



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5130 OF 2009

Nusrat Sultana Munnawar Khan

VERSUS

Iqabalbee Munnawar Khan Pathan And Anr

Mr. S. S. Jadhavar, Advocate for petitioner

Mr. M. P. Kale h/f Mr. P. N. Mule, Advocate for respondents.

CORAM : R. M. JOSHI, J.

DATE : 26th NOVEMBER, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. This petition takes exception to order dated 13.12.2007 passed in Misc Civil Application No. 98/2007 (Old Misc Civil Application No. 29/2006) whereby Succession Certificate came to be issued in favour of petitioner and respondent and their entitlement to seek the share in the property i.e., the amount lying in the bank account of the deceased Munnawar was accepted and shares of respective parties were determined. This order came to be challenged by filing appeal unsuccessfully. Hence this petition.
3. It is the case of petitioner that she is wife of deceased

Munnawar Khan. It is claimed that respondent No.1 was first wife of deceased Munnawar who was divorced in the year 1974. Petitioner also claimed that the Munnawar was ex-serviceman and that in his service record, petitioner's name is recorded as his wife. Respondent No.1 Iqabalbee filed an application before trial Court seeking Succession Certificate in respect of the amount of Rs. 80,100/- standing in the name of deceased Munnawar in the Joint Saving Account No. 1306 at Shri. Mangalnath Nagari Sahakari Pat Sanstha Ltd., Majalgaon. Though, initially the petitioner was not joined as party, an intervention application came to be filed and allowed. Parties were given opportunity to lead evidence to substantiate their respective contentions. The impugned order came to be passed holding petitioner as well as respondents to be entitled for the share in the subject property of the deceased.

4. Learned counsel for the petitioner submits that the trial Court has committed error in not considering the evidence on record in proper perspective. According to him, on the basis of evidence led by petitioner it ought to have been held by the trial Court that respondent No.1 is not widow of the deceased. It is his submission that if she was wife of deceased, there was no reason or justification not to include her name in the service record of the deceased. He also argued that the amount lying in the account, is not single account of deceased but same is joint

account with petitioner and hence no Succession Certificate could have been obtained by respondents, in respect of the same.

5. This submission is opposed by the learned counsel for the respondent contending that there is no dispute about the fact that respondent No.1 was married to the deceased. However, the petitioner has claimed that she was divorced by the deceased. In this regard, however, no evidence is placed before the trial Court and as such, there is no reason or justification to cause any interference in the finding recorded by the trial Court.

6. As far as the rights of the parties to get share in the subject property is concerned, there is admission of respondent No.1 about petitioner being wife of deceased. Similarly, petitioner admits that respondent No.1 has married to deceased but was divorced subsequently. Once such stand is taken by the petitioner, it was necessary for her to led evidence before the Court in order to show that the deceased had divorced respondent No.1. As observed by the trial Court, there is no evidence to indicate that the respondent No.1 was divorced by the deceased. In absence of such evidence, there was no other option for the Court but to accept that both petitioner as well as respondent No.1 as wives of deceased and they are entitled for share in

the subject property of the deceased in accordance with the Mahomedan Law. As far as contention of petitioner about account in question been jointly held with deceased is concerned, there is no specific plea raised before trial/appellate court including in this petition, that any amount lying in the said account belongs exclusively of petitioner, Court finds no substance in the objection raised to the tenability of original application.

7. Learned counsel for the petitioner on this issue submits that in respect of other properties, respondent No.1 has filed separate suit and since the said suit is substantial proceeding, the findings recorded in the application for issuance of Succession Certificate may not be allowed to prevail over outcome of the said suit. This Court finds substance in the contention of the learned counsel for the petitioner in this regard. Since the suit is substantial proceeding, it is necessary for the said Court to determine the issues involved therein on the basis of evidence led before it.

8. Now coming to the issue of the determination of shares by the respective parties in the property of the deceased, it would be relevant to take into consideration the law on the point of inheritance of Muslim man. Under the Mahomedan Law applicable to the deceased and the parties to this proceeding, there are three kinds of classes of heirs i.e., Sharers, Residuaries and Distant Kindred. The "sharers" are those

who are entitled to a prescribed share of the inheritance. "Residuaries" are those who take no prescribed share, but succeed to the residue after the claims of the sharers are satisfied. "Distant Kindred" are all those relations by blood who are neither Sharers nor Residuaries. Admittedly, the parties here to are class I heirs of deceased. As per 23rd edition of Mahomedan Law by Mulla, widow of the deceased is entitled for 1/8th share in his property. Admittedly there are two widows of deceased. Therefore, they will share this 1/8th share which would go to the wives. Sons and daughters of the deceased are residuaries. Various illustrations given in respect of the determination of shares of son and daughter, the principle is that the son would get double the share than the daughter. Thus, if one share of the property is given to the daughter, the son/sons would get double thereof. Thus, learned trial Court seems to have committed error in determining the shares of the parties. Though the deceased was given 1/8th share correctly, it is wrongly held that the son has 1/3rd share and the daughter becomes residuary. In fact, only widow is the sharer and others are residuaries. Therefore, the sons and daughters in this case would become residuaries the sons would get double the share of daughter. Hence, impugned order deserves interference to this extent.

9. In view of the above, impugned judgment deserves partial

interference hence petition is allowed partly. The parties are entitled to get shares in the subject property of the deceased as follows.

i) Wives together – $5/40$

Each wife – $2.5/40$ i.e., $5/80$

ii) Daughter- $7/40$

iii) Each son $14/40$

8. Petition is disposed of in above terms.

(R. M. JOSHI, J.)

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