

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No.79 of 2018

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Fahim Ahmed Siddiqui

J U D G M E N T

Dates of hearing: 28.10.2019 and 27.11.2019.

Appellant: Noor Jehan Khan through Mr. Shafiq Ahmed, Advocate.

Res No.1 to 4: Mst. Rabia Bibi and 3 others through attorney namely, Adil Shamsi.

Res No.5 to 12 Through their attorney Syed Ahmed Shah (respondent No.5).

Irfan Saadat Khan, J.: This High Court Appeal has been filed by impugning the order dated 07.03.2018 passed by the learned Single Judge in J.M. No.06 of 2018.

Mr. Shafiq Ahmed advocate has appeared on behalf of the appellant and stated that the learned Single Judge while dismissing the application under Section 12(2) CPC has not given a chance to the appellant to produce her passport, birth certificate and other documents to prove that she was the daughter of Mst. Nargis Bano, who was the wife of deceased Syed Safdar Hussain Shah Shamsi (Mr. Shah). He stated that the learned Single Judge in a cursory manner has dismissed the said application on the ground that since the appellant is an Indian National hence she was required to seek permission from the Federal Government, as per Section 83 of the CPC. He stated that had the learned Single Judge

granted chance to the appellant to adduce some evidence or documents, the appellant would be able to prove her case that she was the daughter of the deceased Mr. Shah and the appellant would definitely have complied with the above referred section as well but the learned Single Judge in a hasty manner has dismissed the said application without providing any chance to the appellant to prove her case that she was the daughter of Mr. Shah. He stated that matter may be remanded to the learned Single Judge for deciding the same afresh after providing opportunity of hearing to the appellant.

Adil Shamsi, has appeared for himself and on behalf of the respondents No.1 to 3. He firstly denied that the appellant Noor Jehan Khan was the daughter of the deceased Mr. Shah but subsequently stated that he does not know whether she was the daughter or not as that would be a controversial question of fact.

Syed Ahmed Shah is present for self and for respondents No.6 to 12. He categorically stated that to the best of his knowledge and belief, Noor Jahan Khan is the daughter of the deceased Mr. Shah and she has the right to adduce evidence with regard to her said claim. He, therefore, supported the stance of the appellant in this behalf.

We have heard the learned counsel for the appellant and the respondents at considerable length and have perused the record.

We are of the view that the learned Single Judge while passing the order should have asked the appellant to produce such documents to prove that she was the daughter of late Mr. Shah. It is categorically noted that on 8.6.2018 the appellant Noor Jahan Khan was present in Court

when she produced her original Passport, her Birth Certificate, Nikahnama of her mother, namely, Nargis Bano with the deceased Mr. Shah and certified copy of her marriage certificate, which were seen and returned. Copies of the same are available in Court's file at pages 211 to 225. It is also noted that on that date Adil Shamsi (respondent No.4) duly attended the court and sought time. Syed Ahmed Shah in his counter affidavit has also admitted the stance of the appellant.

In view of the above facts, we consider that the matter requires deeper examination with regard to the facts that have surfaced. We, therefore, in order to do substantial justice in the instant matter, deem it appropriate to remand the case to the learned Single Judge for deciding the same afresh, after providing opportunity of hearing to the parties, in the light of the documents available in the instant matter and he may require any other document which he deems necessary for proper disposal of the matter in accordance with law. The present appeal therefore stands allowed by setting aside the order of the learned Single Judge dated 7.3.2018. It is expected that the above exercise would be completed by the learned Single Judge preferably within a period of three months from today.

The instant High Court Appeal stands disposed of alongwith the pending application(s) in the above manner.

JUDGE

JUDGE