

# IN THE HIGH COURT OF SINDH AT KARACHI

HCA No.81 of 2018

Present:  
Mr. Justice Irfan Saadat Khan  
Mr. Justice Fahim Ahmed Sidiqui

## JUDGMENT

Dates of hearing: 28.10.2019 and 27.11.2019.

Appellants: Syed Ahmed Shah Shamsi and others through Mr. Sibtain Mahmud, Advocate.

Respondents: Mst. Rabia Bibi and others through attorney namely, Adil Shamsi.

**Irfan Saadat Khan, J.** This High Court Appeal has been filed impugning the order dated 08.03.2018, whereby the application bearing CMA No.14516/2017 filed in Suit No.1251 of 2008 was dismissed by the learned Single Judge.

Mr. Sibtain Mahmud, advocate has appeared on behalf of the appellants and submitted that he is an officer of the Court and is required to assist the court in a proper manner whatever may be the decision whether in favour of his client or against him. He stated that the issue in the instant matter is with regard to the fact that whether the widow of late Syed Safdar Hussain (Mr. Shah), namely Rabia Bibi would be entitled for inheritance in respect of the assets left by the said deceased, who belongs to Shia Sect in lands also. He stated that the same issue came up for hearing before the Hon'ble Supreme Court of Pakistan in the case of *Noor Bibi and another Vs. Ghulam Qamar and another (2016 SCMR 1195)* and in that judgment a full bench of the Hon'ble Supreme Court of

Pakistan has categorically observed that a widow with children under the Shia law of inheritance would be entitled for her share in land also left by the deceased but a childless widow would not be entitled for any share in the land left by the deceased. He stated that in the instant case also Mst.Rabia Bibi is not a childless widow but having children namely, Hina Shamsi, Sana Shamsi and Adil Shamsi. He further stated that as per Fatwas of some Shia scholars a widow belonging to Shia Sect is not entitled for inheritance in land left by the deceased.

Respondent No.4 Adil Shamsi is present on behalf of all the respondents and stated that since the issue under discussion has already been laid at rest by the Hon'ble Supreme Court of Pakistan in the above referred decision hence this appeal is not maintainable and may be dismissed. He stated that there are some Fatwas of some Shia Scholars with regard to the fact that a widow belonging to Shia sect would be entitled for inheritance in respect of the land also left by a deceased. He lastly request for dismissal of the instant appeal.

We have heard the learned counsel for the appellants and respondent No.4 at considerable length and have also perused the record as well as the decision relied upon by both the parties.

It is noted that the above referred judgment of the Hon'ble Apex Court, while deciding the matter has considered a number of decisions on the subject and a number of books authored by the Islamic Scholars on Shia law of succession and inheritance and thereafter have come to the conclusion that a widow having children belonging to the Shia sect would be entitled for land also in respect of the assets left by her deceased

husband. Hence we without indulging ourselves into the aspect that there are some Fatwas of some Shia Scholars on the point that a widow belonging to Shia Sect is not entitled for land in respect of the assets left by her late husband deem it necessary to confine ourselves to the extent of the decision given by the Hon'ble Apex Court on this subject. The relevant paragraph of the above judgment is reproduced as under:

*“This aspect of the case also been considered in the case of Syid Murtaza Husain v. Musammat Alhan Bibi 1909 IC (Vol.2) 671, which lays down that under the Shia faith, a widow with a child from her deceased husband is entitled to a share in both movable and immovable property of her husband.”*

In view of above, we dismiss this appeal by observing that Mst. Rabia Bibi, since she is a widow having children, would be entitled for inheritance in respect of the land left by the deceased as per her share. It may further be noted that since specific instructions with regard to distribution of shares among the legal heirs of the deceased has already been given by this Court vide order dated 05.09.2018, which would continue and the Nazir of this Court is directed to act strictly as per the directions already given by this Court.

With the observations made above the instant High Court Appeal is dismissed along with all the listed and pending applications. Nazir's report is taken on record.

JUDGE

JUDGE