

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD  
R.A.No.133 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

For orders on CMA-1701/2022

**27.03.2025.**

Mr. Abdul Rashid Mughal, advocate for Applicant.

Mr. Muhammad Yousif Rahpoto, A.A.G.

=

It is contended by learned counsel for the applicant that an order dated 25.04.2022 passed by this Court by not considering the fact that a registered sale deed has been executed by the deceased father to the extent of 1/3<sup>rd</sup> share of the un-divided property in question in the appeal and it is not with regard to full share (100%). He further contends that under Muhammadan Law, a Muslim can bequeath 1/3<sup>rd</sup> of his share to any legal heirs or any third party but a Muslim cannot bequeath more than that without consent of legal heirs. In the present cse he states that since only 1/3<sup>rd</sup> share was the subject matter hence, the consent of other legal heirs was not required under Muhammadan Law. He relied upon the case of *NAWAB DIN and 6 others vs BAGH and 6 others (1994 SCMR 1975)*, which is reproduced hereunder:-

*“A feeble attempt was made by the learned counsel for the petitioners to establish that Mst. Fateh Bibi, the executant of registered will deed, was a limited owner and consequently, not competent to alienate the property in any way. There is abundant evidence on the file which has been relied upon by all the three Courts below to the effect that she was full owner of the property left by her in India and in lieu thereof she was transferred ownership rights in the suit land by the Settlement authorities. This fact is admitted by Noor Ahmed D. W. which admission is binding on the petitioners. The trial Court as well as the appellate Court, on the appraisal of the evidence produced in the case, concurrently held as a fact that Mst. Fateh Bibi was full owner of the property and entitled to make a will to the extent of one-third share. The authenticity of the will deed, being a registered one, cannot be doubted. The High Court in the exercise of its revisional jurisdiction discussed the entire evidence produced in the case to verify the allegations of the counsel for the*

*petitioners of misreading and non-reading of evidence and came to the conclusion that there was no misreading or non-reading of evidence and the factual finding of the two Courts below did not call for interference. The learned counsel for the petitioners could not convince us about any illegality, material irregularity or jurisdictional error in the judgment of the lower forums.”*

It may be observed that the trial Court has dismissed the suit after recording the evidence while appellate Court has reversed the judgment of trial Court.

Let at the first instance notice be issued to the respondents for 21.04.2025.

JUDGE

Ahmed/Pa,