

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Rev. Appln. No. S-171 of 2025

Applicants : 1) Zain-ul-Abideen S/o Muhammad Shafi
2) Mst. Nasreen wd/o Muhammad Shafi
Through by Mr. Tariq Gul Mangi, Advocate

V E R S U S

Respondents : 1) Muhammad Waseem Abbas s/o Muhammad Shafi
2) Muhammad Yaseen s/o Muhammad Shafi
3) Faheem Ahmed s/o Muhammad Shafi
4) Muhammad Naeem s/o Muhammad Shafi
5) Mst. Yasmeen Bano d/o Muhammad Shafi
6) Mst. Samina d/o Muhammad Shafi
7) Mst. Zubaida wd/o Muhammad Shafi
8) Mst. Aisha d/o Muhammad Shafi
Through Mr. Toufique Hussain Noonari, Advocate
9) The Public at large
10) Adamjee Life Assurance Co. Ltd.

Date of Hearing : 08.12.2025
Date of Decision : 02.01.2026

ORDER

KHALID HUSSAIN SHAHANI, J.– Applicant Zain-ul-Abidin, invokes the revisional jurisdiction of this court to assail the legality, propriety, and correctness of the order dated 16.06.2025, passed by the learned Additional District Judge (MCAC), Kandiaro, dismissing an application under Section 151 of the Code of Civil Procedure, 1908, filed by the applicant, maintaining its earlier final order dated 07.02.2023, whereby a Succession Certificate was granted in Succession Application No.07 of 2023.

2. The material facts giving rise to the present revision are that Muhammad Shafi (hereinafter referred to as the Deceased) passed away on 21.11.2022, leaving behind two widows, five sons, and three daughters, who are admittedly his sole legal heirs under Muhammadan Law. Respondent No.1, Muhammad Waseem Abbas, being one of the sons of the Deceased, instituted Succession Application No.07 of 2023 before the learned Trial Court, seeking issuance of a Succession Certificate in respect of the debts and securities left by the Deceased, including certain bank accounts as well as two life insurance policies, namely Adamjee Life Assurance Policy No.40001478 and an EFU Life Insurance Policy.

3. Upon due consideration of the application and the material placed on record, the learned Trial Court, vide order dated 07.02.2023, allowed the succession application and issued a Succession Certificate in favor of Respondent No.1, with a categorical direction to collect the said assets and to distribute the proceeds thereof amongst all legal heirs strictly in accordance with their respective *Shari'ah* prescribed shares. It is an admitted position on record that at the time of passing of the said order, all legal heirs, including applicant No.2, Mst. Nasreen, had submitted sworn affidavits of "No Objection" to the grant of the Succession Certificate. Subsequently, after a lapse of considerable time, on 16.12.2024, the present applicants, namely Zain-ul-Abidin and Mst. Nasreen, filed an application under Section 151 CPC before the same Court, seeking recall and/or modification of the earlier order dated 07.02.2023. The applicants asserted therein that the proceeds of Adamjee Life Assurance Policy No.40001478 were not liable to distribution amongst all heirs, contending that the same were exclusively payable either to Applicant No.1 as the nominated beneficiary or to Applicant No.2, who claimed to have paid the insurance premiums and asserted herself to be the real policyholder. On these premises, it was urged that the insurance proceeds did not constitute part of the deceased's estate (*Tarka*). The learned Trial Court, after hearing the parties, dismissed the said application vide the impugned order dated 16.06.2025, holding, *inter alia*, that having already passed a final order granting the Succession Certificate with the consent of all legal heirs, the Court had become functus officio, and that the inherent powers under Section 151 CPC could not be invoked to recall or modify a concluded order passed nearly two years earlier.

4. The principal questions that arise for determination in the present revision are:

- (i) whether the learned Trial Court was legally justified in dismissing the Applicants' application filed under Section 151 CPC on the ground that it had become functus officio after passing a final order granting a Succession Certificate; and

- (ii) whether the proceeds of a life insurance policy, taken by a Muslim on his own life, vest absolutely in the nominee/beneficiary or form part of the estate (Tarka) of the deceased, liable to distribution amongst all legal heirs in accordance with Muhammadan Law.

5. So far as the first issue is concerned, the learned Trial Court has correctly held that upon passing a final order granting a Succession Certificate, it becomes functus officio qua the power to recall, review, or modify such order through the exercise of inherent jurisdiction under Section 151 CPC. It is a settled principle of procedural law that the inherent powers preserved under Section 151 CPC cannot be invoked to override, circumvent, or substitute the specific statutory remedies expressly provided by law.

6. The scheme of the Succession Act, 1925 provides a complete and self-contained mechanism for challenging a Succession Certificate. An order granting a certificate is appealable under Section 384 of the Act, while a certificate already issued may be revoked or annulled only in the circumstances enumerated under Section 383, including where the proceedings were defective in substance, where the certificate was obtained fraudulently by making a false suggestion or by concealment of material facts, or where it has become useless or inoperative. In the present case, if the Applicants were aggrieved by the order dated 07.02.2023 on the ground of alleged fraud, concealment, or misrepresentation, the proper and exclusive course available to them was to seek revocation of the Succession Certificate under Section 383 of the Succession Act, or to avail the appellate remedy under Section 384. Instead, the Applicants, after a considerable lapse of time, chose to file a generic application under Section 151 CPC, seeking recall and modification of a final order which had attained finality and was passed with the express consent of all legal heirs. Such an application, in substance, amounted to an attempt to re-open concluded proceedings and to indirectly seek review of a final judicial determination, an exercise which is impermissible in law. It is well settled that inherent powers cannot be employed to do that which the statute expressly

prohibits or regulates through specific provisions. In these circumstances, the learned Trial Court was fully justified in holding that it lacked jurisdiction to entertain the Applicants' application under Section 151 CPC, and that the Court had become *functus officio* for the purposes of recalling or altering its earlier final order. The impugned dismissal, therefore, suffers from no illegality, material irregularity, or jurisdictional error, warranting interference in the exercise of revisional jurisdiction.

7. The applicants contend that applicant No.01, Zain-ul-Abideen, being the nominated beneficiary under the insurance policy, and Applicant No.02, having allegedly paid the insurance premiums, are exclusively entitled to the policy proceeds, to the exclusion of the remaining legal heirs. This contention, however, is wholly misconceived and contrary to the settled position of law.

8. The legal character of nomination under a life insurance policy has been authoritatively settled by the Honorable Supreme Court of Pakistan in *Mst. Amtul Habib v. Mst. Musarrat Parveen* (PLD 1974 SC 185), and has been recently reaffirmed and restated by the Lahore High Court in PLD 2025 Lahore 40 (also reported as PLJ 2025 Lahore 42). The consistent judicial view is that a nominee under a life insurance policy does not acquire any beneficial or proprietary interest in the policy proceeds merely by virtue of nomination. The settled legal principle, as laid down by the Honorable Supreme Court and followed by the High Courts, is that a nominee is merely a trustee, custodian, or authorized recipient, entitled to receive the insurance amount on behalf of the estate of the deceased. The act of nomination does not operate as a gift, testamentary disposition, or transfer of ownership in favor of the nominee. Consequently, the amount so received retains its character as part of the estate (*Tarka*) of the deceased and must be distributed amongst all legal heirs strictly in accordance with their respective *Shari'ah* prescribed shares. Likewise, the mere payment of insurance premiums by a person other than the policyholder

does not, in the absence of a lawful assignment or transfer recognized by statute, confer any exclusive ownership rights over the policy proceeds. At best, such payment may give rise to a separate civil or equitable claim for reimbursement, but it cannot alter the legal incidence of inheritance or defeat the vested rights of the legal heirs under Islamic law. Accordingly, the Applicants' claim of exclusive entitlement, whether founded upon nomination or alleged payment of premiums, has no legal basis and stands in direct conflict with binding judicial precedent. The proceeds of the life insurance policy, therefore, form an integral part of the deceased's Tarka and are liable to distribution among all heirs in accordance with Muhammadan Law.

9. The legal character of life insurance proceeds and the status of a nominee are governed by the Insurance Ordinance, 2000, which provides a comprehensive statutory framework in this regard. Section 72 of the Ordinance, titled "Nomination by policy holder", regulates the manner and legal effect of nomination under a life insurance policy. Section 72(1) provides that the holder of a life insurance policy on his own life may, at the time of effecting the policy or at any time prior to its maturity, nominate one or more persons to whom the policy amount shall be paid upon his death. This provision merely enables the policyholder to designate the person authorized to receive the policy proceeds; it does not, by itself, create any proprietary or beneficial interest in favor of the nominee. The non-vesting nature of nomination is further clarified by Section 72(2), which expressly permits the policyholder to cancel or vary the nomination at any time before maturity. The unfettered right of the policyholder to revoke or alter the nomination during his lifetime conclusively demonstrates that a nominee acquires no vested or enforceable right in the policy proceeds and that nomination does not operate as a gift, transfer, or testamentary disposition. Particularly instructive is Section 72(5), which stipulates that where the policy matures during the lifetime of the insured, or where the nominee predeceases the policyholder, the policy amount shall be payable to the

policyholder, or to his heirs, legal representatives, or the holder of a succession certificate, as the case may be. This provision leaves no ambiguity that the policy proceeds remain intrinsically linked to the estate of the policyholder and, upon his death, devolve upon his legal heirs in accordance with the applicable law of inheritance. The statutory scheme of Section 72, therefore, unmistakably establishes that:

- (i) Nomination does not constitute a transfer of ownership;
- (ii) The nominee's right is contingent and revocable;
- (iii) The proceeds do not devolve upon the nominee's heirs if the nominee predeceases the insured; and
- (iv) The Legislature has expressly contemplated devolution of the proceeds upon the heirs or legal representatives of the policyholder.

10. Section 72 (6), which provides that where the nominee survives the insured the amount shall be payable to such nominee, must be read harmoniously with sub-sections (1), (2), and (5). When so construed, and in light of binding judicial precedent, the payment to the nominee is merely a mode of receipt and not a conferment of absolute ownership. The Honorable Supreme Court of Pakistan, in (PLD 1974 SC 185) has conclusively held that nomination under an insurance policy confers only a right to collect the amount and that the nominee holds the proceeds as a trustee for the legal heirs. The legislative intent becomes even clearer from Section 72 (7), which excludes from the operation of Section 72 those policies to which Section 6 of the Married Women's Property Act, 1874 applies. The existence of this express statutory exception demonstrates that, save for such specially protected policies, ordinary life insurance proceeds are intended to form part of the estate of the deceased and are subject to the law of succession. In the present case, no material has been placed on record to show that the policy in question was governed by the Married Women's Property Act.

11. The Applicants' alternate contention, based on alleged payment of premiums by Mst. Nasreen, is equally devoid of legal merit. Section 71 of the

Insurance Ordinance, 2000 prescribes the exclusive statutory mode for transfer or assignment of a life insurance policy. Such transfer or assignment can only be affected through a written endorsement on the policy, duly signed and attested, specifying the transferee and the date of transfer. In the absence of compliance with these mandatory requirements, no ownership rights in the policy can be transferred. In the present case, there is no evidence whatsoever of any assignment or transfer of the policy from the deceased Muhammad Shafi to either Applicant No.1 or Applicant No.2 in accordance with Section 71. The mere payment of premiums by a spouse or family member, even if assumed to be true, does not alter the legal ownership of the policy or the character of the policy proceeds. At best, such payment may give rise to a collateral civil claim for reimbursement, but it cannot defeat the statutory scheme of inheritance.

12. The Insurance Ordinance, 2000 must further be interpreted in consonance with Article 227 of the Constitution of the Islamic Republic of Pakistan, 1973, which mandates that all laws shall be brought into conformity with the injunctions of Islam as laid down in the Holy *Qur'an* and *Sunnah*. In (PLD 2025 Lahore 40), it has been unequivocally held that inheritance rights under Muhammadan Law cannot be abrogated by nomination under an insurance policy and that a nominee cannot exclude or deprive legal heirs of their Quranic shares. Accordingly, even if Section 72 (6) were to be read in isolation, any interpretation that results in deprivation of the divinely ordained inheritance rights of legal heirs would be constitutionally impermissible. When read as a whole, Sections 72 (2) and 72 (5), coupled with Article 227 of the Constitution and binding Supreme Court precedent, reinforce the conclusion that the nominee holds the proceeds merely as a collecting agent or trustee and that the proceeds constitute Tarka of the deceased.

13. In the present case, Adamjee Life Assurance Policy No.40001478 was admittedly taken by the deceased Muhammad Shafi in his own life. The policy documents on record identify him as the policyholder, and there is no

evidence of any statutory assignment in favor of Applicant No. 2. The Applicants' assertion that premium payment confers ownership is thus legally untenable and factually unsupported. It is, therefore, held that the life insurance proceeds form an integral part of the estate (*Tarka*) of the deceased Muhammad Shafi and are liable to distribution amongst all legal heirs strictly in accordance with their respective *Shari'ah* prescribed shares. The order of the learned Trial Court dated 07.02.2023, directing such distribution, is fully consistent with the statutory scheme, constitutional mandate, and settled judicial precedent.

14. Once it is held that the proceeds of the life insurance policy constitute part of the estate (*Tarka*) of the deceased, the necessary legal consequence is that the same must be distributed amongst all legal heirs in accordance with their respective *Shari'ah* prescribed shares. The learned Trial Court, by its order dated 07.02.2023, correctly so directed, and no exception can be taken to the said direction. For the sake of clarity and to obviate any future ambiguity at the stage of execution and disbursement, the distribution of the estate of the deceased Muhammad Shafi, inclusive of the insurance proceeds, is illustrated hereunder in accordance with the settled principles of Muhammadan Law:

The two widows, namely Mst. Zubeda Bano and Mst. Nasreen, are collectively entitled to 1/8th of the estate, which they shall share equally, i.e., 1/16th each. The remaining 7/8th of the estate devolves upon the five sons and three daughters as residuaries, to be divided in the ratio of two shares for each son and one share for each daughter, making a total of thirteen (13) shares. Accordingly: each son shall receive 2/13 of 7/8, equivalent to 14/104 of the total estate; and each daughter shall receive 1/13 of 7/8, equivalent to 7/104 of the total estate.

15. It bears emphasis that the Applicants had, at the time of issuance of the Succession Certificate in the year 2023, voluntarily submitted affidavits of "No Objection" and expressly consented to the collection and distribution of the estate in accordance with law. Having acquiesced in the proceedings and

allowed the order to attain finality, they cannot now, as an afterthought, assert exclusive rights in respect of the insurance proceeds to the exclusion of other legal heirs. Such conduct disentitles them to any discretionary relief.

16. The impugned order dated 16.06.2025, whereby the learned Additional District Judge, Kandiaro declined to recall or modify the final order dated 07.02.2023, is found to be well-reasoned, legally sound, and fully consistent with the statutory scheme, constitutional mandate, and the law laid down by the Superior Courts. No jurisdictional defect, material irregularity, or illegality has been pointed out so as to justify interference in the exercise of revisional jurisdiction.

17. For the foregoing reasons, this Civil Revision Application is dismissed. The orders dated 16.06.2025 and 07.02.2023 are hereby affirmed. The learned Trial Court shall ensure that the amounts covered by the Succession Certificate are collected by the certificate-holder and distributed strictly in accordance with the *Shari'ah* shares as set out above. There shall be no order as to costs.

J U D G E