

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

C.R.No.3843/2014

Tariq Mehmood etc. **VS.** Fateh Muhammad etc.

Date of hearing	11.12.2024
Petitioners by	Mian Ghulam Rasool, Advocate
Respondents by	Mr. Muhammad Siddique Shahid and Mian Muhammad Aslam, Advocates

Ch. Muhammad Iqbal, J:- Through this civil revision, the petitioners have challenged the validity of judgment & decree dated 17.07.2012 passed by the learned Civil Judge, Gojra who decreed the suit for declaration of the respondents and also assailed the judgment & decree dated 06.09.2014 passed by the learned Additional District Judge, Gojra who dismissed the appeal of the petitioners.

2. Brief facts of the case are that Natho, predecessor-in-interest of the parties of the lis was owner of land measuring 83 Kanal 02 Marla bearing Khewat No.156 Square No.58 situated in Chak No.367/J.B, Tehsil Gojra, District Toba Tek Singh. He was Muslim by faith. After his death, the property was devolved upon Ali Muhammad, Abdul Rehman, Ghulam Qadir (sons), Mst. Fatima and Mst. Noor Bibi (daughters) through mutation No.203 dated 09.12.1954. The respondents/plaintiffs, Fateh Muhammad etc. being Muslim grandson of the deceased Natho challenged the mutation No.203 to the extent of Ghulam Qadir, predecessor-in-

interest of the petitioners/defendants, by stating that Ghulam Qadir was a Qadiani by faith (disbeliever) as such he could not inherit the property from the estate of his deceased Muslim father. The subsequent mutations got entered by Ghulam Qadir are also liable to be set aside. The petitioners/defendants filed contesting written statement on the factual and legal parlances. Out of the divergent pleadings of the parties, the trial Court framed issues as under:-

1 Whether inheritance mutation 1No.203 dated 9.12.54 and subsequent gift deed No. 213 dated 28.2.1973 and gift deed No. 1239 dated 21.4.2005 and registered sale deed No. 464 dated 20.2.2009 are against law, facts and are inoperative upon the rights of the plaintiff? OPP

2. Whether the plaintiff is entitled for a decree as prayed for? OPP

3. Whether the plaintiff has got no cause of action and locus standi to file this suit? OPD

4. Whether suit of the plaintiff is barred by time? OPD

5. Whether plaintiffs have not come to the court with clean hands? OPD

6. Whether suit has been filed to disturb the defendants and defendants are entitled to recover special costs from the plaintiff U/S 35-A CPC? OPD

7. Relief.

Recorded evidence of the parties and decreed the suit vide judgment & decree dated 17.07.2012. The petitioners filed an appeal which was also dismissed by the appellate Court vide judgment & decree dated 06.09.2014. Hence, this civil revision.

3. Arguments heard. Record perused.

4. In this case, two questions are required to be answered:

i. Whether a non-Muslim is entitled to inherit share from the estate of his Muslim Relative/father?

ii. Whether Article 260 of the Constitution of the Islamic Republic of Pakistan, 1973 is applicable retrospectively?

Tahir Mehmood, one of the petitioners/defendants appeared as D.W.1 and during his cross examination he admitted that his father Ghulam Qadir was a Qadiani and deposed as under:

"یہ درست ہے کہ میرے والد صاحب احمدی فرقہ کے امیر تھے۔ یہ درست ہے کہ میرے والد صاحب جب فوت ہوئے تو ان کو چناب نگر میں دفن کیا گیا۔ یہ درست ہے کہ میرے نانا غلام قادر احمدی تھے۔ یہ درست ہے کہ احمدیوں اور مسلمانوں کی عبادت گاہیں گاؤں میں علیحدہ علیحدہ ہیں۔"

It is an admitted position that Ghulam Qadir, predecessor-in-interest of the petitioners/defendants, was a Qadiani by faith and while incorporating the inheritance mutation of a Muslim namely Natho, predecessor-in-interest of the parties of the lis, he did not disclose to be a Qadiani (non-Muslim). It is settled law that admitted facts need not to be proved. Reliance is placed on the cases of *Mst. Nur Jehan Begum through LRs v. Syed Mujtaba Ali Naqvi* (1991 SCMR 2300) and *Mst. Rehmat and others Vs. Mst. Zubaida Begum and others* (2021 SCMR 1534). But this fact of conversion of Ghulam Qadir as Qadiani (disbeliever) was not disclosed at the time of sanctioning of the impugned inheritance mutation. It is settled law of Shariah that the estate left by a deceased Muslim owner cannot be inherited by a Non-Muslim heir. For reference in this regard, a Hadith of Hazrat Muhammad (ﷺ) from Sahih Muslim is reproduced as under:

“23. The Book of the Shares of Inheritance

[4140] 1 – (1614) It was narrated from Usamah bin Zaid that the Prophet (ﷺ) said: “A Muslim does not inherit from a disbeliever and a disbeliever does not inherit from a Muslim.

[Sahih Muslim : Volume No.4, Published by Darussalam, English translation by Nasiruddin al-Khattab]”

Further in the British Rule the Personal Laws of the respective communities dwelling in India were protected through

promulgation of legislated law. Similarly the Muslim Personal Laws were also made applicable to the Muslims through Muslim Shariat Application Act, 1937. Section 2 whereof is as under:-

2.Application of Personal Law to Muslim.-Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubarat maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs other than charities and charitable institutions and charitable and religious endowments the rule of decisions in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)

Thereafter Shariat Application Act, 1948 was also promulgated which also affirms application of Muslim Personal Law (Quran & Sunnah) upon the Muslims. This concise and considered view is that canon of Quran and Sunnah are applicable to inheritance of the estate of a deceased Muslim.

In view of above, the first question framed above is answered in manner that a non-Muslim is not entitled to inherit any share from the estate of his Muslim relative as successor or predecessor.

5. As regard second question that whether provisions of Article 260(3) of the Constitution of the Islamic Republic of Pakistan, 1973 are applicable retrospectively. Ghulam Qadir was Qadiani at the time of entry of inheritance mutation of his father/Natho in the year 1954 as admitted by D.W.1, and this material fact was not disclosed by him at the time of incorporation of inheritance mutation of Natho, who was a Muslim by faith, as such the said amendment simply affirm the Qadianis as non-Muslims and declared the position as it existed under Shariat as such, the said amendment being declaratory operates retrospectively. Reliance in this regard is placed on a case cited Muhammad Ashraf and 2 others Vs. Mst. Niamat Bibi

and 2 others (PLD 1981 Lahore 520) the relevant portion whereof is reproduced as under:

“29. While construing Article 260(3), according to the well-established rule of construction of the statute and the Constitutional Provisions, it will be the duty of the Court to find out the real aim, scope and object of amending Act. According to the Maxwell on Interpretation of Statutes, 10th Edition, page 18:-

“..... To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act; to consider, according to Lord Coke. (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of remedy...”

As stated earlier the Muslims of the Sub-Continent have all along been agitating that Qadianis be declared non-Muslims. It was in obedience to the demand of the Muslim Ummah that the Constitution was amended for this purpose. It is to be noticed that he who does not believe in the absolute and unqualified of Prophethood of Muhammad (peace be upon him), has always been outside the fold of Islam. As such the Constitution (Second Amendment) Act, 1974, simply affirmed and declared the position as it existed under Shariat. The amending Act is thus a declaratory Act. It was also held so by this Court in *Abdur Rehman Mobashir v. Amir Ali Shah*.”

Thus, in view of above, it can conveniently be answered that the provisions of Article 260(3) of the Constitution of the Islamic Republic of Pakistan, 1973 are applicable retrospectively.

6. In view of the aforesaid facts and circumstances of the case when it was established that Ghulam Qadir, predecessor-in-interest of the petitioners/defendants, was a Qadiani at the time of incorporation of inheritance mutation of Natho whereas his father Natho was a Muslim as such Ghulam Qadir was not entitled to inherit from the estate of his Muslim father, Natho as such the trial Court rightly decreed the suit of the respondents/ plaintiffs which decision was lawfully upheld by the appellate Court.

7. Learned counsel for the petitioners has not pointed out any illegality or material irregularity in the impugned judgments &

decrees passed by the Courts below and has also not identified any jurisdictional defect. The concurrent findings of fact are against the petitioners which do not call for any interference by this Court in exercise of its revisional jurisdiction in absence of any illegality or any error of jurisdiction. Reliance is placed on the case titled as Mst. Zaitoon Begum v. Nazar Hussain and another (2014 SCMR 1469).

8. In view of above, this civil revision being devoid of any merit is **dismissed**. No order as to costs.

(Ch. Muhammad Iqbal)
Judge

Abdul Hafeez

Approved for reporting.

Judge