

C.R.No. 123 of 2005.

MUHAMMAD AKRAM BHATTI, ETC.

MST. GHULAM SUGHRA, ETC.

22.03.2011.

Malik Muhammad Kabir, Advocate for the petitioners.

Mr. Muhammad Aslam Sheikh, Advocate for the respondents No.1 to 3.

The petitioners No.1 to 3 of the civil revision are the sons, whereas, the petitioner No.4 is the widow of Haji Muhammad Yousaf Bhatti, whereas, the respondents No.1,2 and 3 are the daughters of Haji Muhammad Yousaf Bhatti. The respondent No.1 Mst. Ghulam Sughra, one of the daughters, has died during the pendency of the controversy and is being represented by her legal heirs No.(i) to (vii) mentioned in the memo of parties.

2. This civil revision is directed against the judgment and decree dated 08.12.2004, passed by the learned District Judge, Attock, whereby an appeal preferred by the respondents No.1 to 3 against the judgment dated 07.07.2004, passed by the learned Civil Judge was set-aside.

3. Briefly stating the facts of the case are that the respondents No.1 to 3 instituted an application for obtaining a succession certificate with respect to investment made by Haji Muhammad Yousaf Bhatti in the Defence Savings Certificates of the value of

Rs.21,31,900/- (*rupees twenty one lac, thirty one thousand and nine hundred only*) alongwith profits. The respondents No.1 to 3 prayed for issuance of succession certificate according to Islamic Law of Inheritance after determining the respective shares of all the successors of Haji Muhammad Yousaf Bhatti. The petitioners No.1 to 3 being sons, whereas, the petitioner No.4 being the widow of Haji Muhammad Yousaf Bhatti contested the application moved by the respondents No.1 to 3 by contending that the respondents No.1 to 3 are not entitled to the grant of succession certificate as the deceased Haji Muhammad Yousaf Bhatti had nominated the Defence Saving Certificates to the specific nominees, which included all the parties separately and that by virtue of nomination made by the deceased in the Defence Saving Certificates, columns, the general principle of Muslim Law of Inheritance stand excluded, therefore, the succession certificate, as prayed for by the respondents No.1 to 3, cannot be issued in favour of the said respondents and that the nominations made by the deceased in the Defence Saving Certificates shall prevail upon the method of distribution of the said Defence Saving Certificates as well as the profits incurred thereunder.

4. The learned Civil Judge, Attock framed the following issues:-

1. *Whether petitioners are entitled to share encashment and profit of the disputed defence saving certificates as per their respective shares? OPP.*
2. *Relief.*

5. The parties produced their respective evidence. The learned Civil Judge vide judgment dated 07.07.2004 dismissed the application of the respondents No.1 to 3.

6. An appeal was preferred by the respondents No.1 to 3 against the judgment dated 07.07.2004, passed by the learned Civil Judge, Attock, which appeal came up for hearing before the learned District Judge, Attock, who accepted the appeal vide judgment dated 08.12.2004 and set-aside the judgment of the learned Civil Judge, Attock dated 07.07.2004 by holding that all the legal heirs of the deceased Haji Muhammad Yousaf Bhatti would be entitled to their legal shares in the amount of Defence Saving Certificates alongwith profits on the basis of Islamic Law of Inheritance. The learned District Judge/appellate court recorded an important finding that the nomination made in the Defence Saving Certificates of different nominees by the deceased was only for the purpose of creating an authority in favour of the respective nominees of getting the encashment of the particular Defence Saving Certificates and the profits incurred thereunder. However, the learned District Judge held that this nomination by the deceased does not have the effect of depriving the legal heirs of their respective legal shares in the property left by the deceased.

7. This judgment dated 08.12.2004 of the learned District Judge, Attock has been assailed through the instant civil revision.

8. It is contended by the learned counsel for the petitioners that the nomination made by the deceased

Haji Muhammad Yousaf Bhatti in favour of the nominees, which included the petitioners as well as the respondents No.1 to 3 was in fact a gift made by the deceased in favour of the nominees and, therefore, the act of making a gift of the particular portion of Defence Saving Certificates to the nominees create a right of the nominees to get encashment to the extent of the specified shares as per nomination made by the deceased Haji Muhammad Yousaf Bhatti and the general principle of Muslim Law of Inheritance, on distribution of the entire assets of the Defence Saving Certificates would not be applicable. It is further argued by the learned counsel for the petitioners that the principle of law as pronounced in the judgments reported as Mst. Amtul Habib and others vs. Mst. Musarrat Parveen and others (PLD 1974 Supreme Court 185), Malik Safdar Ali Khan and another vs. Public-at-Large and others (2004 SCMR 1219) and Mukhtar Sultana vs. Tasdaq (Tasadaq Hussain) (PLD 1979 Lahore 34) was not strictly applicable to the present case and that the Defence Savings Certificates having been governed by the Post Office National Saving Certificates Ordinance, 1944, Government Savings Act, 1873 and Defence Saving Certificates Rules, 1966 providing for the entitlement of the nominees in the certificates to receive the amount according to nomination made by the purchaser after his death would be the deciding factor.

9. The learned counsel for the respondents No.1 to 3 has controverted the arguments of the learned counsel for the petitioners by arguing that the nomination made by the deceased purchaser Haji Muhammad Yousaf Bhatti had the effect of only authorizing the

receiving of the amount under the respective Defence Saving Certificates but did not create any exclusive right in favour of the nominees to the extent of the specific nominations made by the predecessor-in-interest of the parties. The learned counsel for the respondents further contended that the plea of creation of a gift was neither taken in the written-statement by the petitioners before the learned Civil Judge nor an issue was got framed thereupon nor it was asserted in the evidence by the petitioners. The learned counsel for the respondents has also produced an uncertified copy of a previous litigation between the same parties in which the question of legal effect of family settlement/surrender deed dated 30.04.1990 was a bone of contention between the same parties which came up for hearing first before the High Court through Civil Revision No.179 of 2005, which civil revision was instituted by the petitioners and was dismissed by this Court vide judgment dated 25.06.2008 and then the matter was finally taken up before the Honourable Supreme Court of Pakistan through C.P.No.977 of 2008 by the present petitioners and the Civil Petition was also dismissed vide judgment dated 14.10.2009. The learned counsel for the respondents has also pointed out that the alleged family settlement/surrender deed as claimed by the petitioners, to have been executed by the legal heirs of the deceased Haji Muhammad Yousaf Bhatti to be of no legal effect as in the said family settlement Haji Muhammad Yousaf Bhatti was not a party. A certified copy of the judgment dated 14.10.2009 passed by the Honourable Supreme Court of Pakistan in C.P.No.977 of 2008 is also placed on the record by the learned

counsel for the respondents for perusal of this Court. Thus, the learned counsel for the respondents prayed that the civil revision instituted by the petitioners be dismissed as having no merits as the learned District Judge passed the impugned judgment dated 08.12.2004 in accordance with the case-law reported as Mst. Amtul Habib and others vs. Mst. Musarrat Parveen and others (PLD 1974 Supreme Court 185), Malik Safdar Ali Khan and another vs. Public-at-Large and others (2004 SCMR 1219) and Imtiaz Shamim and others vs. Muhammad Irfan-ul-Haq and others (2006 CLC 1189).

10. I have considered the arguments of the learned counsel for the parties and have perused the record with their assistance.

11. Admittedly the deceased Haji Muhammad Yousaf Bhatti had purchased the Defence Saving Certificates of the value of Rs.21,31,900/- during the period of 02.11.1991 to 05.05.2000 with specific nominations made in favour of his children, the detail of which is given in the certificates (Annexure-J) placed at page-37 of the instant civil revision. The respondents No.1 to 3 moved an application for the grant of succession certificate on 12.11.2001 after the death of Haji Muhammad Yousaf Bhatti, which application was entertained by the learned Civil Judge, Attock. The respondents No.1 to 3 also alleged that a portion of the investment made has been got encashed by the present petitioners without any entitlement. The petitioners submitted a written-statement dated 07.06.2004. They did not plead in the written statement that the deceased Haji Muhammad Yousaf Bhatti made any gift

in favour of the respective nominees of the Defence Saving Certificates. The petitioners only pleaded that by virtue of the nomination made in favour of the specific persons exclusive entitlement was created in favour of the said nominees to get the encashment of the respective Defence Saving Certificates and the profits incurred thereunder, therefore, the prayer for issuance of succession certificate was opposed by the petitioners. After framing of the issues noted above, the learned Civil Judge dismissed the application of the respondents No.1 to 3 by holding that the nomination made by the deceased in the Defence Saving Certificates shall prevail and that the succession certificate cannot be issued in favour of all the legal heirs according to Islamic Law of Inheritance.

12. The learned District Judge before whom the matter was taken up by the respondents No.1 to 3 after relying upon the judgments reported as Mst. Amtul Habib and others vs. Mst. Musarrat Parveen and others (PLD 1974 Supreme Court 185), Malik Safdar Ali Khan and another vs. Public-at-Large and others (2004 SCMR 1219) and (PLD 1991 SC 750) declared that the effect of nomination made by the deceased Haji Muhammad Yousaf Bhatti in favour of specific nominees was only for the purpose of the receiving of the amount under the Defence Saving Certificates Scheme, but the distribution of the amount has to be made in accordance with the respective legal shares amongst all the LRs of the deceased. The relevant portion of the judgment dated 08.12.2004 is contained in paragraph No.6 of the impugned judgment, which is re-produced below:-

“The nominee had been given the authority only to receive the amount which was to be distributed among the legal heirs of the deceased according to their legal shares and in the light of the case law referred to above the other legal heirs of the deceased could not be deprived of their legal shares in the property left by the deceased merely due to the respondents having been appointed as nominees.”

13. The Honourable Supreme Court of Pakistan in a reported judgment Mst. Amtul Habib and others vs. Mst. Musarrat Parveen and others (PLD 1974 Supreme Court 185) expressed the opinion about the nomination made in respect of Provident Funds at pages 192-193 in the following words:-

“We are of the opinion, however, that the correct view has been taken in the cases referred to earlier, namely, that the nomination merely confers a right to collect the money or to “receive the money”. It does not operate either as a gift or as a will and, therefore, cannot deprive the other of the nominator who may be entitled thereto under the law of succession applicable to the deceased. The nominee thus collects as a trustee for the benefit of all persons entitled to inherit from the deceased employee. It is not without significance that section 5 of the Provident Funds Act neither vests the amount in the nominee nor declares him to be the owner thereof. It merely gives him the exclusive right to receive the amount and nothing more. In any event the position under section 27 of the Bombay Co-operative Societies Act is different because the wording of this section is materially different. There is no analogy between the two.”

14. In a more recent judgment reported as Malik Safdar Ali Khan and another vs. Public-at-Large and others (2004 SCMR 1219), which pertains to the encashment of National Saving Certificates purchased by a Muslim deceased by nominating his brothers as nominee, the Honourable Supreme Court of Pakistan at page 1226 drew the following conclusion:-

“7. The Courts below after analyzing and examining the material available on record granted the Succession

Certificate in favour of respondents No.6 to 8 being wife, son and daughter of the deceased. The claim of Zafar Ali Khan that he is sole person, who can receive the payment of certificate being a nominee is not acceptable because the deceased had left two children and a widow, who through cogent, natural and convincing evidence proved to be Muslims and entitled to inherit the legacy of late Bahadur Khan. The evidence so adduced was rightly believed by the learned trial Court and the same was maintained by the First Appellate Court and upheld by the learned High Court. The contents of the application referred to by Raja Muhammad Ibrahim Satti, learned counsel for the respondents and portion of cross-examination clearly show that the petitioners are bent upon to snatch the property of late Bahadur Khan and that they do not accept the widow, son and daughter of their deceased brother."

Similarly at page 1227 the Honourable Supreme Court of Pakistan laid down the following principle of law:-

"The contention that Zafar Ali Khan was nominated by the deceased in the National Savings Certificates Form cannot override the provisions of Mahomedan Law; according to which legal heirs are only the persons entitled to receive the inherited property left by their father and husband. The contention of Ch. Mushtaq Ahmad Khan, learned Advocate Supreme Court for the petitioners that Succession Certificate could only be granted to the applicant, is also not tenable, because as discussed above, deceased's two children and widow were entitled for the grant of Succession Certificate, therefore, the learned trial Court rightly granted the same in their favour."

15. As far as the plea raised by the learned counsel for the petitioners about the creation of a gift by the deceased Haji Muhammad Yousaf Bhatti in favour of the present petitioners is concerned, this plea was neither specifically taken in the written-statement nor an issue was got framed on this point nor admittedly any assertion to this effect was made in the evidence produced by the petitioners in the statement of Musthaq Ahmad Bhatti produced as RW.1 before the trial court. In a recent judgment pronounced by a learned Single Judge of this Court reported as Imtiaz

Shamim and others vs. Muhammad Irfan-ul-Haq and others (2006 CLC 1189), after discussing the legal proposition as pronounced in the judgments Mst. Amtul Habib and others vs. Mst. Musarrat Parveen and others (PLD 1974 Supreme Court 185), Malik Safdar Ali Khan and another vs. Public-at-Large and others (2004 SCMR 1219) the observation was also recorded about such a claim of gift, by the learned Single Judge in paragraph No.5 of the judgment in the following manner, which is re-produced below:-

"5. It is now a declared law of the land that the concept of nominee is alien to Muslim Law according to which the legal heirs are the only persons entitled to receive the property left by their father or husband and no Muslim heir can exclude the other heir on the ground that he was holding Saving Certificates as a nominee. It is also now an established principle of law that a nominee, if appointed, does not become the sole owner of the assets left by the deceased but he is only authorized to collect the amount from the National Saving Centre or to hold the property of the deceased as an Administrator and then to distribute the same among all the legal heirs. It has also been held by the Honourable Supreme Court in the cited judgments that nomination does not make the nominee as donee nor the nomination amounts to a gift in the absence of delivery of possession of the property gifted. In this case, the petitioners never raised the plea that petitioner No.1 was ever appointed as nominee or the amount under Saving Certificates was ever gifted to her or them, in their written statement and it was for the first time in her statement as R.W.1 before the trial Court when Mst. Imtiaz Shamim petitioner No.1 took the plea that she was appointed as a nominee and no plea of alleged gift was ever taken in his statement also. However, in any case Mst. Imtiaz Shamim petitioner No.1, in view of the clear law as declared in the cited judgments, could not and cannot claim herself as exclusive owner of the amount under the disputed Saving Certificates and two Courts below while discarding her said claim have neither committed any illegality nor irregularity but have passed the impugned orders in advancement of Muslim Law of Inheritance, whereunder all the legal heirs of the deceased have been declared entitled to receive the property left by the deceased, according to their shares under Muslim Law of Inheritance."

16. It would also be relevant that when the question about the enforcement of the family settlement/surrender deed dated 30.04.1990 came up for hearing before the Honourable Supreme Court of Pakistan in C.P.No.977 of 2008, the learned counsel for the present petitioners made the following assertion, which is recorded in paragraph No.8 of the judgment dated 14.10.2009 by the Honourable Supreme Court of Pakistan:-

“During the course of arguments, learned advocate for the petitioners admitted that Defence Saving Certificates in possession of the respondents are in the name of petitioners’ father and respondents name has been given in the certificates only as nominee.”

Therefore, the plea of gift raised during the arguments for the first time by the learned counsel for the petitioners at the revisional stage before this Court is not at all entertainable as it has no factual or legal basis to stand upon.

17. For what has been stated above, I do not find any merits in this civil revision. The judgment passed by the learned District Judge dated 08.12.2004 is perfectly in accordance with the law and calls for no interference. This civil revision is accordingly **dismissed** with no orders as to costs.

(NASIR SAEED SHEIKH)
JUDGE.

Approved for reporting

AMJAD.