written statement filed by the appellants, it transpires that the validity of the gift was not questioned by them on the ground of the lack of delivery of possession of the property to the donee, and in such a situation, they under the law are precluded to assail the validity of the gift on that account, because no one can be allowed to set out a new case beyond the scope of his pleadings.....

.....  
 .....  
 .....  
 This is so because the appellants at the time of the gift, for all intents and purposes, were strangers to the gift, either being the licensee of Babu Khan or being his prospective legal heirs. It is relevant to note here that **Muhammadan Law does not recognize spes successionis i.e. expectation or hope of succeeding to the property of another by survival; or in other words till the death occurs, a presumptive heir has no right at all in the property of his ancestor<sup>1</sup> and thus (a presumptive heir) cannot challenge the validity of any transaction effected by such person from whom he might or ought to inherit, because he shall be a stranger to the gift in the context of both the situations mentioned above;** more so, when the donor out of his free will has made the gift, affirmed and owned it throughout his life as having been validly made; and never questioned till he breath his last; **his successors (L.Rs.) would also lose the locus standi to challenge the validity of the gift on that score.** It may also be pertinent to mention here, that the case of the appellants set out throughout starting from their written statement was, that the gift was mala fide, collusive and depriving the other legal heirs from their right of inheritance and/or they had contributed towards the construction of the said property, but at no level the appellants ever have challenged the validity of the gift on the basis of lack of delivery of possession. **The judgment (supra) cited by the appellants counsel is distinguishable on its own facts,** in that, the donor in this case (appeal) has been admitting the gift as valid; and cancelled the license of the appellant, whereas this was not the position in the cited dictum.

In the case of Mst. Nusrat Zohra vs. Mst. Azhra Bibi and others (**PLD 2006 SC 15**) the Hon'ble Supreme Court in para-5 and 10 has observed as under:-

5. The pivotal question which needs determination is whether a Muslim donor can gift the property in favour of some heirs to the exclusion of others as has been done by Khair Muhammad. It is well entrenched legal proposition that **a Muslim donor has vast powers to alienate his property by way of gift during his**

**lifetime subject to one condition that he should be in proper state of health and the gift is made at his own without any coercion or inducement.** In this regard reference can be made to Muhammad Bashir v. Allah Ditta (1994 SCMR 1870).

10. It is well-settled by now that "**the powers of a Muslim to dispose of the property by way of gift are unfettered. A gift cannot be invalidated only because the heirs are deprived of their shares.** But where the material facts are concealed by the donee, such a gift can be declared invalid on such account. The policy of the Mahomedan Law appears to be to prevent a testator interfering by will with the course of the devolution of property according to law among his heirs, although he may give a specific portion, as much as a third, to a stranger. But it also appears that a holder of property may, to a certain extent, defeat the policy of the law by giving in his lifetime the whole or any part of his property to one of his sons, provided he complies with certain forms.....

17. In the case in hand the father of the plaintiffs has gifted the properties in **2012** and he has not only gifted the properties rather he has again acquired 50% share in the said properties by way of inheritance on the demise of his son (donee), therefore, we can safely say that it was doubly affirmed by the father of the plaintiffs that the suit properties were gifted by him as donor to his son (donee) in exercise of his fundamental right to deal with his properties in terms of **Article 23** of the Constitution which reads:

**23. Provision as to property.-** Every citizen shall have the **right to acquire, hold and dispose of property** in any part of Pakistan, subject to Constitution and any reasonable restrictions imposed by law in the public interest.

There was no restriction on the father of the plaintiffs to "hold and dispose of property". The gift is a registered document which has not been challenged by the plaintiffs on the ground of any fraud or misrepresentation by the beneficiary in acquiring the gift. Nor it is the case of the plaintiffs that the donor (their father) at the relevant time was otherwise not legally competent to execute the gift to his son owing to some legal disability.

18. In view of the above facts, case-laws and discussion the instant suit is dismissed.

19. Consequently, the Letter of Administration granted under the signature of Mr. Justice Faisal Arab (as he then was) in SMA No.167/2013 on **29.5.2014** whereby defendant No.1 is entitled to 25% share from the suit properties mentioned in the schedule of properties in the said SMA is-reaffirmed. On the death of plaintiffs' father on **27.04.2015** an independent cause has accrued to legal heirs of deceased Abdul Rasheed Shahzada as every death opens inheritance for the legal heirs. Defendant No.1 was not among the legal heirs of late Abdul Rasheed Shahzada to inherit anything from his estate. Therefore, a separate petition of Letter of Administration was required to be filed. However, record shows that the plaintiffs have not filed any petition for Letter of Administration in respect of distribution of assets of their father Abdul Rasheed Shahzada and that is why even subsequent Letter of Administration dated **16.03.2016** in the same SMA No.167/2013 also refers to the assets and immovable properties of deceased **Baqar Rasheed Shahzada** and not in respect of plaintiffs' father **Abdul Rasheed Shahzada**. Once the Letter of Administration was issued in respect of the estate of deceased Baqar Rasheed Shahzada, the chapter of inheritance in respect of the suit properties has been closed.

20. In fact under improper and ill advice the plaintiffs instead of filing a separate petition for letter of administration on the demise of their father in respect of 50% share in the suit properties, a frivolous application under **Order XXII Rule 2 CPC** read with Section 151 CPC (**CMA No.896/2015**) was filed in the disposed of Succession petition and permission was sought to amend disposed of petition.

This application was filed by the counsel under his own signature with his own affidavit without realizing that the provisions of **Order XXII Rule 2 CPC** do not apply in succession matters as it was not a case of death of a plaintiff or defendant during proceedings of any suit filed under **Section 9** of the CPC nor it was a suit for administration of the properties of any deceased. Such applications are filed only with a view to bring legal heirs of the parties on record if any one dies during the trial and title of the plaint is amended accordingly without seeking any amendment in the pleadings i.e. the plaint or the written statement. In Succession Petition nothing sort of amended title has ever been filed nor it could be filed. The petition under **Section 278** of the Succession Act, 1925 is not a pleading as defined under **Order VI** of CPC nor a plaint as explained under **Order VII Rule 1** of the CPC and therefore, even in the pending petitions in Succession matter provisions of **Order VI Rule 17** CPC for amendment in the memo of succession petition are not applicable. Even otherwise it is settled law that no amendment in pleadings could be allowed in a disposed of matter. In disposed of Succession Petition only extension of Letter of Administration is permissible under **Section 376** of the Succession Act, 1925 on subsequent discovery of any other estate of deceased which inadvertently or for any reason could not be mentioned in the original succession petition. OR a Succession Certificate may be revoked under **Section 383** of the Succession Act, 1925 on the grounds provided in the said section. But there is no concept of amendment in the disposed of memo of petition for Letter of Administration in respect of ONE identified deceased on subsequent death of another person who was legal heir of the deceased whose petition has been disposed of prior to the death of the other person. Under the law of succession, it is not

permissible that a common petition/application be entertained for grant of succession certificate/ Letter of Administration pertaining to assets of more than one deceased particularly when legal heir of two deceased are not common, irrespective of the fact that assets were inherited by one of them from the other person. The plaintiffs in SMA No.167/2013 were not legal heirs of deceased **Baqar Rasheed Shahzada** and defendant No.1 was not legal heir of plaintiffs' father **Abdul Rasheed Shahzada**. Nor the estate of deceased Baqar Rasheed Shahzada who died on **17.2.2013** and estate left by Abdul Rasheed Shahzada who died on **27.4.2015** were common. In these circumstances, the proceedings in the disposed of SMA No.167/2013 on the demise of plaintiffs' father for distribution of assets of their deceased father were coram-non-judice and not lawful in as much as the estate left behind by deceased Abdul Rasheed Shahzada cannot be included in a disposed of Letter of Administration dated **10.02.2014** issued on the death of his son. In these circumstances, the plaintiffs may file a proper petition for Letter of Administration in respect of the assets of their father who died on **24.7.2015** and survived by a widow and two daughters and disclose the details of other legal heirs of deceased Abdul Rasheed Shahzada strictly according to Chapter-VII about Hanafi Law of Inheritance by D.F Mull's Principles of Mohammadan Law.

21. In view of the above, with the dismissal of the instant suit all the applications filed by defendant No.1 in SMA No.167/2013 stand allowed. The Nazir is appointed Receiver of all the properties and he is directed to:

- (i) evaluate the suit properties for distribution of 25% share of defendant No.1 to her as prayed;

- (ii)** take accounts of rent having so far received by the plaintiffs in respect of **(a)** Flat No.3, 2<sup>nd</sup> Floor, Plot No.08, C, 31<sup>st</sup> Commercial Street, Phase-V, D.H.A admeasuring 900 sq. ft. Karachi and **(b)** Flat No.202, 2<sup>nd</sup> Floor, No.08, C, 31<sup>st</sup> Commercial Street, Phase-V, D.H.A admeasuring 900 sq. ft. Karachi;
- (iii)** handover 25% share from the rental amount to defendant No.1 and continue to pay her 25% share as long as these flats are intact;
- (iv)** receive/realize future rent of the two aforesaid properties from the date of this order and also other income, if any, from the suit properties; and
- (v)** the properties and its income should be retained by the Nazir until a proper Succession Certificate/Letter of Administration after public notice as required under the Rules is obtained by the plaintiffs in respect of 75% ownership of the suit properties by disclosing details of other legal heirs in accordance with Hanafi law of inheritance.

22. The instant suit and SMA No.167/2013 are disposed of in the above terms.

JUDGE

Karachi, Dated: 04.06.2021

Ayaz Gul