

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Constitutional Petition No.S-469/2024
(Aijaz Ali and others V. Mst. Shamul and others)

<u>DATE</u>	<u>ORDER WITH SIGNATURE OF HON'BLE JUDGE</u>
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01. For orders on office objection "A".
02. For orders on M.A No.1057/2024 (S/A).
03. For hearing of main case.

Petitioners:	Aijaz Ali and others Through Mr. Arif Safdar Ghouri, Advocate
Respondents No 1 & 2	Mst. Shamul and Shafiqur Rehman Through Mr. Zafar Ali Malghani, Advocate.
Respondents No 3 & 4	Nemo Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh.
Date of Hearing	02-05-2025
Date of Order	02.05.2025

ORDER

Nisar Ahmed Bhanbhro, J. Through this petition, the petitioners have challenged order dated 29-11-2024 (the impugned order) passed by the Court of Learned Additional District Judge-II Kamber (Appellate Court) in Succession Appeal No 19 of 2024 Re Mst. Shamul Versus Shafiq ur Rehman and others, wherein the succession appeal filed by Respondent No 1 / MstShamulin respect of the Life Estate of her deceased husbandAbdul Ghaffar has beenallowed and moveable assets left by deceased Abdul Ghaffar have been ordered to be distributed amongst his three widows, minor son Shafiq ur Rehman and mother.

2. Facts giving cause for filing of the present petition are that Respondent No 1 (Mst. Shamul) filed succession petition before NADRA authority for grant of succession certificate under the provisions of Sindh Succession Act 2021, enabling her to collect share from moveable Life Estate of her husband Late Abdul Ghaffar who died on 11.10.2016 and left behind cash money and share certificateby purchase of shares in Allied Bank Limited and Habib Bank Limited. In charge Succession Facilitation Unit NADRA Kamber after verificationof record and inviting objections from public declined to grant succession certificate as one of the legal heirs of deceased was minor, thus advised legal heirs to approach Court of law. Mst Shamul filed succession appeal before the Court of Learned District Judge Kamber Shahdadt which was assigned tothe Appellate Court. Mst Shamul claimed that her husband Abdul Ghaffar Chandio died on 11-10-2016 of natural death; he left behind three widows namely Mst Shamul, Mst Khanzadi, Mst Romana and son Shafiq ur Rehman as surviving legal heirs. Late Abdul Ghaffar died without making any will though diligent search was made but no will could be found.Late Abdul Ghaffar during his lifetime used to purchase shares from Allied Bank Limited vide Folio No.26612 CDC share registrar services Karachi and Habib Bank Limited HBL folio No.19273 CDC share registrar services Karachi. Mst Shamul approached concerned NADRA authority for grant of succession certificate enabling her towithdraw said

shares from concerned banks but NADRA did not issue succession certificate through order dated 06-04-2024 on the ground that subject case required adjudication by court of law. Hence, she filed succession Appeal making following prayer:

“That, this Honorable Court may be pleased to issue succession certificate in favour of appellant regarding receiving/collecting shares from the Allied Bank Limited vide folio No.26612 CDC share register services Karachi and another bank account share certificate in Habib Bank Limited HBL folio No.19273 CDC share register services Karachi, left by deceased husband of appellant Abdul Ghaffar Chandio.”

3. Appellate Court issued notices of the appeal to public at large through publication in daily Kawish dated 15-09-2024. Mst. Khanzadi and Mst Romana appeared before Appellate Court and filed an application under order 1 rule 10 CPC seeking indulgence of the Court to implead them as party, as they being widows of Late Abdul Ghaffar were also legal heirs. Application of Mst. Khanzadi and Mst Romana was allowed and they were arrayed as respondents in the appeal. Petitioners also filed an application under order 1 rule 10 CPC before Appellate Court to implead them as party, the application of petitioners was declined vide order dated 22-11-2024. Appellate Court called reports from the concerned Banks, which established the claim of Mst Shamul regarding investments by Late Abdul Ghaffar. The legal heirs of late Abdul Ghaffar Chandio viz; his widows appeared before Appellate Court and rendered no objection for grant of succession certificate, Appellate Court granted Succession Certificate vide order dated 29-11-2024, which is impugned through instant petition. Operative of order part being Para No.9 is reproduced herein below:

“Keeping in view the above legal and factual position, I am of the considered view that appellant Mst. Shamul, respondent No.1 being her real son from her husband late Abdul Ghaffar, respondent No.4 and 5 also being wives of late Abdul Ghaffar are entitled to grant of succession certificate(s) as prayed. The share of Mst. Sharifan from the property under subject inherited from her son late Abdul Ghaffar had devolved upon her legal heirs. The succession certificate(s), therefore, be issued, the appellant shall be given her due share, share of respondent No.1 shall be deposited by the appellant in shape of saving certificate in favour of respondent No.1 with Accountant of District and Sessions Court, Kamber-Shahdadkot at Kamber, till he becomes adult. Shares of respondents No.4 & 5 shall be distributed in their favor by Accountant of District & Sessions Court, Kamber-Shahdadkot, and the share of Mst. Sharifan, the mother of late Abdul Ghaffar, shall be distributed in favour of her legal heirs in accordance with Muhammadan Law, by Accountant of District and Sessions Court, Kamber-Shahdadkot at Kamber. Learned counsel for appellant is directed to submit schedule of shares of appellant, respondent No.1, respondent No.4 & 5 and share of Mst. Sharifan (the mother of late Abdul Ghaffar), such share be highlighted in schedule, share of each legal heir of Mst. Sharifan Shall be outlined in the schedule to be submitted with a period of one month. With these directions this succession appeal is allowed. The succession certificate(s) will be issued after considering and going through the schedule of shares as directed. Each sharer in whose favor succession certificate shall be issued, shall furnish surety equivalent to share, determined after going through schedule to be submitted by counsel for appellant, to which the respondent's side shall have the right to point out if there is any illegality or error. Order accordingly.”

4. Mr Safdar Ali Ghouri, Learned Counsel for the petitioners contended that Minor Shafiq ur Rehman is adopted child of Late Abdul Ghaffar, therefore he cannot succeed from the life Estate of Late Abdul Ghaffar. He contended that Mst Hanifan filed civil suit No 42/2019 Re Mst Hanifan Versus Mst Shamul and others before the Court of Learned Senior Civil Judge Warah, seeking declaration that she was real mother of minor Shafiq Ur Rehman and he was adopted child of Late Abdul Ghaffar. Trial Court after full Trial by recording evidence of parties decreed the suit vide judgment and Decree dated 16.12.2022. He contended that MstShamul filed appeal No 22 of 2023 titled Mst Shamul and another Versus Mst Hanifan and others before the Court of Learned District Judge Kambar Shahdadkot, the Appeal filed by MstShamul was allowed by the Appellate Court vide judgment and decree dated 13.03.2024 as Mst Hanifan backed out from her earlier stance and recorded additional evidence adducing that Mst. Shamul was biological mother of minor Shafiq ur Rehman and he was real son of Late Abdul Gahffar. He contended that the Petitioners have assailed the judgment and decree of Appellate Court before this Court in Civil Revision Application No 55 of 2024 Re Aijaz Ali and others Versus Mst Shamul and others which is pending adjudication. He contended that parties are in dispute over heirship issue of Late Abdul Ghaffar, per his contention Late Abdul Ghaffar died issueless, though he solemnized marriage thrice, therefore he adopted Minor Shafiq ur Rehman who is son of Abdul Manan and such assertion finds support from litigations between the parties. He contended that per orders of Family Court, DNA test of Shafiq ur Rehman was conducted, his DNA matched with Mst Hanifan and he was declared his son by trial Court seized with Civil Suit No 42 of 2019. He contended that exclusion of Shafiq ur Rehman from linen descendance of Late Abdul Ghaffar will change entire scenario of Legal Heirs. He contended that Petitioners preferred an application under I Rule 10 CPC for impleading them as party in Succession Appeal which was declined and Respondents were declared as Legal Heirs of Late Abdul Ghaffar. He contended that the impugned order is illegal, null and void, thus not sustainable under the law. He prayed for allowing this petition.

5. Conversely, Mr. Zafar Ali Malghani Learned Counsel appearing on behalf of Respondents No.1 and 2 contended that there is no illegality or infirmity in the impugned order as Late Abdul Ghaffar was survived by mother, one son and 3 widows. Under the law they were entitled to inherit the life estate of Late Abdul Ghaffar. He contended that in order to get share from property the Petitioners induced Mst Hanifan to claim herself to be the mother of Minor Shafiq ur Rehman and such claim has been rejected through adjudication by Civil Court. He contended that AppellateCourt granted the succession certificate to the extent of shares of each legal heirs and Petitioners have no right or interest in the life Estate of Late Abdul Ghaffar. He contended that Petitioner have got no rights or interest in the assets left by Late Abdul Ghaffar and Appellate Court rightly declined their claim. He supported the impugned order.

6. Learned Assistant Advocate General did not render any assistance and contended that government interest was not involved in the matter.

7. Heard arguments of the parties and examined the material available on record with the able assistance of Learned Counsel appearing for parties.

8. The bone of contention between the parties in the present petition is the entitlement of minor Shafiq-ur-Rehman from Life Estate of Late Abdul Ghaffar who was uncle of Petitioners. The Petitioners claim that Minor Shafiq ur Rehman is adopted child as such he will not get right of inheritance in Life Estate of Late Abdul Ghaffar and if he is allowed to inherit, it will deprive their right to inheritance. Under

Sharia, in fiqh e – Hanfi, if a person dies issueless his wife inherits 1/4th of his Life Estate and rest of the property goes to his brothers. The claim of the Petitioners is that Late Abdul Ghaffar died issueless leaving behind three widows and one mother as legal heirs, three widows shall inherit 1/4th share from life Estate of Late Abdul Ghaffar and remaining 3/4th share will fall in the inheritance of his brothers (late father of the petitioners and Late Uncle Abdul Manan). Since Abdul Mannan and Abdul Ghaffar were real brothers therefore Shafiq ur Rehman at the time of birth was given in the lap of Mst Shamul and brought up by her. After the death of Abdul Ghaffar his brothers started a race to get declared Shafiq ur Rehman as son of Abdul Manan. To establish such claim Mst. Hanifa wife of Late Abdul Manan filed Suit before Civil Court, wherein she claimed herself to be the mother of Shafiq-ur-Rehman. Initially the suit was decreed in favor of Mst Hanifan but it was reversed in appeal where she herself appeared and withdrew her claim of motherhood; her suit was dismissed. This dismissal provoked indignation in the family, petitioners in present petition have attacked the said decision of District Court before this Court through Civil Revision Application No 55 of 2024 which is yet to meet its fate. The much contested issue of succession has been resolved in favor of minor Shafiq ur Rehman, as the Appellate Court seized with succession appeal declined the application of Petitioners to examine their entitlement to receive share in the Life Estate of Late Abdul Ghaffar which includes a cash of Rs 6.2 Million and shares of Allied Bank and Habib Bank, besides Late Abdul Ghaffar has also left immoveable properties in his name and order passed by the Appellate Court is a first step towards determination of rights of the parties.

9. Matter in hand pertains to hotly debated issue of “Adoption” of children by issueless couples / parents. “Adoption” for the issueless couples has not been so easy in our country, for want of any law in field regulating this issue. There are a large number of children, deprived of parental care and leading orphanage life in Edhi Homes, Sweet Homes and other places and a similar number of couples in search of “Adoption” to have a child in their lap. This is within the command and ordains of nature to bestow couples with offspring. Though the modern-day development in the field of biological sciences has eased this problem to a certain extent through different fertility concepts but cannot in any manner equate with the nature’s blessings of being parent. “Adoption” finds encouragement from both religion and society but yet to seek legislative shape in our country. “Adoption” in our Country is regulated through Guardian & Wards Act 1890 which does not in any manner protect the rights of child. The Guardian Court at the most can appoint a willing person as the Guardian of minor and cannot in any manner protect future rights of the minor. A child recognizes his parental relations through the care he gets. He identifies a person as his mother and father, in terms of love and affection he nurtures. Once he grows up, he finds that he was not under biological descendancy of the parents with whom he passed his life, he is ruined, society looks at him with a different eye, he becomes the talk of his friends, his social life comes to a standstill and he starts thinking in a different way. His attention diverts in the search of his real parents and when he looks at the love, care and affection of his adoptive parents, he treats the voices of missing parentage as joke. To curb all this to happen, the country needs to regulate “Adoption” by a law enacted through parliament, wherein a child if taken under “Adoption” should be mandatorily registrable. If a family is incapable of feeding a child due to poor economical conditions, it may leave the child at a registered “Adoption” center, wherefrom the issueless parents can take the custody of infant through registration, without changing his parentage as has been ordained by Holy Religion Islam. Though Religion Islam disentitles an “Adopted” child from right of inheritance but at the same time grants permission to bequeath 1/4th of the Life Estate in favor of “Adopted” Child, if legislation shapes this permission through a suitable lawmaking the problems being faced by adopted children in terms of rights to inheritance can be resolved with more ease and convenience.

10. The United Nations General Assembly in its 44/25 session held on 20th November 1989 adopted a resolution named “Universal Convention on Child Rights” to which Pakistan is also a signatory. The resolution recognized the rights including those of the adopted children. The convention contained in all 54 articles but preamble and relevant articles cognizant of the fundamental rights of children are reproduced below:

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and

Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other

persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of

child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

11. The UN Convention on child rights provides a complete code for the rights of children. Article 4 of the resolution binds the state parties for lawmaking on child rights and Article 21 of the resolution speaks about the effective measures on "Adoption" of children in the countries which recognize adoption of children. An adopted child should have a recognition of law, his/ her rights can be regulated by legal framework, binding the parties to do needful for the welfare of adopted children. It has also been reported that "Adoption" some times has resulted into child abuse, trafficking and other issues. All the problems being faced by adopted children and adoptive parents can be regulated effectively through process of lawmaking including the right of an adopted child to share a portion of property from adoptive parent. The adopted child through lawmaking would get his identity protected. The lawmaking can even pave a way for grant of property rights, in case of passing away of adoptive parents without bequeathing or will for property left by them, the 1/4th share in the life estate of adoptive parents may go in favor of the adopted child. This will reduce the

litigation burden over the courts in respect of the properties of adoptive parents. It is essential that Federal and provincial Governments in Pakistan take a step forward to ensure the protection of rights of adopted children through befitting statutory cover, keeping strict adherence to ordains of Sharia.

12. In recent past there have been serious complaints of human trafficking in which the significant number reportedly pertains to children, which has resulted in increase of child abuse. The trafficking of children could be controlled by establishing state owned "Adoption" Centers, where the poor parents may leave the children and desirous parents may seek their custody after proper registration through orders of a competent authority as resolved in Article 21 of the UN Convention on child rights. This will help curbing child abuse, child trafficking and bring hope for destitute children.

13. Adverting to the issue involved in the present lis, minor Shafiq-ur-Rehman is present in Court, he is aged about 16 years. On Court query he states that he is son of Mst. Shamul and Abdul Ghaffar. He adamantly states that whatever the Courts may decide but he will not recognize any one else as his parents. This statement on the part of minor speaks about his attachment with parents in whose presence he nurtured, flourished and grown up. If for the sake of arguments, the contention of Petitioners that minor Shafiq ur Rehman is adopted child of Late Abdul Ghaffar believed to be true. Will it benefit Petitioners in any manner? Yes, off course, Petitioners would get a bounty of share from life estate of Late Abdul Ghaffar. This declaration if granted at this stage, would definitely affect social and mental development of minor Shafiqur Rehman. Instead of allowing him to join school in pursuit of bright future, he is dragged before Courts of Law, since last more than 9 years. Since 2016 Shafiq ur Rehman is before the Court and most of his time is spent in facing litigation rather to attend school. Petitioners who are first cousins of Shafiq ur Rehman in any manner, they knew that Shafiq ur Rehman was not son of Abdul Ghaffar, why not they stopped their uncle from registering this innocent child in his parentage in NADRA, School and other birth registering institutes. Petitioners have no sympathies with late Abdul Ghaffar but greed to control his life estate creeps in their minds, which even has crushed the customary rituals of this part of province wherein old aged widows are treated a sacred subject and they are given tender care, love and affection so that they may not feel lonely.

14. This court will not indulge into the determination of parentage of minor Shafiq-ur-Rehman, the Court has no powers to direct a person to be called by a fathers' name which he does not recognize to be his father. Least to say that the matter is already sub-judice before this court in Civil Revision Application No.55/2024, let the finding on the issue come on merits in the said case. But for all the good things to happen, Courts of law should not enter into such issues involving the parentage of a child, when his father and mother in unequivocal terms declare him to be their child and similar feelings come from the child who recognized them his parents.

15. The Petitioners have challenged the order passed by Appellate Court granting rights of succession in favor of widows with direction to deposit the share of minor Shafiq ur Rehman with accountant of the Court till he attains Majority. The impugned order in no manner affected the rights of Petitioners, thus they cannot invoke the writ jurisdiction of this Court. Petitioners, could not produce any material or documentary evidence in support of the contention that minor Shafiq ur Rehman is not the real son of Late Abdul Ghaffar and was adopted by him. Neither any adoption deed nor any order or proceedings from the competent court of jurisdiction to this effect were produced or referred by the petitioner before this Court, they have relied upon the decree passed by Civil Court in favor of Mst Hanifan declaring minor Shafiq ure

Rehman as his biological son but such decree has been reversed in appeal and suit stands dismissed. The record reveals that name of minor Shafiq ur Rehman is entered with his father as Abdul Ghaffar in number of public documents viz. NADRA record, School record and is supported by the evidence of Mst Hanifa and MstShamul that he was Biological Son of Abdul Ghaffar, therefore, the presumption of correctness attached to the official record in terms of Article 91 and the relevancy of entry in public record made in performance of duty in terms of Article 49 of the Qanun-e-Shahadat Order, 1984. It is pertinent to mention that in view of the overwhelming oral as well as documentary evidence available on record regarding parentage of minor, the claim of Mst Shamul cannot be overruled, the NADRA authorities were not justified to dismiss the succession application filed by Respondent No 1 on mere assertions of by the petitioners that Shafiq ur Rehman was the adopted childof deceased Abdul Ghaffar. The parties are face off to get a verdict to the paternity relation of Abdul Ghaffar deceased with Shafiq ur Rehman and for this reason the Succession of life estate has yet to devolve on legal heirs since 2016, and the legal heirs have been deprived of their right of inheritance in respect of estate left behind by Late Abdul Ghaffar.

16. Law permits a putative father to bring a cause to challenge the paternity of a child, within the parameters prescribed under article 128 of Qanun e Shahadat Order, 1984. The Petitioners cannot challenge the legitimacy of Shafiq ur Rehman as they lack a legal character enunciated under section 42 of the Specific Relief Act, even the Petitioners have not challenged the paternity of minor, which was challenged by Mst. Hanifa before Civil Court, later on she herself withdrew such claim of being mother of minor, this further affirms the assertion of Mst Shamul that she was mother of minor Shafiqur Rehman.

17. Honorable Supreme Court of Pakistan in the case of Mst Laila Qayum versus Fawad Qayum reported in P L D 2019 Supreme Court 449, while dealing with a similar issue has been pleased to hold as under:

“15. There is yet another reason why a DNA test should not be allowed. If the proposed DNA testing is done it would neither confirm nor negate Laila's paternity. The same also holds true for Fawad and those of his siblings whom he acknowledges. Abdul Qayum died sixteen years ago and his DNA can now be accessed if his body is disinterred from the grave and a sample taken from his remains. Fawad's suit however is premised on the assumption that he is the son of Abdul Qayum, then, on the basis of this assumption, he denies Laila's paternity. Fawad's assertion that Abdul Qayum is his father is equally assumptive to Laila asserting this.

16. Fawad sought to deprive Laila of her identity and of her inheritance. The Court cannot legally make the declarations the plaintiff seeks nor can it order the cancellation of the documents. The suit filed by Fawad cannot be decreed. To keep such a suit pending only harasses the petitioner further and may deprive her of her inheritance. Already a lot of court time has been taken up to attend to this frivolous suit. Therefore, we invoke our ancillary powers, granted to us under Article 187 of the Constitution, as it is necessary for doing complete justice, and exercising such powers dismiss the suit pending before the Senior Civil Judge Gulkada, Swat. We also award costs throughout, to be paid by the respondent No. 1 to the petitioner. Copy of this judgment be sent to the Trial Court. Copy be also sent to the Registrar, Peshawar High Court, for placing it before the learned Judge who had passed the impugned Judgment.”

18. Honorable Supreme Court of Pakistan in the case of Munir Hussain and others Versus Riffat Shamim and others reported in 2023 SCMR 6 in the identical situation has been pleased to hold as under:

“3. CPLA No. 3842/2022: The learned counsel for the petitioners states that the petitioners are the siblings of Azhar Hussain who died issueless on 4 June 2013. The learned counsel submits that Azhar Hussain adhered to the Sunni Hanafi fiqh of Islamic Shariah, therefore, if Tuba Sahab is taken to be the daughter of Azhar Hussain then their share in the estate of Azhar Hussain would be significantly reduced. It is admitted that Azhar Hussain was married to Riffat Shamim (respondent No. 1). The case of the petitioners (plaintiffs in the suit) was that Tuba Sahab was actually the daughter of Muhammad Zareef and not of Azhar Hussain. The suit was filed on 29 January 2014, that is, about seven months after the death of Azhar Hussain and at a time when Tuba Sahab was, as per learned counsel, aged about 17 years. Admittedly, Tuba Sahab was brought up by Azhar Hussain and Riffat Shamim as their daughter and as long as Azhar Hussain lived her paternity was not questioned by the petitioners who, for the first time, did so after the father, Azhar Hussain, had departed from this world. The mother (respondent No. 1) testified that Tuba Sahab was her and Azhar Hussain's daughter.

4. The learned Judge of the High Court had referred to a number of decisions including the decision in the case of Laila Qayyum v. Fawad Qayum (PLD 2019 Supreme Court 449) which had considered in detail the scope of a declaratory suit filed under section 42 of the Specific Relief Act, 1877 and like in that case the paternity of another was denied by the plaintiffs. In other words the plaintiffs (petitioners herein) through their suit sought a negative declaration. After considering the scope of the said section 42 and precedents this Court held in Laila Qayyum's case that to challenge another's paternity/legitimacy was not an assertion of one's own legal character in terms of section 42. However, a person whose legal character, including paternity, was being denied such person could file a suit to claim it, but the instant case is not such a case. In Laila Qayyum's case the plaintiffs lacked legal character under section 42 of the Specific Relief Act, 1877, and the same principle is attracted in this case. The learned counsel has also not been able to distinguish the decision in Laila Qayyum's case from the instant one.”

19. The High Court's jurisdiction under Article 199 of the Constitution can only be invoked by an 'aggrieved' person. It is not understandable how anyone can be stated to be aggrieved if the moveable life estate of a deceased person is directed by Court of Law to be distributed amongst his legal heirs. The Petitioners are not affected by the impugned orders, they have nothing to lose on their part, because the moment Abdul Ghaffar died his life estate devolved upon his widow, children and parents. The Appellate Court granted the right of succession to the persons to whom it belonged, by no means the rights of petitioners were infringed through impugned order to bring Petitioners in the limb of definition of aggrieved persons, to seek writ of this Court in the nature of certiorari. It is very strange that Abdul Manan who per claim of the petitioner is the real father of minor Shafiq-ur-Rehman, is not before this court or even the legal heirs of Abdul Manan are not before this court as he has passed away and the suit filed by Mst. Hanifa the widow of Abdul Manan has already been dismissed.

20. The petitioners by hook and crook intend to deprive minor Shafiq-ur-Rehman and widows of late Abdul Ghaffar of their right to inheritance. The petitioners should

have been compassionating to the widows on demise of their uncle. The conduct of Petitioners manifested their intention to grab the property left by late Abdul Ghaffar. They have opposed the grant of succession certificate and dragged the widows before courts through litigation without any rationale. Instead of being helpful to the widows, they have created hurdles and obstacles in grant of legal rights to widows. Petitioners knew that the application under order 1 rule 10 CPC filed by them was declined by the Appellate Court assigning cogent reasons, despite of that they did not stop litigating against the widows of their real uncle. This is a worst example of thwarting the due process of law to happen. The Petitioners are not aggrieved persons as the widows have every right to inherit the property of their late husband and petitioners have no right whatsoever to obstruct in their way. Since last more than 9 years Petitioner have halted the due process of law to happen and indulged into a litigation. It may be observed that Article 199 of the Constitution not only gives the authority but makes it obligatory upon the High Court to exercise constitutional jurisdiction in appropriate cases under the circumstances, to rectify any jurisdictional defect or illegality committed by the Court below, but Petitioners have failed to point out any illegality or infirmity in the impugned orders, which may invite indulgence of this Court. Petitioners have failed to make out a case for interference by this Court, the impugned order is within the premise of law and does not suffer from any infirmity or illegality thus maintained. The Appellate Court is directed to ensure that the share of widows is delivered to them within a reasonable time preferably in two months from date of this order.

21. Intention of Petitioners to drag Respondents through fictitious and frivolous litigations before Courts is tasked to get them bowed down. This is worst example of frivolous litigation which needs to be dealt with iron hands. Besides the precious time of the Court has been wasted, the source of passing livelihood of three old aged ladies has been withheld due to unabated litigation by petitioners since last more than nine years. Such frivolous, vexatious and speculative litigation unduly burdens the courts giving artificial rise to pendency of cases which in turn halts the justice system and delays the disposal of genuine litigation. Such litigation is required to be rooted out of the system and one of the ways to curb such practice of instituting frivolous and vexatious litigation is to deal them strictly by imposing of heavy costs, which will purge the legal system of frivolous, vexatious and speculative claims and defenses so also it will repose the confidence and trust of genuine litigants in judicial system.

22. In the instant case, the petitioners have repeatedly through abuse of the process attempted to advance a personal grudge by filing vexatious and frivolous claims in various courts, not only wasted the precious time of courts but also caused anguish and pain to the Respondents. The Court feels the pain of widows with heavy heart, that unnecessary, unfair and prolonged litigation brought, this pain cannot be healed in any manner, because for a very simple matter they have ruined 9 years of their life wandering in the court corridors. For deterrence and to give a warning to all those who pursue the false suits to deprive widows and minors of their legal rights, the Court of law has to adopt a strict policy. The matters involving the inheritance rights of widows and minor children be decided on priority, giving them a fair chance of survival.

23. For what has been discussed hereinabove, the Petitioners have failed to make out a case for indulgence of this Court, and instant petition from the face of it appears to be frivolous, therefore, the same is dismissed with costs of Rs.170,000/- to be paid in the equal share to the widows as Rs.50,000/- each and a cost of Rs.20,000/- to be paid to minor Shafiq-ur-Rehman. Petitioners are directed to deposit the cost within a period of 30 days of this order with accountant of this Court. The cost granted to minor Shafiq ur Rehman shall be paid to him through his mother Mst. Shamul. In case the

petitioners fail to deposit costs with accountant of the court, their CNICs shall be blocked.

Office is directed to send copy of this order to Secretary Law Government of Sindh and Federal Secretary Law Government of Pakistan to place the matter for deliberations before competent authority for enacting law on the “Adoption” of children if deemed appropriate, as highlighted in para No 9 to 12 of the judgment.

The Petition stands disposed of in above terms.

JUDGE

Asghar/P.A