

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr Justice Faisal Kamal Alam

Mr Justice Jawad Akbar Sarwana

Constitution Petition No. D – 1018 of 2025

Farheen Saeed w/o Saeed Ahmed & Another

v.

Aziz Ahmed s/o Muhammad Aquilain and Nine (9) Others

Petitioner No.1	:	Farheen Saeed w/o Saeed Ahmed
Petitioner No.2	:	Sadaf Nadeem w/o Muhammad Noman
		Both petitioner nos.1 &2 through Ameer Muhammad, Advocate
Respondent No.2	:	Aziz Ahmed s/o Muhammad Aquilain. Nemo.
Respondent No.2	:	Mst. Farida Bano through legal heirs. Nemo.
Respondent No.3	:	Muhammad Sadequain s/o Muhammad Aquilain. Nemo.
Respondent No.4	:	Mst. Nasreen Zafar @ Zakia. Nemo.
Respondent No.5	:	Mst. Salma Begum w/o Muhammad Sadequain. Nemo.
Respondent No.6	:	Muhammad Ismail through legal heirs. Nemo.
Respondent No.7	:	Mushtaque Ahmed through legal heirs. Nemo.
Respondent No.8	:	Rahimuddin through legal heirs. Nemo.
Respondent No.9	:	The learned IVth Additional District Judge, Central, Karachi
Respondent No.10:		The learned VII Senior Civil Judge, Central, Karachi
Date of Hearing	:	12.03.2025
Date of Judgment	:	25.03.2025

J U D G M E N T

Jawad Akbar Sarwana, J.: The petitioners, Farheen Saeed and Sadaf Nadeem, are two of the five (5) children of the Late Muhammad Ismail and Mst. Mumtaz Begum. Late Muhammad Ismail, in turn, is one of the legal heirs of Late Muhammad Aquilain. The petitioners claim that the judgment and decree dated 28.11.2016 in Suit No.282/2016, filed by their uncle/chacha, Aziz Ahmed (co-plaintiff/respondent no.1) and aunt/phuppi, Mst. Farida Bano (co-plaintiff/respondent no.2), in respect of the two Suit Properties mentioned therein,¹ was passed:

- (i) fraudulently and malafide as the two petitioners were not served summons;
- (ii) with malafide intention, the address of the two petitioners given in the plaint in Suit No.282/2016 was not the address where the petitioners resided, and
- (iii) ex parte, i.e. the judgment and decree dated 28.11.2016, were obtained by their uncle and aunt ex parte.

Finally, they claim that the above-mentioned uncle and aunt, after almost seven (7) years from the date of judgment and decree, have applied to the court for enforcement of the judgment, allegedly without mentioning that the said aunt had passed away during the Coronavirus (COVID-19) pandemic.

Therefore, the two petitioners contend that the two forums below, i.e. the trial court in Suit No.282/2016, with material irregularity, dismissed their application under Section 12(2) CPC vide order dated 12.07.2024,² and, thereafter, the district court in civil revision no.95/2024, without lawful

¹ The Suit Property consists of (1) House No.1110, Block-2, Azizabad, Karachi consisting of ground plus one floor, and (2) House No.1133, Block No.2, Azizabad, Karachi consisting of ground plus two floor with six shops located on the ground floor.

² Available on pages 187-189 of the petition.

authority, dismissed their revision application under Section 115 CPC vide order dated 05.03.2025.³ Hence, the petitioners have invoked the Constitutional jurisdiction of the High Court under Article 199(1)(a)(ii) of the 1973 Constitution.

2. Heard Counsel and perused the documents available in the petition.

3. The trial court's order dated 12.07.2024 dismissing the application under Section 12(2) CPC clearly articulates the several opportunities afforded to the two petitioners to file their written statements in Suit No. 282/2016. The order notes that legal heirs refused to receive summons, that they were present in Court and took time to consult their lawyer before receiving the summons, which they never did,⁴ and service was also affected by pasting and publication. The petitioners were debarred from filing their Written Statements and proceeded ex parte as per the Court's order dated 03.08.2016. They also did not cross-examine their Uncle after he filed his affidavit in ex parte proof dated 16.11.2016.

4. The judgment and decree dated 28.11.2016 itself in Suit No.282/2016, as per the prayer clause, seeks to bifurcate the two Suit Properties among all the legal heirs, which includes the two petitioners, and in case of failure, the Nazir may be appointed for distribution of share(s) amongst the legal heirs excluding the legal heirs of Defendant No.4/Respondent No.8 (Rahimuddin s/o Muhammad Aquilain) and those Defendants/Respondents mentioned in the Iqarnama.⁵ According to Counsel for the two petitioners, none of the remaining legal heirs have raised objections to the judgment and decree dated 28.11.2016 except the two petitioners.

5. No useful purpose would be served to conduct a fact-finding mission by this Constitutional High Court. The two petitioners claim ranks at par with the

³ Available on pages 33-37 of the petition.

⁴ The two petitioners were two of the six legal heirs of Defendant No.2 in Suit No.282/2016. However, the Order dated 12.07.2024 consistently refers to defendant no.2 as a whole. It does not particularize the two petitioners. For the purpose of this Judgment, we have assumed that the references to defendant no.2, include the two petitioners/legal heirs of defendant no.2. The Counsel for the two Petitioner also accepted the references to Defendant No.2 in the Order dated 12.07.2024 to be reference to the two petitioners.

⁵ Iqarnama is available on page 151 of the petition.

remaining legal heirs of the Late Muhammad Aquilain, and execution proceedings have yet to be concluded. The legal rights of the parties to this petition, as per Muslim laws of Inheritance, continue to remain in place, which should be ensured by the Court seized of this Lis. Neither any irregularity nor illegality has been made out against the impugned order by the two Petitioners. Even otherwise, we find no ground to interfere with the impugned order.

6. Based on the above understanding, the discussion set out herein, and the record available in the petition, we hold that this petition is not maintainable and dismiss it in limine.

Judge

Judge