

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Succession Misc. Appeal No. S – 05 of 2024

Succession Misc. Appeal No. S – 06 of 2024

(Mst. Ameerzadi v. Public at Large and others)

Date of hearing : **07.04.2025**

Date of decision : **07.04.2025**

Mr. Saeed Ahmed Panhwar, Advocate for Appellant in both matters.

Mr. Shafqat Rahim Rajput, Advocate for Respondent No.3 in Succession Misc. Appeal No.05 of 2024.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh along with Sajoo Kumar, Branch Manager, Bank Al-Habib, Pano Aqil.

ORDER

Zulfiqar Ahmad Khan, J. – Through instant Succession Misc. Appeals under Section 384 of the Succession Act, 1925, the Appellant has prayed for setting aside the impugned orders dated 19.03.2024, passed by learned Additional District Judge, Pano Aqil, in Succession Applications No.73/2023 and 68/2023. The former application was allowed and the Succession Certificate was issued in favour of respondent No.3 (Iftikhar Rasool) to the extent of his share and share of his brother (Siraj Ahmed) as per *Fatwa*, while the latter application filed by the appellant was dismissed.

2. Learned Counsel for the Appellant submits that the Appellant's husband served with Pakistan Army and passed away due to natural death, leaving behind his widow, the Appellant, as he died issueless. It is further contended that a sum of Rs.47,72,198.32 was deposited by the Department in the deceased's account as the commuted value of his pension. The said amount, being a post-retirement benefit,

does not fall within the purview of *Tarka* (inheritance). However, the learned trial Court failed to appreciate this legal distinction and erroneously treated the said amount as part of the *Tarka*, thereby issuing a Succession Certificate in favour of the deceased's siblings. Learned Counsel further contends that the deceased had nominated his wife, Mst. Ameerzadi (the Appellant), as the sole nominee to receive his pensionary benefits. As such, the Appellant is lawfully entitled to the entire amount in her capacity as nominee, and Respondent No.3 along with other legal heirs have no lawful claim over the pensionary benefits of the deceased.

3. Conversely, learned Counsel representing Respondent No.3 contends that the assets left behind by the deceased fall within the purview of *Tarka*, and that it is the responsibility of the nominee to collect such amounts for the purpose of distribution among all the legal heirs of the deceased. Therefore, the claim of the Appellant to receive the entire amount exclusively is without legal justification and contrary to law. It is thus argued that the learned trial Court rightly issued the Succession Certificate in favour of the other legal heirs of the deceased.

4. Learned AAG Sindh submits that in cases where the benefits of a deceased employee form part of the *Tarka*, such benefits are to be distributed among all legal heirs. However, if the asset in question does not fall within the definition of the *Tarka*, it shall ordinarily vest in the nominee.

5. Heard learned Counsel for the parties and perused the material available on record with their assistance.

6. From a careful perusal of the record, it transpires that an amount of Rs.47,72,198.32 was deposited in the bank as the commuted value of the deceased's pension. Such an amount

does not fall within the ambit of *Tarka*. However, this pivotal legal aspect appears to have been overlooked by the learned trial Court while passing the impugned order. It is a well-settled principle that pensionary benefits, in respect of which a deceased employee has duly nominated an individual, do not form part of the *Tarka*. In such cases, the nominee receives the amount in the personal capacity as a beneficiary, and not in the capacity of a legal heir. In the present case, the record (Page 69) clearly reflects that the deceased had nominated his wife, the Appellant, as the sole beneficiary in respect of his pensionary benefits. Accordingly, the Appellant alone is entitled to receive the commuted pension amount of her late husband, to the exclusion of all other legal heirs.

7. In view of the foregoing, the captioned Succession Misc. Appeals are hereby **allowed**. Consequently, the impugned orders, both dated 19.03.2024, passed by learned Additional District Judge, Pano Aqil, in Succession Applications No.68 and 73 of 2023, are set aside. The Appellant, Mst. Ameerzadi, is held to be solely entitled to withdraw the aforesaid amount, deposited to this Court in the account of Additional Registrar of this Court vide order dated 16.09.2024, with any profit accrued thereon upon proper identification.

Office is directed to place a signed copy of this order in the connected captioned matter.

J U D G E

Abdul Basit