

**IN THE HIGH COURT OF SINDH AT KARACHI**

**SUIT NO.703/2007**

Plaintiffs : Mrs. Bilquis Mohsin Butt & others,  
through Mr. Narain Das C. Motiani, advocate

Defendants : Mohammad Mahmood Butt & others,  
through Mr. Abdul Shakoor, advocate for  
Defendant No.3.

Mr. Mohsin Shahwani and Ms. Zulekha  
Sakhrani, advocates for Defendants No.2, 13  
and 14.

Mr. Kashif Peracha, advocate for the  
Defendants No.1, 8 to 12 and 15.

Mr. Rizwan Ahmed Siddiqui, advocate for the  
Defendant No.16.

Date of hearing: **20.11.2014.**

**O R D E R**

**NAZAR AKBAR, J.** This order will dispose of two applications, both under order VII Rule 11 CPC, one filed by defendants No.1, 3, 8 to 12 and 15 (CMA No.4060/2014) and the other filed by Defendant No.2, 13, and 14 (CMA No.10995/2014) for rejection of plaint on the grounds, inter alia, that plaintiffs had no cause of action and the suit is barred by Article 9, 120 and 127 of the Limitation Act, 1908.

2. Briefly stated the relevant facts for the purposes of these applications are that the Plaintiffs No.2, 3 & 4 claiming to be the grand children of deceased Muhammad Yaqoob Butt and Plaintiff No.1 is widow of Muhammad Mohsin Butt son of Muhammad Yaqoob Butt. They have filed the instant suit on **05.06.2007** for declaration, injunction, accounts, possession and recovery of amount of Rs.30 Crores. However, the prayer is in the nature of a

suit for administration of the properties of deceased Muhammad Yaqoob Butt, who had expired on **3.5.1970**. The Plaintiffs have given a schedule of the properties in the prayer clause is reproduced herein below:-

- i. Declare that the moveable and immoveable properties, companies and their assets mentioned in the Schedule hereunder are of late Muhammad Yaqoob Butt's joint family properties.

**SCHEDULE**

- i. Bungalow No.37-A, Sindhi Muslim Co-operative Housing Society, measuring 660 sq.yds. Karachi.
- ii. Bungalow No.108-C, KDA Scheme No.1, Karachi.
- iii. Bungalow No.62/2/1, Street No.6, Khayaban-e-Badar, Phase-V, Defence Housing Authority, Karachi.
- iv. Bungalow No.5/55, Model Colony, Malir, Karachi.
- v. NEW ERA Flour Mill known as S.M. Corporation at Plot No.F/62, Hub River Road, SITE, Karachi alongwith construction godowns, fixtures, Trucks/Vans etc.
- vi. Factory at Plot No.4/1, Model Colony, Karachi including Hosiery Machine, Bealach, Machine & Boiler Plants, Deying Plants etc.
- vii. Plot of 1060 sq.yards in Sector No.27, Korangi Industrial Area, Dar-ul-Islam Society, Karachi.
- viii. Plot No.40-C measuring 2000 sq.yds Sector No.27, Korangi Industrial Area, Karachi.
- ix. Office Jehangir Kothari Building, M.A. Jinnah Road, Karachi.
- x. 75 acres of land in Gaddani Ship Breaking Industrial Area, Hub, Lasbella, Balochistan.
- xi. Flat No.15 Second Floor, Lachmi Chand Building, Mir Ayub Khan Road, Karachi.
- xii. Plot of land bearing No.'G' measuring 1213 sq.yds. Survey No.55, Deh Mehram Tappo Malir, situated at Model Colony, Karachi.

- xiii. Plot No.4/1, Model Colony, Malir, Karachi.
- xiv. Plot of Darul-Islam Cooperative Housing Society, measuring 1000 sq.yds. Karachi.
- xv. Commercial Plot measuring 200 Sq. Yds. of Defence Housing Authority, Karachi.

**MOVEABLE**

- a) Cash 744,000/- U.S. Dollars lying fixed deposit in Middle East Bank Sharjah UAE since, 1985.
- b) Declare that the Plaintiffs are entitled to the share of assets and properties/according to Sunni Muslim Personal Law.
- c) Direct the Defendants to maintain the status quo of the assets and properties till the decision of the suit and not to dispose of, or transfer any share or do any act whereby rights of Plaintiffs are prejudiced. Direct the Defendants No.1 to 3 and 8 to 15 to furnish true statements of accounts in respect of the suit properties and also file six monthly accounts statement with the Nazir of this Hon'ble Court.
- d) That this Hon'ble Court be pleased to direct the Naizr to inspect and make inventory of all the properties and cash in hand or in Banks and liability, if any.
- e) Restrain the Defendant No.16 not to dispose of property mentioned in Sale Deed.
- f) That this Hon'ble Court may dispose of movable and immovable properties and assets through open auction and distribute the amount among all the legal heirs of late Muhammad Yaqoob according to Sunni Muslim Personal Law.
- g) Cost of the suit.
- h) Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case.

3. The deceased Muhammad Yaqoob Butt was survived by four sons and four daughters and out of eight legal heirs Muhammad Mohsin Butt, husband of Plaintiff No.1 and father of other Plaintiffs had died on **1.5.2005**. Two daughters of Muhammad Yaqoob Butt, namely, Ayesha Khan and Khursheed Begum have also died before filing of the preset suit, therefore, legal heirs of Mst. Ayesha Khan and Khursheed Begum have been impleaded as

Defendants No.6(i) to (vi) and Defendant No.7(a)(b)(c). The Defendant No.8 to 12 are sons and daughters of Defendant No.1 namely Muhammad Mahmood Butt and defendants Nos.13 and 14 are sons of defendant No.2, namely, Masood Butt, and Defendant No.15 is son of Defendant No.3, namely, Muhammad Inayat Butt and Defendant No.16 is an stranger to the family of the deceased Muhammad Yaqoob Butt.

4. A thorough scrutiny of the plaint suggests that in para 7 of plaint, the plaintiffs themselves have claimed that Muhammad Yaqoob **or** M/s. Yaqoob & Sons owned seven properties. But in the schedule of properties in prayer clause the plaintiffs have mentioned 15 properties without giving their proper particulars such as names of the title holders and the date of acquiring of these properties. Even the seven properties mentioned in para 7 have not been mentioned in the same serial number in the prayer clause/schedule of properties to unnecessarily confuse the matter. The property mentioned at serial **No.ii** in para 7 has been mentioned at serial **No.vii** in the schedule in prayer clause. The property at serial **No.iii** in para 7 has been mentioned twice at serial **No.vi** and serial **No.xiv** in the schedule in prayer clause. Property mentioned at serial **No.iv** in para 7 has also been shown at serial **No.iv** and repeated at serial **No.xii** in the schedule in prayer clause. Two properties mentioned at serial **No.iii** and **No.xv** in the schedule has not been mentioned in the memo of plaint nor the defendants are in possession of these properties. In fact, these properties have been added in the schedule of properties only to stretch the list of properties. These properties are even not identifiable. Therefore, the schedule of properties is reduced to only

**eleven** properties, and the cash has been shown in moveable properties, which was deposited in Middle East Bank in **1985**. Such moveable property cannot be treated as property of a person who had died in 1970, fifteen (15) years prior to the opening of fixed deposit account.

5. The Plaintiffs, besides the above suit, are also contesting several other legal proceedings under the Companies Ordinance, 1984, in which the subject matter are the same immovable properties which are mentioned in the schedule and the said proceedings were filed either by Muhammad Mohsin Butt, their predecessor-in-interest, in his lifetime or any of his brothers or sisters. Serial wise these proceedings are:

- (i) **J.M No.3/2001** was filed by Muhammad Mohsin Butt the predecessor-in-interest Plaintiffs to claim payment of dividend in M/s. S. M. Corporation and **J.M No.1/2002** has been filed by Defendant No.1 for winding up of M/s. S. M. Corporation, this property is mentioned at **Sr.No.v** to the schedule of the properties and after the death of Mohsin Butt. The plaintiffs have also been joined in the said J.M as legal heirs of deceased Mohsin Butt.
- (ii) **J.M No.38/2002** has been filed by Masood Butt, defendant No.2, for liquidation of M/s. Cossar Carpet (Pvt.) Limited, and the property at **Serial No.ix**, namely, Office, Jehangir Kothari Building, M.A. Jinnah Road, Karachi was asset of the said company, which has already been wound up and the plaintiffs have filed their claim before the Liquidator.
- (iii) **J.M No.57/2009** has been filed by Masood Butt, defendant No.2, for winding up of Yaqoob Sons Limited and the

properties at Serial **Nos.vi, viii and x** are mentioned in the said J.M. as properties of the Company in liquidation.

- (iv) **SMA No.239/2009** was filed by Mst. Hafeeza Begum Defendant No.5 in respect of properties at **Serial No.i and vii** in the schedule. It has already been converted into an Administration **Suit No.1399/2009**.
- (v) The defendants have specifically disowned the properties mentioned at **Serial No.iii and xv**. Neither the defendants are in possession of these properties nor the properties have been claimed by the defendants. The plaintiffs are free to deal with these properties the way they like as there is no dispute about these properties and till date no suit has been filed by the plaintiff or the defendants in respect of the said properties.

6. The plaintiffs in their counter affidavit and in their arguments have not disputed the claim of the Defendants that the Plaintiffs are party to the proceeding under Companies Ordinance, 1984, in the aforementioned J.Ms. Therefore, admittedly except the properties at Serial **No.i** and **vii**, which are subject matter of administration suit **No.1399/2009**, all other properties are properties of one or the other companies and plaintiffs have averred that these are “joint family properties” of Muhammad Yaqoob Butt or properties of M/s. Yaqoob Sons (Pvt.) Limited.

7. I have heard counsel of the parties and perused record. Learned counsel for the plaintiffs has argued the case as a suit for declaration, injunction, accounts, possession and recovery of a sum of Rs.30 Crore though not a single justification has been shown in the plaint that how Rs.30 Crore is mentioned in the title of the plaint, when in the prayer clause not a single penny has

been claimed to be awarded in the decree. Even in the memo of plaint the word “recovery” is not mentioned anywhere. That is why on the conclusion of the arguments, the Court has specifically directed the Plaintiff’s counsel to file a statement in writing that whether it is a declaratory suit, which is obviously time bound or it is a suit for administration and partition of properties by way of inheritance and free from limitation. Learned counsel in compliance has filed a statement and he has categorically stated that the suit is in the nature of administration and partition of the estate of deceased Muhammad Yaqoob Butt and the parties are governed by Sunni Muslim Personal Law. He has further stated that **SMA No.239/2009** was filed by Hafeeza Begum (Defendant No.5), which has been converted into Suit for administration bearing Suit No.1399/2011 and this suit may also be treated as administration suit and heard alongwith suit No.1399/2011.

8. In suit No.1399/2011, on **21.10.2014** I have already passed an order that Suit No.1399/2011 will be taken up after the disposal of present Suit No.703/2007 in terms of **Section 10** of Civil Procedure Code, 1908. Plaintiff has not shown any grievance to the said order and afore-mentioned statement is dated **21.11.2014** after hearing of application under Order VII Rule 11 CPC. There is no justification to let two suits be pending for partition of properties of deceased Muhammad Yaqoob Butt, particularly in view of the fact that every legal heir of the deceased in a suit for administration of his properties is the plaintiff and the defendant at the same time and the dispute generally is not supposed to be in respect of the ownership of the properties left by the deceased as there is no concept of “joint ownership” in

Muhammadan Law. More so, when the shares of Muhammadan heirs are definite and specific, the suit for administration is only a formality to determine the mode of distribution of the estate of the deceased amongst the legal heirs according to Shariah and the Court acts only as an administrator for a limited purpose. Generally in a suit for administration and partition, the Plaintiff is required to satisfy the Court about two things, firstly, he has to show his status as heir of the deceased in accordance with the Shariah/Fiqah followed by the deceased in his lifetime, and secondly, the proprietary rights of the deceased in the estate at the time of opening of succession in which the plaintiff claims share by way of inheritance.

9. I will examine the second requirement first that what constitute the estate of deceased for the purpose of suit for administration in Muhammadan Law. The perusal of plaint suggests that the plaintiffs have repeatedly averred that all the assets mentioned in the schedule of properties were “joint properties of family” of Muhammad Yaqoob Butt and the question of limitation in case of joint family properties does not arise. However, the counsel for the plaintiff has not referred to any provisions of Muhammadan Law to justify that how such assertion in the plaint can be accepted by the Court when the Muhammadan Law does not envisage a joint family property. **Para 57** of the Muhammadan Law from Mulla’s Principles of Muhammadan Law, reproduced below, is complete answer in negative to the claim of the plaintiff that the suit properties are to be declared as “joint family properties”. Para 57 of the Muhammadan Law from F. D. Mulla’s Principles of Muhammadan Law is as follows:



“57. **Joint family and joint family business.**—(1) When the members of a Muhammadan family live in commensality, **they do not form a joint family** in the sense in which that expression is used in the Hindu law. Further, in the Muhammadan Law, there is not, as in Hindu law, any presumption that the acquisitions of the several members of a family living and messing together are for the benefit of the family. But if during the continuance of the family properties are acquired in the name of the managing member of the family, and it is proved that they are possessed by all the members jointly, the presumption is that these are the properties of the family, and not the separate properties of the member in whose name they stand.

(2) If after the death of Muhammadan his adult sons continue their father’s business, and retain his assets in the business, they will be deemed to stand in fiduciary relation to the other heirs of the deceased, and liable to account as such for the profit made by them in the business. If after the death of the sons the business is continued by their sons or by other heirs, they also will be liable to account on the same footing.

(3) **Members of a Muhammad family carrying on business jointly do not constitute a joint family firm in the sense in which that expression is used in the Hindu law so as to attract the legal incidents of such a firm.** Sons assisting father in business are presumably his agents and not his partners unless an agreement of partnership is provided. A minor may be entitled to a benefit in the business, but this will not make him liable on a mortgage executed by him along with his adult brothers in the course of the business carried on by the latter. The managers of such a business in a Muhammadan family have no right to impose any liability on the minor members of the family.” (Emphasis is provided).

10. In fact, the plain reading of **Para 57** of Muhammadan Law has demolished the claim of the plaintiff on the theory of joint family properties. The contention of the plaintiff in paras 12 and 27 of the plaint that late Muhammad Mohsin Butt, the predecessor-in-interest of plaintiffs was not only the owner of 25% shareholding in M/s. S. M. Corporation but also owner of 25% shareholding in M/s. Yaqoob & Sons (Pvt.) Limited as Director, negates the claim of the plaintiffs that all the properties of the Companies were owned by late Muhammad Yaqoob Butt and, therefore, these were not

joint properties of the Butt family. The assertions of the plaintiffs in para 12 of the plaint that Muhammad Mohsin Butt was shareholder to the extent of 25% in the assets of the Butt family including moveable and immovable properties left by late Muhammad Yaqoob Butt according to the Sunni Hanafi Laws is not tenable. Even otherwise, if all the companies and their assets were the assets of late Muhammad Yaqoob Butt who died in 1970 then why the predecessor-in-interest of the Plaintiffs, namely, Muhammad Mohsin Butt himself instead of filing the judicial misc. applications for securing his interest in the assets of the said companies did not file a suit for administration/partition to claim his share in accordance with Shariah. Admittedly this was not done by Muhammad Mohsin Butt and this conduct of predecessor in interest of the plaintiffs confirms that the assets of companies mentioned in the schedule were not part and parcel of the assets of deceased Muhammad Yaqoob Butt at the time of his death.

11. It has been repeatedly emphasized by the plaintiffs' counsel that all the properties are joint assets of M/s. S. M. Corporation, M/s. Cossar Carpet (Pvt.) Limited and Yaqoob Sons. This argument of the plaintiff's counsel is fatal to his claim that he has filed suit for administration of properties of deceased governed by Sunni Hanafi Law. Irrespective of the fact that the companies were joint family concerns or not the assets of companies cannot be subject matter of a suit for administration. It is the elementary principle of Company Law that a limited company is a juristic person and a legal entity separate from its share-holder and any change in the shareholding of a company does not mean change in the title of the assets of the company or premises occupied thereby. In this regard

we may refer to the case law reported as **2007 CLD 659** (Lahore) (PATTOKI SUGAR MILLS LIMITED through Chief Executive versus WAPDA through Chairman and 4 others) and another case reported in **2007 CLC 1414** [Karachi] (ANJUM RASHID and others versus SHAHZAD and others) can also be referred with advantage to appreciate what is the difference between the properties of an individual and the properties of a Company Limited by shares. In the last mentioned case a division bench of this Court at Page-1427-28 (side note B & C) has observed as under:-

“It would suffice to say that the respondent- No.4 company is a separate entity distinct from its Director and no shareholders/or Director of a company can be said to be the owner of any particular piece of a property in which the company has an interest. Such distinction has to be clearly observed between the company as a legal entity and its rights on the one hand and individually shareholders and their right on the other, as such, it cannot be said that the property in question is owned by its shareholders or Directors. Even otherwise, the property owned by a wife and sons of a judgment-debtor, or for that matter of any person cannot be said to be a property of such person. Following cases may be referred to in this regard:-

Mohan Singh Oberoi v. Rai Bahadur Jodha Omal Kuthalla PLD 1961 SC 6; The Eastern Federal Union Insurance Company v. State Life Insurance Corporation of Pakistan 1987 CLC 1408 and EBM Company Ltd. v. Domanion Bank AIR 1937 PC 279.”

12. In view of the legal position, the properties of a company cannot be inherited by the legal heirs of one of its directors or even ordinary shareholders of the company. Legal heirs of a deceased director or shareholder of a company can claim inheritance only to the extent of shareholding of the deceased director or shareholder in the company and not in the assets of the company as estate of the deceased. I have examined files of all the pending judicial Misc. and noticed that deceased Muhammad Yaqoob Butt was not even

Director/Shareholder in any of the aforementioned companies. All these companies were, in fact, incorporated after the death of Muhammad Yaqoob Butt and therefore the plaintiffs cannot claim their share in the said properties even through their father, Muhammad Mohsin Butt, on the ground that these properties were **not** estate of deceased Muhammad Yaqoob Butt.

13. Now I would like to examine the *locus standi* of the plaintiffs, the first requirement to file a suit for administration, as heir under Muhammadan Law to succeed the estate of the Muhammad Yaqoob Butt. In Sunni Hanfi Law of Succession, the heirs of the deceased Muhammadan are divided into three classes, namely, sharer, residuaries and the uterine relation called the distant kindred. **Paras 61 and 63** of Muhammadan Law reproduced below from D.F. Mulla's Principles of Muhammadan Law is quite clear and binding for the followers of Sunni Hanafi School of Muhammadans:

**“61. Classes of heirs:--** There are three classes of heirs, namely, (1) Sharers, (2) Residuaries, and (3) Distant Kindred:

- (1) “Sharers” are those who are entitled to a prescribed share of the inheritance;
- (2) “Residuaries” are those who take no prescribed share but succeed to the “residue” after the claims of the sharers are satisfied;
- (3) “Distant Kindred” are all those relations by blood who are neither Sharers nor Residuaries.”

**“63. Shares:--** After payment of funeral expenses, debts and legacies, **the first step** in the distribution of the estate, of a deceased Mohamedan **is to ascertain which of the surviving relations belong to the class of sharers**, and which again of these are entitled to share of the inheritance, **and, after this is done, to proceed to assign their respective shares to such of the sharers** as are, under the

circumstances of the case, entitled to succeed to a share.”  
*(Bold letters are for emphasis)*

The first claimants, after funeral expenses, debts and legacies are the “sharers” who are entitled to a prescribed share by inheritance. The first line of sharers are widow, father, mother, son and daughters and by application of the principle of nearer in degree excludes the remoter, the grandchildren in presence of sons and daughters do not belong to the class of sharers to inherit anything from the estate of the deceased.

14. In the case in hand, the deceased Muhammad Yaqoob Butt died on **03.05.1970** and the plaintiffs themselves have shown eight (8) legal heirs of deceased Muhammad Yaqoob Butt including the predecessor-in-interest of the plaintiffs in the title of the plaint. Therefore, according to Muhammadan Law the properties of late Muhammad Yaqoob Butt were to be divided into 12 shares, for eight legal heirs i.e. four sons and four daughters (two shares each for the four sons and one share each for the four daughters) and with this division of the assets of late Muhammad Yaqoob Butt on his death in 1970, the predecessor-in-interest of plaintiff was not in any way entitled to 25% shareholding by way of inheritance. His share, as rightly pointed out by the defence counsel, could be hardly 16% and not 25% as claimed in the plaint. All the four daughters of late Muhammad Yaqoob Butt were alive on **03.05.1970** when the succession opened and they were entitled to receive their share according to Hanafi Law of Inheritance. They are defendants Nos.4 to 7 in the instant suit. The sons/daughters of sons/daughters of late Muhammad Yaqoob Butt, i.e. the plaintiffs and defendants Nos.8 to 15, on the opening of succession

in 1970 were not in the first category of legal heirs generally called “sharers” though they could be the surviving relations of deceased Muhammad Yaqoob Butt. The Plaintiffs and defendants Nos.8 to 15 cannot claim inheritance in the estate of their grandfather in presence of their father/mother. It is settled principle of Muhammadan Law that once a Muhammadan passes away, the succession to his estate immediately opens and the title passes to the heirs automatically to the extent of their respective shares ordained by Shariah without any interference by the State functionaries and clergy as held by the Hon’ble Supreme Court in the case reported in **PLD 1990 SC 1** (GHULAM ALI and 2 others versus MST. GHULAM SARWAR NAQVI), relevant portion from the judgment is reproduced below:

“The main points, of the controversy in this behalf get resolved on the touchstone- of Islamic law of inheritance. As soon as an owner dies, succession to his, property opens. There is no State intervention or clergy's intervention needed for the passing of the title immediately, to the heirs. Thus it is obvious that a Muslim's estates legally and juridically vests immediately on his death in his or her heirs and their rights respectively come into separate existence forthwith. The theory of representation of the estate by an intermediary is unknown to Islamic Law of inheritance as compared to other systems. Thus there being no vesting of the estate of the deceased for an interregnum in any one like an executor or administrator, it devolves on the heirs automatically, and immediately in definite shares and fraction. It is so notwithstanding whether they (the heirs) like it, want it, abhor it, or shun it. It is the public policy of Islamic law. It is only when the property has thus vested in the heir after the succession opens, that he or she can alienate it in a lawful manner. There is enough comment and case-law on this point which stands accepted.

Reverting to the vesting of the property in a Muslim heir, as a corollary to what has already been said, it is further to be held that if the State, the Court, the clergy, the executor, the administrator does not intervene, no other body intervenes on any other principle, authority, or relationship” -- even of kinship.”

The above dictum of the Hon’ble Supreme Court read with **Paras 43, 44 and 56** of the Principles of Muhammadan Law makes it

clear that legal heir of a legal heir cannot directly claim “share” in the estate of a Muhammadan on his death if at the time of opening of succession he was not included in the 1<sup>st</sup> class of heirs called SHARER. The provision of Para-43, 44 and 56 are reproduced as under:-

**43. Extent of liability of heirs for debts.**—Each heirs is liable for the debts of the deceased to the extent only of a share of the debts proportionate to his share of the estate.

**44. Distribution of Estate.**—Since the estate devolves on the heirs at the moment of the death of the deceased, they are at liberty to divide it at any time after the death of the deceased. The distribution is not liable to be suspended until payment of the debts.

**“56. Vested Inheritance.**--- A “vested inheritance” is the share which vests in an heir at the moment of the ancestor’s death. If the heir dies before distribution, the share of the inheritance which has vested in him will pass to such persons as are his heirs at the time of his death. The shares therefore are to be determined at each death.”

15. The principle as embodied in **Paras 43 and 44** of the Muhammadan Law and the above referred judgment of the Hon’ble Supreme Court regarding the devolution of the estate of a Muhammadan on his legal heirs on his death settles even the extent of liabilities of each legal heir proportionate to his/her share in the estate of the deceased and **Para 56** further clarifies that the grandchildren whose father or mother has survived their grandfather have no *locus standi* to claim inheritance in the estate of the deceased grandfather. At the best, once their own father/mother has died (true legal heirs of grandfather) they can file a suit for administration of the estate left by their deceased parents and if there was any undistributed property from the estate of their grandfather, continues to be in existence, they can include “share” of their deceased parents in the said estate of their own deceased father or mother as the case may be but they cannot

reopen the issue of inheritance from the entire estate of their grandparents. The above provisions defining “vested inheritance” further confirm that grandchildren cannot claim as matter of their own right any share in the estate of their grandfather. The phrase that “the shares therefore are to be determined on each death” refers to the set of legal heirs for inheritance at the time of death of a Muhammadan. In view of the direct prohibition in law discussed above, the proposition as advanced by the counsel for the plaintiff is accepted that the plaintiffs who were not otherwise entitled to inherit anything on the opening of the succession can bring the suit at the time of opening of a subsequent succession on the death of someone who was otherwise a legal heir of the earlier deceased then there shall be no end to it. Every second or third generation will start claiming inheritance by bringing suit for administration of the properties of their forefathers. It is against the public policy and negation of provisions of Muhammadan Law stated in Paras 43 and 44 read with Paras 56 to 63.

16. The plaintiffs were also conscious of this legal position that they had not acquired any right of inheritance in the properties mentioned by them in the schedule of properties even if the same are treated to be the properties of late Muhammad Yaqoob Butt. The plaintiffs’ predecessor-in-interest Muhammad Mohsin Butt had died on **01.05.2005** and they have shown firstly cause of action accrued to them on **19.12.2005** and subsequent thereto. They have not claimed cause of action on the death of their grandfather, late Muhammad Yaqoob Butt, on **03.05.1970**, and rightly so since at the time of death of Muhammad Yaqoob Butt they were not in any of the class of legal heirs mentioned in **Para**



**61** of the Muhammadan Law to inherit anything from the said Muhammad Yaqoob Butt on his demise nor the properties mentioned in the schedule were own by the deceased. Therefore, this suit is not maintainable since no cause action has accrued to the plaintiffs in 1970 when the succession on demise of Muhammad Yaqoob Butt opened.

17. The upshot of the above discussion is that the plaintiffs' suit for administration must fail on the ground that none of the properties mentioned in the schedule were part of the estate of the deceased Muhammad Yaqoob Butt, therefore, these properties cannot be declared so and also on the ground that the plaintiff not being otherwise lawfully entitled to inherit anything on the demise of Muhammad Yaqoob Butt in 1970 cannot seek administration and partition of the property of deceased Muhammad Yaqoob Butt.

Karachi, dated  
January\_\_\_\_\_ 2015

**J U D G E**