

*Order Sheet*  
IN THE HIGH COURT OF SINDH, KARACHI

**SMA No. 89 of 2023**

Date	Order with signature of Judge
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1. For order on office objection No.3 on main petition a/w reply of counsel.
2. For hearing of main petition. D.R (OS) Diary Flag A and B.

**23.10.2024.**

Ms. Sabahat Kiran, Advocate for the petitioner

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1. On the previous date, learned counsel for the petitioner was directed to assist this Court with regard to the office objection. Today, while referring to the office objection she submits that the petitioner, in order to cater the sufferings of legal heirs of predeceased son, mentioned the name of his widow alongwith his children in the memo of petition, however, if the said widow is not entitled to the shares as per the law, her name may be excluded from the array of the legal heirs of the deceased. The office objection reads as follows:-

“3. *How Naveeda Aslam (Widow of Pre-Deceased son) is entitled in this SMA? Only Children of pre-deceased son are entitled as per section 4 of Muslim Family Law Ordinance.*”

Section 4 of the Muslim Family Laws Ordinance, 1961, notwithstanding the fact that it has been declared repugnant to the injunctions of Islam by Federal Shariat Court in the case of *Allah Rakha and others V. Federation of Pakistan and others* (**PLD 2000 Federal Shariat Court 1**), however, the same still holds the field in view of proviso to Article 203-D (2) of the Constitution of Islamic Republic of Pakistan, 1973, as the decision of the Federal Shariat Court was assailed before the Supreme Court of Pakistan in appeal and the same is pending adjudication. Thus, in accordance with the proviso of the aforementioned article, the decision of the Federal Shariat Court before disposal of the appeal by the Supreme Court is not effective. Reliance can be made in the case of *Mst. Fazeelat Jan and others V. Sikandar through his legal heirs and others* (**PLD 2003 Supreme Court 475**). It may also be observed that Section 4 of the Ordinance 1961, provides that in the event of death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes receive a share equivalent to the share which such son or daughter, as the case may be

would have received, if alive. In fact, under the proviso of Section 4 of the Ordinance the benefit is provided only to the sons and daughters of a predeceased in the legacy of their propositus whereas the other legal heirs of a predeceased son / daughter cannot be the legal heirs of grandfather or grandmother either in accordance with the text of the Holy Quran or tables provided by Muhammadan Law, especially the widow of predeceased son with relation to the legacy of her father-in-law or mother-in-law, has got no concern, whatsoever; as the widow is neither a sharer nor a residuary. Thus, a widow could not be held entitled in the legacy of her father-in-law or mother-in-law, in the event of the death of her husband in the lifetime of his father/mother, being predeceased son. In this regard, reliance can be placed in the cases of *Haji Muhammad Hanif V. Muhammad Ibrahim and others (2005 ML 1)* and *Saif-ur-Rehman and another Vs. Sher Muhammad through LRs (2007 SCMR 387)*.

In view of the above, Naveeda Aslam, widow of the predeceased cannot be held legal heir of her mother-in-law (Rehmat Begum) the deceased in the present case and also is not entitled to any share in the property left by the said deceased, as such, office is directed to delete the name of Naveeda Aslam widow of predeceased son-Muhammad Aslam Yasin from the array of legal heirs of deceased-Rehmat Begum mentioned in the memo of petition through red ink. Office objection stands disposed of in the above terms.

2. Since the office objection has been disposed of, as such, the main petition is taken up for hearing.

Through instant SMA, the petitioner seeks grant of letter of administration in respect of immoveable properties left by deceased namely **Rehmat Begum wife of Muhammad Yasin Khan**, who died on 08.06.2023 at Karachi, leaving behind the following surviving legal heirs:-

Sr. No.	Name	Relationship
1	Muhammad Wasim Yasin	Son
2	Muhammad Shahid Yasin	Son
3	Muhammad Nadeem Yasin	Son
4	Muhammad Aslam Yasin	Son
5	Nasreen Aijaz	Daughter
6	Naila Aziz Khan.	Daughter

Muhammad Aslam Yasin son of deceased was expired on 07.11.2016 leaving behind the following children as his legal heirs.

Sr. No.	Name	Relationship
1	Iqra Moeen	Daughter
2	Yusra Yasin	Daughter
3	Bushra Zahid	Daughter
4	MuhammadMubbashir Yasin	Son
5	Muhammad Taha Yasin	Son

From the record, it appears that legal heirs of deceased **Rehmat Begum** as well as the legal heirs of her predeceased son **Muhammad Aslam Yasin** have sworn their respective affidavits of No Objection in favour of the petitioner. From the report of Deputy Registrar (OS) dated 18.01.2024, it reflects that the Mental Health Petition was filed by Naveeda Aslam before the XI-Additional District Judge, Karachi-East to appoint her as Guardian of her son namely; Muhammad Taha Yasin legal heir / son of predeceased (Muhammad Aslam Yasin) under Section 32 of the Mental Health Act, 2013 on the ground that he is of unsound mind, which was granted, vide order dated 15.01.2021.

The affidavits of two independent witnesses namely; (1) Syed Rameez Uddin Ahmed son of Syed Razi Uddin Ahmed and (2) Ashfaq Hameed son of Abdul Hameed Khan are also available on the record, which support the contents of the petition.

The petitioner, legal heirs and the independent witnesses appeared in Court and have admitted/acknowledged the contents of their respective affidavits sworn in support of the petition.

The deceased at the time of her death left behind immovable properties, details whereof are mentioned in the Schedule of Property (available at Page-35). Record also shows that the publication of the main petition has been effected in the “Daily Jang, Karachi dated 13.12.2023, but none has appeared and filed any objection. In this regard, a report of Deputy Registrar (O.S) dated 18.01.2024 is also available on the record.

In the circumstances, the matter has now emerged as non-contentious one, therefore, in my opinion, there is no legal impediment in granting the present SMA. Accordingly, this SMA is allowed as per Rules.

SMA stands disposed of.

JUDGE