IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN, REGISTRY BRANCH SKARDU.

BEFORE:-

Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Raja Jalal-ud-Din, Judge.

Civil Appeal No.09/2015 in
CPLA No.03/2012.

1. Mst. Sultan Bi, Mother of late Muhammad Ali through her Legal Heirs, (1). Mst. Fizza (2) Mst. Banu, (03). Mst. Fatima daughters and (4). Ashraft Hussain son, residents of Kharko Tehsil Daghoni, District Ghanche.

PETITIONERS/APPELLANTS/PLAINTIFFS.

VERSUS

1. Mohsin (2) Hamid Ullah. (3).Nazir son and (4). Mst. Fizza daughter of Mayur residents of Balgar Tehsil Daghoni, District Ghanche.

RESPONDENT/DEFENDANTS.

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ORDER XIII OF SUPREME APPELLATE COURT GILGIT-BALTISTAN RULES 2008 READ WITH ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE) ORDER, 2009 AGAINST THE JUDGMENT PASSED BY THE LEARNED CHIEF COURT GILGIT-BALTISTAN ON 12.05.2012.

PRESENT:-

1. Mr. Ali Khan Advocate alongwith Syed Muhammad Ali Shah Advocate on behalf of the petitioners.

2. Mr. Muhammad Issa, Senior Advocate for the respondents.

DATE OF HEARING: - 30-09-2015.
DATE OF ANNOUNCEMENT OF JUDGMENT: - 17.11.2015.

JUDGEMENT.

Dr. Rana Muhammad Shamim, CJ..... This is a petition for leave to appeal against the impugned judgment dated 12-05-2012 in CSA No. 04/2010, passed by the Hon'ble Chief Court, Gilgit-Baltistan, whereby findings of both the courts below i.e. the Judgment dated 29.07.1997, in Civil Suit No. 26/95, passed by the Civil Judge First Class Mashabrum at Skardu & Judgment dated 30.05.1998 in Civil First Appeal No.

05/1997 passed by the learned District Judge Ghanche were set aside. Wherein the Executing Court was directed to execute the decree passed in Civil Second Appeal No. 06/1998, passed by the then Chief Court Northern Area, Gilgit was maintained dated 21.10.1998 to the extent of 1/3 share of Mst. Sultan Bi (mother of the deceased Muhammad Ali in his legacy, as provided by the Personal Law of the parties to the execution proceedings.

Briefly the background of the case is that one Mayur married to Mst. Sultan Bi and out of this wedlock one son namely Muhammad Ali deceased and one daughter namely Fizza were born. Subsequently, the said Mayur divorced Mst. Sultan Bi. Whereafter, she married with another person namely Muhammad Ali. From the said wedlock son Ashraf and daughters i.e. Fatima and Banu were born. After the death of Mayur all his property devolved to Muhammad Ali who used to live with his mother Sultan Bi at village Kharkoh while suit property was situated at Balghar village. The said property was under the control and possession of Mst. Fizza (daughter of Mayur).

On the other hand, Mst. Fizza (daughter of Mayur) married with one Rozi, from whom sons namely Hameed Ullah, Nazir and Mohsin were born. Whereas Muhammad Ali son of Mayur later on died issueless. The property devolved from the legacy of Mayor was in possession and control of Mst. Fizza

(daughter of Mayur and his sons Hameed Ullah, Nazir and Mohsin). Consequently, Mst. Sultan Bi (mother of Muhammad Ali) filed civil suit No. 26/95, praying therein that she was entitled for the whole suit property being from Shia Sect. Upon hearing the learned Civil Judge First Class Mashabrum Camp at Skardu partly decreed the suit property in her favour. Resultantly, Mst. Sultan Bi was declared owner of 2/3 property and was entitled to possess the same, whereas the gift dead was stand cancelled. The ownership of deceased Muhammad Ali was not disputed but both Sultan Bi and Fizza claimed title of the suit property.

Being aggrieved by and dissatisfied with the Judgment dated 29.08.1997, passed by the learned Civil Judge first Class Mashabrum Camp Skardu, Mst, Fizza (daughter of Mayur) and her three minor sons i.e. Hameed Ullah, Nazir and Mohsin filed civil appeal No. 05/97 in the Court of District Judge Ghanch Khaplu. Upon hearing the parties, the appeal being meritless was dismissed. The Judgment/Decree of the learned Trial Court was maintained.

Being aggrieved by and dissatisfied with the Judgment dated 30.05.1998, passed by the learned District Judge Ghanche Khaplu second Civil Appeal was filed by Mst. Fizza & her legal heirs before the then Chief Court Northern Area Gilgit. Upon hearing the parties, vide its Judgment dated 21.10.1998 was pleased to hold that on the death of Muhammad Ali, he

was survived by her mother Sultan Bi and Mst. Fizza (sister), both the ladies belonged to Noorbakhshia Sect. Consequently, Mst. Sultan Bi (Mother of deceased Muhammad Ali) and Mst. Fizza (Sister of deceased Muhammad Ali) and her legal heirs i.e. Hameed Ullah, Nazir and Mohsin were held to inherit the property of deceased Muhammad Ali according to their Personal Law of inheritance. With the above modifications in the judgments/ decrees of the Courts below, the appeal was dismissed.

In pursuance of the judgments of the Courts below Mst. Sultan Bi filed Execution No. 03/1998 showing herself decree holder whereas Mst. Fizza and her legal heirs were shown as Judgment debtors. The learned Executing Court upon hearing the parties, vide its Judgment dated 20.05.2002, was pleased to hold as under:-

"Suit decreed with possession of 2/3 property of deceased Mayur, Father of deceased Muhammad Ali in favour of the legal heirs of plaintiff/Decree holder deceased Mst. Sultan Bi LHR namely Mst. Fizza, Mst. Fatima Mst. Banu insane and Mr. Ashraf Hussain son/daughter of Mst. Sultan Bi according to the persona law of the parties i.e. Fiqah Ahwat Noorbakhshia. Modified the decree passed by the then Civil Judge dated 29.07.1997 accordingly. Collector, Ghanche be directed to execute the decree on the site and in the revenue record as well".

The aforementioned judgment was challenged by Mst. Fizza & her legal heirs before the learned District Judge, Ghanche. Upon hearing the parties, the learned District Judge Ghanche through its Judgment dated 23.09.2014; in CFA No.

08/2002 set aside the impugned Judgment dated 20.05.2002 passed by the learned Civil Judge Ghanche Khaplu and was pleased to pass the order as under:-

"***In view of the above discussion, the appeal is accepted , set aside the order dated 20.05.2002 of executing Court and direct the estate of deceased Muhammad Ali be divided as under:-***

1. ***Mst. Sultan Bi Mother 1/6 share.***
2. ***Mst. Fizza full sister ½ share and***
3. ***Uterine brother and sisters be given 1/3 share".***

The above Judgment passed by the learned District Judge Ghanche was challenged by Mst. Sultan Bi before the learned Chief Court Gilgit Baltistan. Upon hearing the parties the learned Chief Court passed the impugned Judgment dated 12.05.2012 in CSA No. 04/2010, whereby both the Judgments of the Courts below were set aside and the executing Court was directed to execute the decree dated 21.10.1998 passed by the learned Chief Court to the extent of 1/3 share of Mst. Sultan Bi, the mother of the deceased Muhammad Ali in his legacy, as provided by the Personal Law of the parties to the execution proceedings**.**

The petitioners feeling aggrieved by and dissatisfied with the impugned Judgment dated 12.05.2012, passed by the learned Chief Court Gilgit-Baltistan in CASA NO. 04/2010 filed petition for leave to appeal with the prayer that the said impugned judgment may please be set aside as the same is the result of misconception of law, misreading and non-reading of

the facts hence the same is not sustainable in the eyes of law. We after hearing the petitioners granted leaved to appeal and the case was fixed for final arguments on 30.09.2015.

The learned counsels for the petitioners contend that according to the Fiqh-e-Alahwat Noorbakhshia, to which both parties belong, the sister who is a sharer of the second class is excluded from the inheritance in the presence of mother being the sharer of the first class on the principle of "**nearer in degree excludes the remote"** in the absence of the real brothers of the deceased her Quranic share will be 1/3 as sharer and in the absence of residuaries in the same class residues of 2/3 will revert to her according to the **Doctrine Of Return** (**Kulia-e-Radd**).

He contends that the learned trial Court vide judgment dated 29-07-1997 decreed the suit in favour of the plaintiff which was maintained by the first Appellate Court, vide its decree dated 30-05-1998. The then Hon'ble Chief Court Northern Area, vide its judgment/decree dated 21.10.1998 while disposing the appeal ordered that Sultanbi and Mst. Fizza be held entitled for their due shares in the inheritance of deceased Mohammad Ali **As Per Their Personal Law**. Since the Supreme Appellate Court, did not exist at that time, no further appeal could be filed and the petitioners/plaintiff had no other way but to file Execution Petition before the trial Court. The Executing Court, sought the advice of the Imams and jurists of

the respective sect i.e. Noorbakhshia on the issue of entitlement of the Shari share of the parties. Based on the juristic view of the religious leaders, the Executing Court construing the real intent of Hon'ble Chief Court, decreed in favour of Mst. Sultan Bi, the mother of the deceased, to the extent of 2/3 of the legacy of Mayur (which was the suit property as the legacy of Mayur had been passed on his son Mohammad Ali 2/3 and his daughter Mst. Fizza 1/3).

He also submits that the judgment of the executing Court was challenged before the learned District Judge Khaplu, who wrongfully decided the appeal according to the Hanafis Law of inheritance while admittedly the parties to the suit belong to Fiq-e-Ahwat, Noorbakhshia (Shia school of thought). Since, the decision was not acceptable to the parties so the petitioners /plaintiff filed appeal before the Hon'ble Chief Court, Gilgit-Baltistan on 26-10-2004 and the respondent/defendants challenged the stipulated order through objection petition dated 22-09-2005. The Hon'ble Chief Court, Gilgit-Baltistan upon hearing the parties at length vide its Judgment dated 12.05.2012 set aside the judgments of the lower Courts by maintaining the judgment/decree dated 21-10-1998 passed by the then learned Chief Court Northern Area holding that the petitioner/plaintiff be given 1/3 share of the legacy of deceased Mohammad Ali. However, there was no order where the residue i.e. 2/3 share of the legacy will go. Aggrieved by the said

impugned judgment dated 12.05.2012 of the Hon'ble Chief Court, the petitioners approached this Court.

He contends that the said impugned judgment dated 12-05-2012 gave rise to the following important legal issues raised according to him which needed to be discussed and requires to be resolved, which are follows:-

(**a**). What is the status of the Fiqh-E-Ahwat Noorbakhshia? Which law i.e. Shia or Sunni law of inheritance will be applicable to Noorbakhshis?

(b). Whether the Judgment /Decree dated 21.10.1998, passed by the then Chief Court Northern Area is sustainable?

(c). Whether the Executing Court has the jurisdiction under Section 47 CPC to re-evaluate the judgment and decree under execution & whether the Execution Court can remove any ambiguity to make the decree executable under the "Rule of Construction".

He contends that before discussing the merit of the case it is necessary to remove a confusion being created on the status of Noorbakhshia sect. Noorbakhshis are the followers of Syed Mohammad Noorbakhsh (R.A), a religious scholar of high caliber like other contemporary Shia Mujtahids and a devoted Sufi who visited the Baltistan region in 800 Hijra to preach Islam. Due to his moderate approach of Islam many people in Baltistan specifically in the areas of Khaplu and Shigar were attracted and became his followers who called them Noorbakhshis. As regards to point (a), the perusal of the introductory chapter of Al-Fiqa-ul-Ahwat Noorbakhshia it transpires that the Noorbakhshis call them the TRUE SHIAS

who with moderate approach of Sufism are the staunch followers of the twelve Shia Imams. Their spiritual leader Syed Mohammad Noorbakhsh (R.A) himself is the offspring of Imam Mosa-al-Kazim, the seventh Shia Imam. His spiritual diligence was endowment of the Shia Imams to whom he follows. The book Fiqh-e-Al-Ahwat is a precise guide book and mainly derived from/based on the 'Sharaya-ul-Islam' the codified authoritative text books on Shia law.

In the perspective of Shariah the Muslim are categorized as Shias or Sunnis only. Shia School of thought is comprised of Shia Isna Asharis (Twelvers), Shia Ismalis, and zaidyas. The Shia Isna Asharis is in whelming majority and spread all over the world. Noorbakhshis fall in this category; therefore neither this sect can be categorized as a separate sect nor the book "Al-Fiqa Al-Ahwat" Many books have been written on FIQHAH by the Grand Shia Mujtahids and Imams through out the world like Imam Khomeini's "Tehrirul Wasilla" but Sharaya-ul-Islam is the only codified authoritative law for adjudication. In the court of law as Al-Sirajiyyah has the status of codified law for Hanafis. For summing up the issue it can be said that the Noorbakhshis are the practicing Shia Isna Ashari (Twelvers) with only distinction that the Noorbakhshis are allowed to take moderate view on the points of some procedural law which they think AHWAT i.e. better.

He says that as regards points (b) to resolve the same, the Honorable Chief Court did not apply its judicial mind towards the authenticity and correctness of the judgment/decrees of the courts below and set aside them without giving any reason. This is in contravention to the explicit provisions of Order XX CPC and therefore is bad in the eyes of law. The only legal issue in the case was to see as to whether the Shia or Sunni law will apply to Noorbakhshis. Accordingly to adjudge as to whether in the presence of mother of the deceased ,can the sister also get any share in the legacy of his deceased brother, If yes how much? It is imperative for the appellate courts to decide the case themselves when the judgment/decree has been passed on merit or involves the issue of law and refrain from remanding a case unless an investigation is required or an evidence is needed to be recorded. In that case also it is the requirement of law that the specific issues by the appellate courts is an abuse of process of law. The stipulated judgment/decree was neither executable as no specific share of each legal heir has been fixed therein nor the same can be termed as a valid judgment/decree being repugnant to the injunction of Quran and Sunnah.

As regards to point (c) he submits that the executing court cannot travel beyond the scope of the final decree under section 47 of CPC nor can the same be modified through the inherent power under Section 151 CPC. The Hon'ble Chief

Court vide impugned Judgment dated 12-02-2012 has dismissed the judgment/decree of the lower courts by maintaining the judgment/decree passed by his predecessor late Justice Zeenat Khan Chairman of the then Chief Court Northern Area on 21-10-1998 on the sole plea that the stipulated order has been admitted by the petitioner/plaintiff as she herself sought execution and has thus become final. Mere reading the provisions of Section 47(1) CPC, it envisages that the matter pertaining to the execution, discharge or satisfaction of the decree will be looked into and adjudicated by the executing court itself only. The discharge and satisfaction of a decree is thus subjected to its executability. In case the decree is not executable the court can either send it back for modification or construe the decree by looking into the judgment and pleading to know the real intent of the court issuing decree in order to remove any ambiguity and to make the decree executable without violating its terms and nullifying its essence.

He submits that the judgment/decree dated 21.10.1998 passed by the late Justice Zeenat Khan as Chairman of the then Chief Court Northern Area was not executable as he had failed to give specific share to the parties of the suit which was his legal obligation. The Executing Court was absolutely right to look into the pleading to seek the legal opinion of the religious scholars to know Shari shares of the

parties according to their personal law and thereby to construe the real intent of the court issuing decree. The Executing Court was entitled to look into the judgment and pleading to confirm as to whether the judgment/decree is in consonance with the pleading and is not violative to the Islamic injunctions. The Executing Court was justified to assess that the Hon'ble Chief Court Gilgit-Baltistan has stressed upon the right to the parties as per their personal law, therefore, the executing court was justified to construe that the intent of the Hon'ble court was not to give definite shares to both the parties rather the real intention was to give the sister her share along with her mother if their respective Fiqh so permits. As per the personal law of the parties as has been elaborated by the jurists of Fiqa-e-ahwat, the sister was excluded from the stipulated legacy of Muhammad Ali and the mother of the deceased was solely entitled for the whole suit property. Thus the executing Court has acted in accordance with law as provided under Section 47 CPC. In support of his contentions, he relied upon the case laws, Allah Ditta versus Ahmed Ali Shah etc (2003, SCMR 1202) and a case of Fakir Abdullah and other versus Government of Sindh and others (PLD 2001 Supreme Court 131).

In view of the above the learned counsel for the petitioners continues in submitting that the judgment/decree of the Trial Court dated 29.07.1997 and the Executing Court dated 25.05.2002, were well founded and un-exceptional which

were based on the dictates of Holy Quran and Sunnah. The share of each share had been specified in Ayat 11 of Sura Nisa which says "***if the deceased has no children and his heirs are his parents then mother will get 1/3 but if the deceased has brothers the mother get 1/6***. The Shia Jurists have divided into two categories i.e. the Shares and the residuaries. They have been divided into three classes and each class sub-divided into two on preferential basis with the established rules framed by the jurists that "Nearer in degree excludes one in remote". Accordingly the heirs in the first class will debar the ones in the second class. The Fiqa-e-Ahwat is the precise translation of Sharaya-ul-Islam therefore it reflects the Shai law on these points. Since, this book "Al Fiqah Al-Ahwat" is not exhaustive as it is silent on many points i.e. on the point of residuary and Doctrine of Return while both Sunni as well as the Shia law recognized this Doctrine. However, based on the consultation of the jurists of Fiqh-e-Ahwat who gave their detailed reasoned opinion, the Courts declared that "Mst. Sultan Bi the mother of the deceased Mohammad Ali, being the heir of the first class will excluded Mst. Fizza, the sister, from the legacy of her deceased brother being the heir of the second class who will get nothing and the whole legacy of deceased Muhammad Ali will go to the legal heirs of Mst. Sultan Bi. The Hon'ble Chief Court has totally ignored the views of these celebrated religious scholors/aalims of the Fiqh-e-Ahwat,

Noorbakhshia. The decision of the Hon'ble Chief Court Gilgit-Baltistan dated 21.10.1998 and 12.05.2012 are not tenable. The Hon'ble Chief Court has miserably failed in understanding the Quranic Injunction on the Islamic law of inheritance and the Rule framed by the Muslim Jurist thereto

He lastly submits that in the light of the above deliberation of the judgment/decree of the Trial Court dated 29-07-1997 and the judgment/decree of the Executing Court dated 20-05-2002 were based on the relevant law of inheritance and supported by strong reasoning. The judgments of the learned Chief Court dated 21-10-1998 and 12-05-2012 are not sustainable being illegal, arbitrary and repugnant to the Shariah laws. He says that Mst. Sultan Bi is entitled for decree of the suit property with possession along with the rent produce for the period from the death of Mohammad Ali till the same is finally paid through the Collector Ghanche.

On the other hand the learned senior counsel for the respondents submitted that it is a fact that Muhammad Ali was son of Mayur who died issueless leaving his mother (Sultan Bi) and his real sister (Fizza) as his legal heirs. It is also a fact that Sultan Bi was divorced by Mayur and married to one Muhammad Ali from whose wedlock one son Ashraf and two daughters namely Banu and Fatima were born. Mst. Fizza the daughter of Mayur married to one Rozi from whose

wedlock three sons i.e. Mohsin, Hamid Ullah and Nazir were born.

He further submitted that there are six (06) shares in Islam with regard to distribution of Legacy and the same could neither be changed either by any Jurist or Jirga Member nor the same could be altered by any other law as Quranic law is the ultimate law in Islam. The doctrine of "Nearer exclude the remote" is applicable in this case, He continued his arguments with saying that "Doctrine of Return" is applicable in Shia thought of School and the same is not applicable in Sunni thought of School or in Al-Ahat fiqha. Both the petitioners and the respondents belong to Fiqa-E-Ahwat Noorbakhshia. According to Fiqa-e-Ahwat the residuaries and distant kindern have their own share in legacy. The share of Mother in Islam is 1/3 and it could not be changed to 1/6. The Chief Court Gilgit-Baltistan vide its judgment dated 12.05.2012 in Civil Second Appeal No.04/2010, has given 1/6 to the mother which is against the law and facts, therefore the same judgment is not sustainable and set aside.

We have heard both the learned counsels for the respective parties, perused the record of the case file and gone through all the Judgments/Decrees passed by the Courts below in first and second round of litigations. We have also been fortified by a judgment in SMC No. 04/2011

passed by this Court and we followed its guidelines relating to inheritance. In our considered view, the essential question requiring determination would be whether in a Muslim society, law of sharia would prevail or local custom having overriding effect to the law of Sharia. Would it defeat the Muslim Law of inheritance and female would not be entitled to claim any right of inheritance in the property left by the last full owner?

The Muslim Personal Law was enforced in Gilgit-Baltistan by virtue of Gilgit-Baltistan Muslim personal Law Sharia Application Act, 1963 and Section 2 of the said act provides as under:-

Notwithstanding any rule of custom or usage, in all questions regarding succession (whether testate or interstate) specially property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, legitimacy, or bastardy, family relations, wills, legacies, gifts, religious usages or institutions including Waqfs, trusts and trust property, the rule decision shall be the Muslim Personal Law (Sharia) in cases where the parties are Muslims.

Section 3 of the ibid act is read as under:-

In respect of immoveable property held by a Muslim female as a limited owner under the Customary Law, succession shall be deemed to open out on the termination of her limited interest to all persons who would have been

entitled to inherit the property at the time of the death of the last full owner, had the Muslim Personal Law (Sharia) been applicable at the time of such death, and in the event of the death of any of such persons before the termination of the limited interest mentioned above, succession shall devolve on his heirs and successors existing at the time of the termination of the limited interest of the female as if the aforesaid such person had died at the termination of the limited interest of the female and had been governed by the Muslim Personal Law (Sharia).

Provided that the share, which such female as aforesaid would have inherited, had the Muslim Personal law (Sharia) been applicable at the time of the death of the last full owner, shall devolve on her if she loses her limited interest in the property on account of her marriage or a remarriage and on her heirs under the Muslim Personal Law (Sharia) if her limited interest terminated because of death.

The general principle is that enactment in respect of the substantive rights is prospective unless it is specifically mad e applicable retrospectively but this rule may not be applicable to law of Sharia, which is not subordinate to the man made laws and is not governed by the principle of interpretation of ordinary law. This cannot be disputed that rights acknowledged by the law of Sharia in the command of the Holy Quran can neither be suspended nor taken away by

any other law on the earth and in the light of command of Sharia law proviso to Section 3 of Gilgit-Baltistan Muslim Personal Law (Sharia) Application Act 1963 supra would also acknowledged the rights of inheritance of a Muslim female in accordance with law of inheritance in Islam. Consequently, Gilgit-Baltistan Shariat Application Act, 1963, would have retrospective effect in respect of acknowledgment of the right of a female in inheritance, on death of last full owner and a female would get her share as per her entitlement in accordance with the law of inheritance in Islam, therefore notwithstanding law of customs contrary to the law of Sharia in a particular area or a State, the law of Sharia would prevail as superior law with binding force right of a Muslim female in inheritance recognized by Islam would not be defeated by custom.

There is no cavil to the proposition that prior to 1974; customary law was applicable in different parts of Gilgit-Baltistan. As per local custom a female was not entitled to get share in inheritance but this custom would not under the command of the Holy Quran in the matter of inheritance and Muslim female would be entitled to get her share in the ancestral property in accordance with the law of inheritance in Islam. The scope of the judgments in question was not enlarged to the issue regarding the command of the holy Quran in respect of right of inheritance of a Muslim

female over the custom and whether local custom would defeat the law of inheritance in Islam. The supremacy of the law of Quran cannot be disputed in any circumstances and any law or custom or usage contrary to the law of Sharia is always treated repugnant to the injunction of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet Peace Be Upon Him. The inheritance in the command of the holy Quran is a substantive right and no exception can be taken to the right of inheritance of a Muslim female or a male in Islam. The reference thereto be made to the command of Holy Quran in Surah Nisa as under:-

Verse:-07

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ ٱلْوَٰلِدَانِ وَٱلْأَقْرَبُونَ وَلِلنِّسَآءِ نَصِيبٌ مِّمَّا
تَرَكَ ٱلْوَٰلِدَانِ وَٱلْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا ﴿٧﴾

مردوں کے لئے حصہ ہے اس میں سے جو چھوڑ گئے ماں باپ اور قرابت والے اور عورتوں کے لئے
حصہ ہے اس میں سے جو چھوڑ گئے ماں باپ اور قرابت والے ترکہ تھوڑا ہو یا بہت حصہ ہے اندازہ
باندھا ہوا (ف ۱۷)

For men there is share in what their parents and relatives have left behind, and for women there is share in what their parents and relatives have, be it little or much –an obligatory share.

Verse:- 11.

يُوصِيكُمُ ٱللَّهُ فِيٓ أَوۡلَٰدِكُمۡۖ لِلذَّكَرِ مِثۡلُ حَظِّ ٱلۡأُنثَيَيۡنِۚ فَإِن كُنَّ نِسَآءٗ
فَوۡقَ ٱثۡنَتَيۡنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَۖ وَإِن كَانَتۡ وَٰحِدَةٗ فَلَهَا ٱلنِّصۡفُۚ وَلِأَبَوَيۡهِ
لِكُلِّ وَٰحِدٖ مِّنۡهُمَا ٱلسُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُۥ وَلَدٞۚ فَإِن لَّمۡ يَكُن
لَّهُۥ وَلَدٞ وَوَرِثَهُۥٓ أَبَوَاهُ فَلِأُمِّهِ ٱلثُّلُثُۚ فَإِن كَانَ لَهُۥٓ إِخۡوَةٞ فَلِأُمِّهِ
ٱلسُّدُسُۚ مِنۢ بَعۡدِ وَصِيَّةٖ يُوصِي بِهَآ أَوۡ دَيۡنٍۗ ءَابَآؤُكُمۡ وَأَبۡنَآؤُكُمۡ لَا تَدۡرُونَ
أَيُّهُمۡ أَقۡرَبُ لَكُمۡ نَفۡعٗاۚ فَرِيضَةٗ مِّنَ ٱللَّهِۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا حَكِيمٗا ﴿١١﴾

اللہ تمہیں حکم دیتا ہے (ف ۲۵) تمہاری اولاد کے بارے میں (ف ۲۶) بیٹے کا حصہ دو بیٹیوں برابر
(ف ۲۷) پھر اگر نری لڑکیاں ہوں اگرچہ دو سے اوپر (ف ۲۸) تو ان کو ترکہ کی دو تہائی اور اگر
ایک لڑکی تو اس کا آدھا (ف ۲۹) اور میت کے ماں باپ کو ہر ایک کو اس کے ترکہ سے چھٹا اگر میت
کے اولاد ہو۔ (ف ۳۰) پھر اگر اس کی اولاد نہ ہو اور ماں باپ چھوڑے (ف ۳۱) تو ماں کا تہائی پھر
اگر اس کے کئی بہن بھائی (ف ۳۲) تو ماں کا چھٹا (ف ۳۳) بعد اس وصیت کے جو کر گیا اور دین کے
(ف ۳۴) تمہارے باپ اور تمہارے بیٹے تم کیا جانو کہ ان میں کون تمہارے زیادہ کام آئے گا (ف
۳۵) یہ حصہ باندھا ہوا ہے اللہ کی طرف سے بے شک اللہ علم والا حکمت والا ہے

Allah commands you concerning your children, the share of male is equal to the share of two females; then if there be daughters only, though more than two, then for them is two third of what is left, and if there be only one daughter, for her is one half. And for each of the parents of the deceased is one sixth of what is left, if there be a child of the deceased, but if he has no child and leaves parents, then for the mother is one third; but if there be his many sisters and brothers, then for the mother is one sixth, after any bequest which has been made and debts. Your fathers and your sons, you know not which of them will be more profitable to you. This is fixed proportion from Allah. Undoubtedly Allah is All Knowing, Wise.

Verse:-12.

۞ وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَٰجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ ۚ
فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ ٱلرُّبُعُ مِمَّا تَرَكْنَ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَآ
أَوْ دَيْنٍ ۚ وَلَهُنَّ ٱلرُّبُعُ مِمَّا تَرَكْتُمْ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ ۚ فَإِن كَانَ
لَكُمْ وَلَدٌ فَلَهُنَّ ٱلثُّمُنُ مِمَّا تَرَكْتُم ۚ مِّنۢ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَآ أَوْ دَيْنٍ ۗ
وَإِن كَانَ رَجُلٌ يُورَثُ كَلَٰلَةً أَوِ ٱمْرَأَةٌ وَلَهُۥٓ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ
وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ ۚ فَإِن كَانُوٓا۟ أَكْثَرَ مِن ذَٰلِكَ فَهُمْ شُرَكَآءُ فِى ٱلثُّلُثِ ۚ
مِنۢ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَآ أَوْ دَيْنٍ غَيْرَ مُضَآرٍّ ۚ وَصِيَّةً مِّنَ ٱللَّهِ ۗ
وَٱللَّهُ عَلِيمٌ حَلِيمٌ ﴿١٢﴾

اور تمہاری بیبیاں جو چھوڑ جائیں اس میں سے تمہیں آدھا ہے اگر ان کی اولاد نہ ہو پھر اگر ان کی اولاد ہو تو اُن کے ترکہ میں سے تمہیں چوتھائی ہے جو وصیت وہ کر گئیں اور دَین نکال کر اور تمہارے ترکہ میں عورتوں کا چوتھائی ہے (ف ۳۶) اگر تمہارے اولاد نہ ہو پھر اگر تمہارے اولاد ہو تو ان کا تمہارے ترکہ میں سے آٹھواں (ف ۳۷) جو وصیت تم کر جاؤ اور دین نکال کر اور اگر کسی ایسے مرد یا عورت کا ترکہ بٹتا ہو جس نے ماں باپ اولاد کچھ نہ چھوڑے اور ماں کی طرف سے اس کا بھائی یا بہن ہے تو ان میں سے ہر ایک کو چھٹا پھر اگر وہ بہن بھائی ایک سے زیادہ ہوں تو سب تہائی میں شریک ہیں (ف ۳۸) میت کی وصیت اور دین نکال کر جس میں اس نے نقصان نہ پہنچایا ہو (ف ۳۹) یہ اللہ کا ارشاد ہے اور اللہ علم والا حلم والا ہے

And for you is one-half of what is left by your wives, if they have no issue (child) but if they have issue (child),then you have one fourth of what they leave after (paying) any bequest made by them and the debts. And for the women is one fourth of what you leave if you have no issue (child); but if you have issue (child), then for them is one-eight of what you leave after (paying) any bequest made by you and the debts. And if the heritage of any such male or female who leave behind nothing, neither parents nor children is to be divided and from mother side he or she has brother or sister, then for each one of them is one sixth. Then if the sister and brother be more than one, then all are sharer in one-third, after (payment of the bequest of the deceased and debts in which the deceased would not

have caused any harm. This is an injunction from Allah and Allah is All Knowing, Gentle.

Verse:- 176.

يَسْتَفْتُونَكَ قُلِ ٱللَّهُ يُفْتِيكُمْ فِى ٱلْكَلَٰلَةِ ۚ إِنِ ٱمْرُؤٌا۟ هَلَكَ لَيْسَ لَهُۥ وَلَدٌ
وَلَهُۥٓ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَآ إِن لَّمْ يَكُن لَّهَا وَلَدٌ ۚ فَإِن كَانَتَا
ٱثْنَتَيْنِ فَلَهُمَا ٱلثُّلُثَانِ مِمَّا تَرَكَ ۚ وَإِن كَانُوٓا۟ إِخْوَةً رِّجَالًا وَنِسَآءً فَلِلذَّكَرِ
مِثْلُ حَظِّ ٱلْأُنثَيَيْنِ ۗ يُبَيِّنُ ٱللَّهُ لَكُمْ أَن تَضِلُّوا۟ ۗ وَٱللَّهُ بِكُلِّ شَىْءٍ عَلِيمٌۢ ﴿١٧٦﴾

اے محبوب تم سے فتوٰی پوچھتے ہیں تم فرمادو کہ اللہ تمہیں کلالہ (ف ۴۳۷) میں فتوٰی دیتا ہے اگر کسی مرد کا انتقال ہو جو بے اولاد ہے (۴۳۸) اور اس کی ایک بہن ہو تو ترکہ میں اس کی بہن کا آدھا ہے (ف ۴۳۹) اور مرد اپنی بہن کا وارث ہو گا اگر بہن کی اولاد نہ ہو (ف ۴۴۰) پھر اگر دو بہنیں ہوں ترکہ میں ان کا دو تہائی اور اگر بھائی بہن ہوں مرد بھی اور عورتیں بھی تو مرد کا حصہ دو عورتوں کے برابر اللہ تمہارے لئے صاف بیان فرماتا ہے کہ کہیں بہک نہ جاؤ اور اللہ ہر چیز جانتا ہے

'O beloved Prophet! They ask you for a decree. Say you, "Allah decrees to you in respect of a person who leaves neither father nor child that if a man dies and has no child and he has a sister then his sister has half in his heritage and the man will be the heir of his sister, if the sister has no child. Then if there are two sisters then they have two-third in the heritage and if there are brother, sister, males and females both, then the share of male is equal to the shares of two women. Allah explains for you clearly so that you may not go astray. And Allah knows every thing.

In the present case one Mayur dies leaving behind his Legal heirs as one son namely Muhammad Ali and one daughter namely Mst. Fizza. After the death of deceased Mayur all his property devolved upon his son Muhammad Ali

depriving the right of inheritance to his daughter Mst. Fizza. In short the law of the Holy Quran is a supreme law and according to it we hold as under:-

(i) That the aforementioned Legal Heirs of deceased Mayur i.e. Muhammad Ali (son) and Mst. Fizza (daughter) were entitled from the property left by their father Mayur and the said property would have been distributed amongst them in accordance with the Quranic law/law of Sharia i.e. Muhammad Ali (Son) two shares (2/3) and Mst. Fizza (daughter) one share (1/3).

(ii) That Later on, Muhammad Ali (son of Mayur) died issueless leaving behind his mother Mst. Sultan Bi and his sister Mst. Fizza as Legal Heirs and the property left by Muhammad Ali has to be distributed amongst them as per Sharia Law i.e. Mst. Sultan Bi (mother of Muhammad Ali) entitles 1/6 share, whereas Mst. Fizza (sister of Muhammad Ali) entitles 1/2 share.

In view of the above, Judgments passed by all the three Courts below in first & second round of litigation are set aside. Consequently, the appeal is disposed off with the above directions /orders. The learned District Collector, Ghanche is directed to demark the property in question as held in (i) & (ii) above according to the respective shares of

the parties and deliver possession to them within two (02) months hereto. The copy of this Judgment be sent to the learned Collector District Ghanche for its strict compliance.

The appeal is disposed off in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?