

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Yahya Afridi  
Mr. Justice Shahid Waheed  
Mr. Justice Aqeel Ahmed Abbasi

*AFR/DJ*

**Civil Petition No.259-Q of 2020**

*(Against the judgment dated 05.10.2020 of the High Court of Balochistan, Sibi Bench passed in Succession Appeal No.(s) 01 of 2016)*

*Moulvi Abdul Fateh*

*... Petitioner*

*Versus*

*Yar Muhammad and others*

*... Respondents*

For the Petitioner: Mr. Manzoor Ahmed Rehmani, ASC  
*(via video link from Quetta)*

For the Respondents: N.R.

Date of Hearing: 09.09.2024.

**ORDER**

**AQEEL AHMED ABBASI, J.-** The instant Civil Petition for leave to appeal has been filed against the impugned judgment dated 05.10.2020 passed by the learned Single Judge of the High Court of Balochistan, Sibi Bench whereby, Succession Appeal No.(s) 01 of 2016, filed by the respondents against the judgment dated 29.11.2016 passed by the learned District Judge, Usta Muhammad (trial Court) whereby, the Succession Applications No.3 and 4 of 2009 were dismissed, has been allowed. The petitioner being aggrieved by the aforesaid judgment of the High Court has preferred instant petition for leave to appeal.

2. Learned counsel for the petitioner after having read out the impugned judgment has argued that the learned Single Judge of the High Court has erred in law and fact by setting aside the judgment passed by the learned District Judge, Usta Muhammad whereby the Succession Applications No.3 and 4 of 2009, filed by the respondents, in respect of the estate of deceased Moulvi Abdul Sattar, were dismissed, and the appeal was allowed, in spite of the fact that there was a dispute with regard to parentage of the respondents, who according to the learned counsel for the petitioner, were not the real son and daughter of deceased namely Moulvi Abdul Sattar and were adopted by him. Whereas, according to the learned counsel, the rights of the parties cannot be decided under Sections 372 and 278 of the Succession Act, 1925 which provides for a summary procedure, hence the remedy lies before the competent court of civil jurisdiction by filing a suit for determination of title etc. According to the learned counsel for the petitioner, since the matter relates to rights and entitlement in respect of movable and immovable property, being part of the estate left behind by deceased Moulvi Abdul Sattar, the brother of the petitioner, therefore, the learned Single Judge of the High Court could not decide the matter in a summary manner under Sections 372 and 278 of the Succession Act, 1925, therefore, the impugned judgment is liable to be set aside.

3. We have heard the learned counsel for the petitioner, perused the record and the impugned judgment passed by the

learned Single Judge of the High Court of Balochistan, Sibi Bench in the above mentioned Succession Appeal.

4. Briefly the facts as stated in the impugned judgment and also duly incorporated in the concise statement of the instant petition for leave to appeal are that respondents namely, Yar Muhammad and Mst. Zahida Parveen (both son and daughter of Moulvi Abdul Sattar) filed applications under Sections 372 and 278 of the Succession Act, 1925 for grant of succession certificate and letter of administration against the petitioner in respect of the movable and immovable estates of deceased Moulvi Abdul Sattar, who was serving in Education Department as Arabic Teacher (BPS-14) and owned house bearing No.125/4-1-11-1, measuring 2989 square feet situated at Hussain Abad Mohallah Usta Muhammad, Tehsil Municipal Administration Usta Muhammad District, Jaffarabad.

Initially on conclusion the above applications were dismissed by learned District Judge, Usta Muhammad vide judgment dated 4<sup>th</sup> September, 2009, against which succession appeal No.(s)1 of 2009 was filed before the High Court and vide order dated 19<sup>th</sup> October, 2012 the matter was remanded to the trial court. The trial court vide judgment dated 16<sup>th</sup> January, 2015 again dismissed both the applications. The appellants/applicants again preferred succession appeal No.(s)1 of 2015 before the High Court and vide order dated 30<sup>th</sup> December, 2015 again remanded the matter to the trial court with the direction to provide opportunity of producing additional evidence (oral and documentary) to the appellants/petitioners. If

the respondents want to produce additional evidence, they may also be provided an opportunity to do so, or in case the respondents do not want to produce the evidence, the evidence already produced by them be considered accordingly. The trial court should then decide the matter on the basis of the evidence and the material available before it, strictly in accordance with law and on its own merits. The trial court should decide the case at the earliest, possibly by or before 30<sup>th</sup> April, 2016. The parties are directed to co-operate the trial court. No unnecessary adjournment should be granted to the parties. The trial court after remand and on conclusion of trial vide judgment dated 29<sup>th</sup> November, 2016 again dismissed both the applications, the respondents then preferred Succession Appeal No.(s) 1 of 2016 under Section 384 of Succession Act, 1925 before the High Court of Balochistan, Sibi Bench, which has been allowed through impugned judgment, whereas, the petitioner being aggrieved by such judgment has filed instant civil petition for leave to appeal under Article 185(3) of the Constitution.

5. Perusal of the impugned judgment passed by the learned Single Judge of the High Court of Balochistan, Sibi Bench reflects that after having taken cognizance of all the material facts and the evidence produced by the respondents in the shape of oral evidence (fourteen witnesses) and the documentary evidence, including school admission certificate No.4431 dated 16<sup>th</sup> September, 2009 of Government High Court, Jaffarabad through school representative who exhibited the same Ex: AW-8. AW-9 Niaz Muhammad SST High School Usta

Muhammad, representative Record Incharge produced verification certificate of National Identity Card of appellant No.1 bearing serial No.277 vide Ex:AW-9. The witness produced verified certificate of register vide Ex:AW-9-B. AW-10 representative of Girls High School Usta Muhammad produced verification certificate No.162 of appellant No.2 and school leaving certificate bearing No.162. AW-11 Hamadullah Deputy Superintendent NADRA appeared and produced CNIC of appellant No.1 bearing No.532-02-34496101, tracking image and form image vide Ex:AW-10-A. AW-12 Ali Hussain representative of DC Office, Jafarabad appeared and produced local certificate of appellant No.2 as Ex:AW-11-A and local certificate of appellant No.1 as Ex:AW-11-B. AW-13 Adnan Hafeez Manager MCB Usta Muhammad produced the documents of opening of account as Ex:AW-13-A of deceased Abdul Sattar and AW-14 Jan Muhammad Deputy District Education Officer, Usta Muhammad produced copy of application for nomination of GP Fund Account of his legal heirs as Mark: AW-14-A, reached to the conclusion that the respondents, through oral as well as the documentary evidence have make out a *prima facie* case for issuance of Succession Certificate in their favour and entitled to inherit the estate left behind by their deceased father namely, Moulvi Abdul Sattar, whereas, the petitioner, could not produce any material or documentary evidence in support of the allegation that the respondents are not the real son and daughter and were adopted by deceased Moulvi Abdul Sattar. Neither any adoption deed nor any order or proceedings from the competent court of jurisdiction to this effect were produced or referred by the petitioner before

the Courts below while disputing the parentage of respondents namely, Yar Muhammad and Mst. Zahida Parveen (both son and daughter of Moulvi Abdul Sattar).

6. The record further reveals that besides the oral evidence (fourteen witnesses) number of public documents as referred in the impugned judgment, being part of the official record, were produced and admitted in evidence without any objection by the petitioner, therefore, the presumption of correctness attached to the official record in terms of Article 91 and the relevancy of entry in public record made in performance of duty in terms of Article 49 of the Qanun-e-Shahadat Order, 1984 are fully attracted to the facts of the instant case. It is pertinent to mention that in view of the overwhelming oral as well as documentary evidence produced by the respondents to establish their parentage, and in the absence of any material or evidence produced by the petitioner to dislodge such claim of the respondents, the learned trial court was not justified to dismiss the succession applications filed under Sections 372 and 278 on mere allegation by the petitioner to the effect that the respondents were the adopted children of deceased Moulvi Abdul Sattar. Since the procedure under Section 372 and 278 of the Succession Act, 1925 is summary in nature, therefore, in case of any dispute relating to determination of right in any movable and immovable property, left behind by a deceased or the challenge to the paternity/legitimacy of the children could have been agitated by the party disputing such right before the competent court of civil jurisdiction while producing the evidence to this effect. It is

regretted to observe that in the absence of any material or evidence to support the allegation of the petitioner relating to paternity/legitimacy of respondents namely, Yar Muhammad and Mst. Zahida Parveen (both son and daughter of Moulvi Abdul Sattar), the Succession Certificate could not be issued since 2009, and the legal heirs have been deprived of their right of inheritance in respect of estate left behind their father namely, Moulvi Abdul Sattar on above false and frivolous grounds.

7. Without prejudice to hereinabove factual and legal position as emerged in the instant case, we deem it appropriate to take cognizance of the settled legal position relating to challenging the paternity/legitimacy of a child in terms of judgments of this Court in the case of Laila Qayyum v. Fawad Qayum and others (PLD 2019 SC 449) and Munir Hussain v. Riffat Shamim (2023 SCMR 6) wherein it has been held that only a putative father, within the time prescribed in Article 128 of Qanun-e-Shahadat Order, 1984 can challenge the paternity of child. It has been further held that to challenge another's paternity/legitimacy is not an assertion of one's own legal character in terms of Section 42 of the Specific Relief Act, 1877. Whereas in the instant case the petitioner who claims to be brother of deceased Moulvi Abdul Sattar has no legal character to challenge the paternity/legitimacy of respondents in succession proceedings without even filing a suit in terms of Section 42 of the Specific Relief Act, 1877, seeking a negative declaration to this effect.

8. Accordingly, we do not find any factual error or legal infirmity in the impugned judgment passed by the learned Single Judge of the High Court of Balochistan, Sibi Bench, which may require this Court to entertain instant civil petition for leave to appeal. Accordingly, the same was dismissed vide our short order of even date and above are the reasons of such short order.

**Islamabad.**

09.09.2024.

*'Approved for Reporting'*

*(Zubair)*