

which having been concurrently dismissed by the two Courts below through the judgments and decrees, impugned herein.

2. Ch. Ehsan ul Haq Virk, Advocate, learned counsel for the petitioners while relying upon ***Saadullah and others Vs. Mst. Gulbanda and others (2014 SCMR 1205)*** and quoting verses of Sura An-Nisa interpreted by Peer Muhammad Karam Shah, an eminent religious scholar submitted that petitioner/plaintiff being full sister of the propositus under Para 65 of the Muhammadan Law of D.F. Mulla falls at serial No.6 of the residuary table, whereas the full brother's sons to whom inheritance was also shared are figuring at serial No.9, but both the Courts below erred while ignoring doctrine of "Radd" or "rule of exclusion", whereby the latter/remote were to be excluded by the full sister being nearer.

3. I have gone through the esteemed judgment of the apex Court with great care and found that almost in an identical situation, the full sisters of issueless brother excluded consanguine brother even figuring at serial No.7 of the residuary table, more nearer to the full brother's son as the case in hand, but with all reverences, I am of the view that while rendering such view by the august Supreme Court and concurring with concurrent findings of the Courts below, the capacity of full sister as referred in residuary table provided under sub-para (6) of Para 65 of Muhammadan Law by D.F. Mulla was partly placed before their lordships as depicted in Para-6 of cited judgment to the following effect:-

(6).FULL SISTER- In default of full brother and the other residuaries above named, the full sister takes the residue.

Whereas, her complete reference as per afore-noted law is as follows:-

(6).FULL SISTER- In default of full brother and the other residuaries above named, the full sister takes the residue if any, if there be (1) a daughter or daughters, or (2) a son's daughter or daughters h.l.s., or even there

be (3) one daughter and a son's daughter or daughters h.l.s.

Thereby being default of perfect reference the view in **Saadullah's** case (*supra*) was formed. Had it been plenary placed/pleaded before the apex Court during the hearing of precedent case, the position might be otherwise and after giving thoughtful consideration to verse No.176 of Sura An-Nisa as well as the relevant provision of Muhammadan Law (*supra*), this Court is clear in mind that full sister may inherit in the following three categories:-

Firstly: As a Sharer, when child, (ii) child of a son h.l.s. (iii) father (iv) true grandfather (v) full brother or (vi) consanguine brother will not be available;

Secondly: As a Residuary in the presence of brother and failing to inherit in either of these two capacities; and

Thirdly: As a Residuary with daughters or son's daughter or daughters h.l.s. or one daughter and son's daughter h.l.s. provided there is no nearer residuary.

In the present case, the propositus died without leaving child, child of a son, father, grandfather, brother or consanguine brother, hence the petitioner as a sister had to inherit being sharer.

Although there might be eventuality when status of a sister being sharer may also be converted into residuary, but condition precedent for that capacity would be either she has a brother or in his default there be (a) a daughter or daughters or (b) son's daughter or daughters h.l.s. or even if there be (c) one daughter and a son's daughter or daughters h.l.s., but in the case in hand, no such situation arose and she as well as sons of predeceased brother were rightly awarded shares as per dictates of the holy Quran, Sunnah and Muhammadan Law (*supra*), hence neither she was entitled to take the residue nor the ultimate conclusion of the Revenue Forum and that of two Courts below was erroneous, which being unexceptionable

requires no interference by this Court in the exercise of revisional jurisdiction.

4. Consequently, instant Civil Revision being meritless is dismissed with no order as to costs.

(Ch. Muhammad Masood Jahangir)
Judge

Announced in open Court on 12.02.2018

Judge

Approved for reporting.

Judge

S Zameer