

P L D 2018 Peshawar 30

Before Syed Arshad Ali, J

INAM SHAH---Appellant

Versus

PUBLIC-AT-LARGE and anothers---Respondents

F.A.O. No.1-A of 2016, decided on 4th October, 2017.

Succession Act (XXXIX of 1925)---

---Ss. 372 & 383---Succession certificate---Disputed items, status of---Determination---Scope--- Appellant filed application for seeking succession certificate with regard to Bank account and valuable items lying in locker of the deceased---Trial Court issued certificate to the extent of Bank account only---Validity---Status of disputed items could not be determined by Trial Court exercising jurisdiction under Succession Act, 1925---Appropriate remedy for parties was to approach Civil Court under its plenary jurisdiction to first determine status of disputed items being legacy of deceased or otherwise; after determination by Civil Court that disputed items constituted legacy of deceased, parties could resort to mechanism under Succession Act, 1925, for obtaining succession certificate in respect of disputed items or extension of existing succession certificate to the disputed items---Order accordingly.

Aziz Ahmed v. Hakimzadi and 7 others 2013 CLC 406 rel.

Ghulam Younas Khan Tanoli and Raheela Mughal for Appellant.

Khalid Rehman Qureshi for Respondents.

Date of hearing 4th October, 2017.

JUDGMENT

SYED ARSHAD ALI, J.---Through instant appeal, the appellant has questioned the validity, legality and propriety of judgment/order dated 09.12.2015 passed by learned Senior Civil Judge, Haripur whereby he partly allowed the petition filed by present appellant.

2. Brief but essential facts of the instant appeal are that on 26.11.2013 Muhammad Jan died leaving behind the present appellant Inam Shah (brother) and Mst. Sadiq Jan (widow) as the only legal surviving heirs. The deceased has also left behind huge moveable as well as immoveable properties. Respondent No.2 being widow of the deceased filed an application on 20.1.2014 under section 372 of Succession Act, 1925 for issuance of succession certificate regarding certain movable assets left behind by the deceased i.e. Locker No.436 maintained at Allied Bank Limited, Shahrah-e-Hazara, Haripur, Rs.37,33162.83 lying in the account maintained in the said Bank and Special Savings certificates worth Rs.60,00,000/-. The respondent No.2 did not implead the present appellant in the said application, however, subsequently on the application for impleadment filed by the present appellant, learned Senior Civil Judge vide order dated 08.02.2014 allowed the impleadment of appellant to the said application. During proceedings the learned trial Court vide order dated

12.05.2014 directed the Civil Nazir of the Court to open the locker in the presence of parties and Manager of the Bank. Accordingly, the Civil Nazir prepared detailed inventory of the items available in the locker. Apart from the certain documents the following valuable things were available in the locker, saving certificates bearing Nos.27, 48, 51 and 52 worth of Rs.5,00,000/- each (twelve in number) total worth of Rs.60,00,000/-. BSC worth of Rs.26,00,000/-, Pound Sterling 5600/-, BSC worth of Rs.60,00,000/- and Rs.26,00,000/- (hereinafter called disputed items).

3. From the said locker certain documents, which were titled as Wasiyat Nama/Will, were also recovered. The said documents contain instruction/will of the deceased regarding aforesaid amount lying in the said locker. In view of this changed situation learned trial Court directed the parties to amend the application for succession certificate by incorporating the disputed items available in the locker and accordingly the appellant filed amended application. From divergent claims of rival claimants, the learned trial Court framed the following issues:-

1. Whether the petitioner has got the cause of action?
2. Whether the petitioner is entitled to any share in the property/belongings of the deceased Muhammad Jan mentioned in the succession petition?
3. Whether the deceased had donated his entire property to Al-Ghosia School/College in his lifetime?
4. Whether the petitioner is entitled to the grant of succession certificate as prayed for?
5. Relief.

4. Muhammad Arshad, Operation Manager of Allied Bank Limited, Shahrah-e-Hazara Branch, Haripur appeared as PW-1, who has given detailed description of items present in the locker and endorsed the inventory report prepared by the Civil Nazir of the Court of learned Senior Civil Judge, Haripur relating to the items lying in the locker No.436. Sajid Irshad, Assistant National Saving Officer NSC-1 G.T Road, Haripur appeared as PW-2, he stated in his statement that saving certificates worth of Rs.58,12,481 are in the name of deceased. He also mentioned that certain saving certificates are in the names of Mehmoob-ur-Rehman, Sadiq Jan Syed, Afsana Bibi and Inam Shah. Widow of deceased appeared as PW-3 whereas Nazakat Ali, special attorney of present appellant, appeared as DW2. The learned trial Court after hearing arguments of learned counsel for the parties through judgment/order dated 09.12.2015, allowed the application in respect of amount of Rs.39,70,583.91 lying in Allied Bank, Haripur in account No.0010012064970015, whereas claim of the parties for issuance of succession certificate for other assets lying in the said locker was rejected. The appellant has called in question the aforesaid judgment/order passed by learned Senior Civil Judge, Haripur through present appeal.

5. Learned counsel appearing on behalf of appellant has argued that Saving certificates bearing Nos.27, 48, 51 and 52 worth of Rs.5,00,000/- each (twelve in number) total worth of Rs.60,00,000/-. BSC worth of Rs.26,00,000/-, Pound Sterling 5600/-, BSC worth of Rs.60,00,000/- and Rs.26,00,000/- are essentially the assets left behind the deceased as legacy, therefore, the learned trial Court has erred in law by not including the same in the succession certificate. He relied upon 2013 CLC 406 (Sindh).

6. On the other hand, learned counsel appearing on behalf of respondent has stated that the aforesaid items do not include in the legacy of the deceased as the same was waqf property left behind

the deceased for a particular purpose i.e. Al-Ghosia School/College known as "Alkultul Ghausia Lilbanat situated at Mauza Bignian Tehsil and District Haripur.

7. Arguments heard and record perused.

8. The recovery of aforesaid items from the locker and the fact that the present appellant and respondent No.2 are the only surviving legal heirs, are admitted and has not been denied by any party. The form and character of the disputed items also fall within the mischief of security as provided by Section of the Succession Act, 1965, against which a succession certificate can be issued. However, the documents dated 07.02.2011, 24.02.2011, and 21.02.2011, which contain instruction of the deceased regarding mode and manner through which disputed items would be applied/utilized. True that testator can only bequeath 1/3rd of his estate under the Islamic Law, but despite the fact that in the recital of the document the word Wasiyat Nama has been used, however, if the contents of the documents are perused it gives an impression that the disputed items have either been gifted to Jamia Alkultul Ghausia Lilbanat situated at Mauza Bignian Tehsil and District Haripur or deceased was holding disputed items as trustee. Hence, status of the items being legacy of deceased or waqf cannot be determined by the learned trial Court exercising limited jurisdiction under the provisions of Succession Act, 1925. In Aziz Ahmed v. Hakimzadi and 7 others (2013 CLC 406 Sindh) has held that:-

"From the bare perusal of the above sub proviso of section 373 of Succession Act, 1925, it appears that this section is related to the extent of the share of one applicant and same is relevant when dispute on some share arose and also on this point the dictum of honourable Supreme Court in which authoritative proposition of law is laid down which is to the effect that the proceedings under Succession Act, being summary in nature, cannot help in determining the issue of status of a party hence in the even of dispute of status of a party the property course would be for parties to approach the competent Civil Court for declaration of such disputed status and then to resort to course, provided under the Act."

9. In view of the above, since the status of the disputed items cannot be determined by the trial Court exercising jurisdiction under Succession Act, 1925, therefore, appropriate remedy for the parties is to approach the Civil Court under its plenary jurisdiction to first determine the status of the disputed items being legacy of the deceased or otherwise. After the determination by the civil Court that the disputed items constitute legacy of the deceased, then the parties may resort to the mechanism under the Succession Act, 1925, for obtaining Succession Certificate in respect of the aforesaid disputed item or extension of the existing succession certificate to the disputed items.

10. With these observations, this appeal is disposed of accordingly.

MH/331/P

Order accordingly.