

# HIGH COURT OF SINDH, KARACHI

Revision Application No. 131 of 2011

Azam Rasheed applicant through : Mr. Zafaruddin Khan  
Advocate

Mst.Asifa Kiran, respondent through : Mr. Pir Darvesh, Advocate

Date of hearing : 20-04-2015

Date of reasoning Order : 21-04-2015  
**Before:**  
Mr. Justice Nazar Akbar

## ORDER

**NAZAR AKBAR-J.**, Through this revision application, the applicant Azam Rasheed son of Rasheed Ahmed has challenged the concurrent findings of II<sup>nd</sup> Senior Civil Judge West-Karachi in Suit No. 686 of 2009 upheld by III-Additional District & Session Judge West-Karachi in Civil Appeal No. 119 of 2010, whereby; both the Courts below held that, the respondent was wedded wife of deceased Rasheed Ahmed son of Madad Ali, and; therefore, she was entitled to the inheritance as a widow from the estate of deceased Rasheed Ahmed.

2. Briefly stated, the applicant has filed a Succession Miscellaneous Application under Section 372 of the Succession Act, 1925, which was registered as S.M.A No. 95 of 1998 in the Court of District & Session Judge, West-Karachi. He himself has stated that, the respondent claims to be widow of the deceased though, she has been divorced by his father and; therefore, she has not been joined as legal heir. On this disputed

question of inheritance, the S.M.A No. 95 of 1998 was converted into Civil Suit No. 685 of 2009, in which the following two relevant issues were framed:-

- Whether the marriage of the defendant with the father of the plaintiff was invalid and illegal and whether the son born due to illegal wedlock is not entitled for inheritance?
- Whether the defendant has divorced by the deceased father of the plaintiff?

3. Both the issues were discussed by the learned trial Court and found that in evidence a registered Nikahnama of the respondent with the deceased father of the applicant was placed on record and the Plaintiff had produced a divorce deed on a plain paper without any stamp and without any attestation from Notary Public or any other authority. It was also observed by the learned trial Court that, the respondent produced two witnesses who categorically stated that they have never heard that the respondent was divorced. The Plaintiff counsel did not cross examined witnesses of respondent and he himself has filed an unauthenticated piece of paper showing a divorce which was not obviously admissible document. The Appellate Court also endorsed the findings of the trial Court; since no material was available before both the Court to come to the conclusion that the version of the petitioner was proved. Learned counsel for the applicant has attempted to make wild allegations against the learned Presiding Officer of the trial Court as well as Appellate Court to impress upon the Court that the findings were biased. However; neither at the time of evidence nor in any appeal a complaint was made by the applicant against the Presiding Officers.

4. Be that as it may, burden of proof of divorce was on the appellant, since he asserted before the Court that his father had divorced the respondent. Even in the present revision application, the applicant has

failed to produce any divorced deed or affidavit of two witnesses to confirm that divorce was pronounced by the deceased Rasheed Ahmed to his second wife Respondent hereinabove in their presence. No case is made out for interference in the concurrent findings of facts by the Courts below to invoke revisional jurisdiction of this Court, therefore, this revision is dismissed with no order as to costs. These are the reasons for dismissing this revision application by sort order dated 20-04-2015

***J u d g e***