

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:-

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 99 of 2016
(PLA filed on 12.04.2016)

Noreen Akhtar, widow of Muhammad Suleman r/o
Dhoke Chosia Rathoa Muhammad Ali, Tehsil and District
Mirpur.

.... APPELLANT

VERSUS

1. Fauzia Bibi wife of Muhammad Mumtaz Malik.
2. Uzma Bibi wife of no knowledge r/o Mohalla Awan
Colony Jabbi Shamali Tehsil and District Khushab.
3. Public at large.

..... RESPONDENTS

4. Nighat Suleman.
5. Safoora Suleman daughters,
6. Amman Suleman,
7. Atif Suleman sons of Muhammad Suleman r/o
Dhoke Ghosia Rathoa Muhammad Ali Tehsil and
District Mirpur.

..... PROFORMA- RESPONDENTS

(On appeal from the judgment of the High Court
dated 12.02.2016 in Civil Appeal No.252/2013)

FOR THE APPELLANT: Mr. Arshad Mehmood
Mallick, Advocate.

FOR RESPONDENTS No.1 & 2: Mr. Muhammad Idrees
Mughal, Advocate.

FOR PROF. RESPONDENTS: Sardar Wajid Pervaiz,
Advocate.

Date of hearing: 17.04.2017.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.- The captioned appeal by leave of the Court arises out of the judgment of the High Court dated 12.02.2016, whereby the appeal filed by the appellant, herein, has been dismissed.

2. The facts necessary for disposal of this appeal are that the appellant, herein, filed an appeal before the High Court against the order passed by the learned District Judge, Mirpur on 31.10.2013, alleging therein that she filed an

application for obtaining succession certificate in respect of the inheritance left by Muhammad Suleman s/o Alaf Din, before the District Judge, Mirpur on 20.9.2013. On receipt of application, the public at large was summoned through proclamation but nobody appeared before the Court, therefore, ex-parte proceedings were ordered on 7.10.2013 and the applicant was directed to produce ex-parte evidence. The applicant/appellant produced two witnesses in support of her claim on 9.10.2013 and also produced the death certificate and the Bank statements, whereupon the next date for proper order was fixed as 21.10.2013. On the said date respondents No.2, and 3, herein, appeared before the Court and filed an application claiming therein to be the daughters of late Muhammad Suleman, and requested that their names may be entered as the successors of the deceased. It was stated in the application that Muhammad Suleman (deceased)

had contracted three marriages and two daughters namely, Fauzia Bibi and Uzma Bibi (respondents No.1 and 2, herein) born out of the wedlock of earlier two wives, are alive, whereas, the applicant (appellant, herein) is the third wife of the deceased who has four children. It was craved that their names be incorporated in the succession certificate. The District Judge on completion of evidence led by the parties, vide judgment dated 31.10.2013 accepted both the counter applications and issued the succession certificate in favour of all the descendants of Muhammad Suleman, deceased. The appellant herein, challenged the succession certificate by filing an appeal before the High Court on the ground that Fauzia Bi and Uzma Bibi are not daughters of Muhammad Suleman and the District Judge has wrongly ordered to incorporate their names in the succession certificate. A learned Judge in the High Court through the impugned

judgment dated 12.2.2016, dismissed the appeal, hence this appeal by leave of the Court.

3. Mr. Arshad Mehmood Mallick, Advocate, counsel for the appellant after narration of necessary facts seriously objected to the impugned judgment of the High Court as well as the order of the District Judge while submitting that the same are against the basic natural principle of the administration of justice i.e., *Audi Alteram Partem*. While elaborating his arguments he referred to the interim orders recorded by the learned District Judge during the proceedings conducted in the application for issuance of the succession certificate. He forcefully submitted that initially the application for issuance of succession certificate was filed by the appellant. On the said application the required proceedings were conducted and the appellant appeared in the Court as her own witness. She also produced two other witnesses in support of her claim, the statements of

whom were recorded on 7.10.2013 and 9.10.2013. Thus, the proceedings were completed and no further appearance of the appellant was required. The case was fixed for proper orders on 12.10.2013. Thereafter, in absence of the appellant the case was fixed for 21.10.2013, when the contesting respondents filed an application claiming to be the legal heirs of the deceased. The learned District Judge without providing an opportunity of hearing to the appellant or recording any order in this regard, recorded the evidence of the contesting respondents against law and finally passed the order on 31.10.2013 in absence of the appellant. On gaining knowledge of this whole story, the appellant filed an appeal in the High Court on 22.11.2013. The judgment and order passed by the District Judge is totally against law. The important proposition as is fully established from the interim orders of the learned District Judge that the appellant was condemned unheard, has not been

considered by the learned High Court in appeal. Moreover, there is self-contradictory evidence on the record produced by the appellant and the contesting respondents regarding to be the heirs of the deceased. The learned High Court has failed to apply its judicial mind, hence the impugned judgment is not maintainable.

4. Sardar Wajid Pervaiz, Advocate counsel for the proforma-respondents supported the arguments of the counsel for the appellant.

5. Mr. Muhammad Idrees Mughal, Advocate, counsel for the contesting respondents seriously defended the impugned judgment and submitted that the learned District Judge has conducted the proceedings according to law. The contesting respondents fully established that they are the legal heirs of the deceased, thus, the succession certificate has rightly been issued. The appeal has been filed without any legal justification which is not maintainable. The

impugned judgment of the High Court does not suffer from any illegality or infirmity, therefore, this appeal has no substance.

7. We have considered the arguments of the learned counsel for the parties and perused the record made available. Leaving aside all other aspects, apparently the interim orders recorded by the learned District Judge are supportive of the arguments of the counsel for the appellant. During the pendency of the application for issuance of succession certificate filed by the appellant, after recording the evidence of the appellant and her witnesses on 9.10.2013, the case was fixed for proper order on 12.10.2013. The interim order recorded of this date speaks that no one appeared and the case was fixed for proper order on 21.10.2013. Obviously, when the whole evidence was recorded on behalf of the appellant the Court should have pass the order for issuance of succession certificate, whereas, on 21.10.2013 the

contesting respondents filed an application for addition of their names in the succession certificate as legal heirs. The learned District Judge after recording the statement of the applicant Fauzia Bibi passed the order that:

"رپورٹ سرشتہ ملاحظہ ہوئی۔ سائلہ کا بیان قلمبند کیا جا کر فریق ثانی کو بھی طلب کیا جا کر مسل 30.10.2013 پیش ہو۔"

This order clearly speaks that the proceedings were conducted in absence of the appellant and the Court ordered for summoning her on 31.10.2013. There is nothing on the record to show that any notice has ever been served upon the appellant for appearance on 31.10.2013 and the Court without applying the judicial mind and ascertaining the fact, whether any notice has been served upon the appellant or not, recorded the evidence produced by the contesting respondents in her absence and on the very next day issued the impugned succession certificate. Thus, it is clear that the whole proceedings in the application filed by the contesting respondents were conducted in absence

of the appellant without providing her an opportunity of hearing. This aspect of the case has not been seriously considered by the High Court whereas in such like circumstances it was enjoined upon the District Judge to provide an opportunity to the appellant to file objections, if any, and then he has to determine the disputed question as to who are the legal heirs or persons entitled for succession certificate of the deceased.

8. In this state of affairs, we are constrained to accept the appeal, set aside the impugned judgment of the High Court as well as the succession certificate issued by the District Judge. The case is remanded to the District Judge for conducting proceedings according to law and thereafter decide the matter within a period of three months from the communication of this order.

With the above observations this appeal stands accepted with no order as to costs.

CHIEF JUSTICE

JUDGE

Mirpur.

--.04.2017.

Date of Announcement: 17.04.2017