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ORDER SHEET.
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Civil Succession Appeal No.S-01 of 2016

Date of hearing	Order with signature of Judge
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1. For orders on office objection at flag A.
2. For hearing of CMA No.32 of 2016. (S/A).
3. For hearing main case.
Notice issued to respondents counsel.

18.09.2017.

Mr. Abdul Qadir Abro Advocate for the Appellant.

Mr. Premchand R. Sawlani Advocate for Respondents No.1,4 to 8.

Mr. Bashir Ahmed Dargahi Advocate for National Bank of Pakistan.

Abdul Wahid Solangi, Officer Incharge, National Saving Center -I, Shikarpur.

Muhammad Junaid Ghaffar, J:- Through this Appeal filed under section 384 of Succession Act, 1925, the appellant has impugned order dated 04.01.2016 whereby the Succession Petition was dismissed.

2. Learned counsel for the appellant submits that there is no dispute to the effect that the appellant is the son of deceased Abdul Sattar Memon who had invested various amounts in National Saving Centers as well as Banks so detailed in his memo of petition; however, the trial Court, firstly on the basis of a *WILL* purportedly made in the favour of the other legal heirs of late Abdul Sattar Memon; and secondly, on the basis of some reports of Savings Centre and Banks came to the conclusion that no case for issuance of Succession certificate is made out and the Succession petition was dismissed. He submits that the appellants counsel was not heard, whereas, the amount which was lying with the Saving Centers and banks was withdrawn subsequently after death of appellant's father by the other legal heirs. In Support of his contentions he relied upon the case of *Mst. Amatul Habib and others V. Mst. Musarrat Parveen and others and Joseph and others V. Mst. Teresa Joana Andrews and another (PLD 1974 Supreme Court 185)*, *Imtiaz Shamim and others V. Muhammad Irfan-ul-Haq and others (2006 CLD 1189)* and *Malik Safdar Ali Khan and another V. Public-at-Large and others (2004 SCMR 1219)*.

3. On the other hand learned counsel for respondents submits that appellants counsel was duly heard and report was called from the concerned Saving Centers and Banks and no objections were filed, whereas, the amount invested with National Saving Center-II never belonged to the deceased and was invested by respondent No1, out of her own resources.

4. I have heard learned counsel for the parties and perused the record. Insofar as the question of purported *WILL* issued by the deceased is concerned, it appears to be an admitted fact that no Probate was issued by the Court in respect of the *WILL* in terms of Section 276 of the Succession Act, 1925, nor have the Respondents made any such prayer or petition as informed by their Counsel. The Trial Court seems to have been impressed by mere existence of the *WILL* for which no efforts seems to have been made by the Respondents for issuance of a Probate by the Court. Though the learned Court has rightly observed that no challenge to such *WILL* was made by the appellant, and the said *WILL* should have been challenged through a Civil Suit in accordance with law; but at the same time the Succession Petition of one the legal heirs cannot be dismissed on the ground that he is not one of the legatees and the Estate of the deceased has not been bequeathed upon him.

5. Insofar as dismissal of succession petition is concerned, I do not agree with the finding of the learned trial Court as admittedly the appellant is son of deceased Abdul Sattar and it appears that while dismissing the succession petition the learned trial Court was impressed by execution of purported *WILL* made in favour of the other legal heirs. It has come on record at least from the response of National Saving Centre-I, Station Road, Shikarpur that the amount which was lying with them in the name of late Haji Adul Sattar was en-cashed by the nominees after his expiry on 04.04.2014, whereas, he expired on 9.2.2014 and along with this Statement copies of 2 Cheques of Rs.1.5 Million each issued in the name of respondent Nos. 2 & 3 have been annexed, whereas, the said Behbood Savings Certificates were purchased in the year 2008 by deceased Abdul Sattar Memon. It is settled law that the legal heirs are entitled for their shares in the estate of deceased left by him according to Shariah. Apparently insofar as this amount of Rs.30,00000/- (Rupees Three Million)

is concerned the same was invested by and in the name of Abdul Sattar Memon deceased and was encashed after his death by nominees. It is also settled law that mere nomination of a person during his lifetime for any amount held by him in a savings scheme would not operate as a Gift or a Will and such nomination cannot be so construed or applied so as to deprive another legal heir from his lawful share in the estate of a deceased. Reliance in this matter can be placed on the case of ***Bushra Farooq v Shabana Rafiq (2002 CLC 1502)*** wherein a learned Single Judge of this Court has been pleased to hold as under:

15. As regards the certificates in the name of Jamal Ahmed Khan, on the same analogy it would be held that in view of the Defence Saving Certificates Rules these certificates and the amount and profit thereon is the property of late Jamal Ahmed Khan which is ordinarily to be inherited by his heirs. However, there is a nomination made to the extent of 50% in favour of Shabana Rafique. As regards the legal effect of nomination it is relevant to observe here that the provision of nomination in the Rules wherever it defeats the right of heirs is to be interpreted strictly as this provision of the Rule derogates from the general law that in case of inheritance the Muslim Personal Law is applicable to the parties. Rules 13 of the Defence Saving Certificates Rules makes a provision for nomination and the claim of defendant No. 1 is based on this provision, but since it is flagrantly in direct conflict with the substantive law of inheritance it can legitimately be observed that the substantive law should prevail and the rules being subordinate legislation shall give way to it. In any manner it is imperative to give effect to the provision of the law of inheritance notwithstanding the conflict. The defendant No.1 has, however, endeavoured to place on record a Will said to have been executed by Jamal Ahmed Khan mentioning therein that 50% of his properties shall go to Shabana Rafique. How far such a testament could be valid is a question apart, but since the question of inheritance is yet to be decided in a different suit, the effect of this document as also the alleged Nikahnama etc. are not being considered for the purpose of this suit. Consequently, it is held that the Defence Saving Certificates in the name of Jamal Ahmed Khan and profit thereon are to be inherited by his legal heirs in accordance with law.

6. The same view has been followed by another learned Single Judge of this Court in the case of ***Muhammad Shahid Farooq v. Jamshed Ali Khan and another (2017 CLC 1227)*** and in fact certain directions have been given to the State Bank as well National Savings Centres in this regard, whereas, the nominee who had received the amount of certificates was directed to surrender such received amount along with profits thereon to the Nazir of the Court for distribution amongst all the legal heirs according to their entitlement.

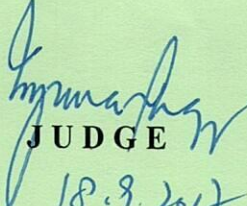
7. The Hon'ble Supreme Court in the case of *Malik Safdar Ali Khan v. Public at Large* (2004 SCMR 1219) has been pleased to observe as follows;

7.....The contention that Zafar Ali Khan was nominated by the deceased in the National Savings Certificates Form cannot override the provisions of Mahmomedan Law; according to which legal heirs are only the persons entitled to receive the inherited property left by their father and husband. The contention of Ch. Mushtaq Ahmad Khan, learned Advocate Supreme Court for the petitioners that Succession Certificate could only be granted to the applicant, is also not tenable, because as discussed above, deceased's two children and widow were entitled for the grant of Succession Certificate, therefore, the learned trial Court rightly granted the same in their favour.

8. In view of hereinabove facts and circumstances of the case the appellant has made out a case for indulgence. Accordingly impugned order dated 14.1.2016 passed by 2nd Additional District Judge, Shikarpur is hereby set-aside and the matter is remanded to the said Court with directions to first probe the matter regarding the investment allegedly made by the deceased with National Savings Centre and Banks, and after calling report(s), if it comes on record that the amount was invested by the deceased and has been en-cashed after his death by the nominees, then apparently the appellant would be entitled for his share according to "SHARIAH". The trial Court is directed to decide the succession matter preferably within a period of six months from the date of this order.

Appeal stands allowed in above terms.

S.Ashfaq


JUDGE
18.9.2017