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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 353/2022 & I.As. 13716/2025, 13743/2025**

HAMZAH MUNEER & ANR.

.....Plaintiffs

Through: Mr. Sanjeev Sindhwani, Sr. Advocate
with Mr. Jai Sahai Endlaw and Ms.
Sagarika Kaul, Advocates

versus

MOHD AQIL & ORS.

.....Defendants

Through: Ms. Gayatri Puri, Mr. Madhav
Saraswat, Mr. Reshul Mittra, Mr.
Jayant Chauhan and Mr. Yusuf,
Advocates for D-1 to D-6

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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28.05.2025

I.A. 13716/2025 (Under Order XXXIX Rule 1 and 2 CPC)

1. This is an application filed by the plaintiff under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 ('CPC') praying that the ad-interim order dated 02.06.2022 passed in I.A. 9391/2022 be additionally extended to the suit properties enlisted at paragraph '13' of this application. It is stated that these properties are also enlisted as paragraph '10 (b)' of the original plaint. The details of the said properties at paragraph 13 of the application are as under: -

“(i) Immovable property no. 5319-20 Gali Petti Wali Sadar Bazar Delhi 110006 comprising Shops No. 5319 A/GF, 5319 B/GF, 5319 C/GF, 5319 1/GF on the ground floor and Shop No. 5320 1/GF on the first floor along with terrace rights; and



(ii) Immovable property bearing no. 5330 Gali Petti Wali Sadar Bazar Delhi 110006 comprising Shops No. 5330 10/GF, 5330 10A/GF, 5330 11/GF, 5330 12/GF, 5330 13/GF and 5330 13/GF/1 on the ground floor.”

2. Issue notice.
3. Ms. Gayatri Puri, learned counsel for defendant nos. 1 to 6 accepts notice.
 - 3.1. She submits that paragraph ‘10(b)’ of the original plaint comprises of three distinct immovable properties.
 - 3.2. She states that the property i.e., one Godown on Ground Floor and a room on First Floor with its terrace rights of property bearing no. 5346 all situated at Gali Tikke Wali, Churiwalan, Delhi - 110006 has already been disposed of by defendant nos. 1 to 6.
 - 3.3. She states that she reserves her right to file her reply in this application.
4. Learned counsel for defendant nos. 1 to 6 contends that under Muslim Law grand-children do not inherit the estate of the grandfather. She states that the present suit has been filed for the estate of late Mohd. Arif, who was the grandfather of the plaintiffs. She states that Mohd. Muneer (father) died on 24.03.2014 and Mohd. Arif died on 18.08.2021 (grandfather).
5. She states that the estate of Mohd. Arif will instead devolve upon the legal heirs of his predeceased brothers Mohd. Farooque (died on 05.12.2012) and Mohd. Adil (died on 11.12.2012).
6. In support of her contention, she relies upon the judgment of the High Court of Karnataka in **Smt. Ashabi vs. Smt. Faziyabi and Others**¹ and judgment of the Supreme Court in **Mohd. Amirullah Khan and Others vs.**



Mohd. Hakumullah Khan and Others².

7. This Court has perused the judgment of the Supreme Court in **Amirullah Khan** (supra). In the said case, the trial court held that the grandchildren of a predeceased son did not acquire any right in the immovable property of the deceased grandfather under the Muslim Law. The Court held that the immovable property devolved upon the surviving sons and daughters of the deceased under the Muslim Law. In the facts of that case, the deceased was survived by sons and daughters as well as grandchildren of the predeceased son.

8. However, in the facts of the case in hand late Mohd. Arif had only one son Mohd. Muneer and no other surviving son or daughter. Therefore, in the considered opinion of this Court, the reliance placed by defendants on the judgment of **Amirullah Khan** (supra) is of no avail.

9. Similarly, in the judgment of **Smt. Ashabi vs. Smt. Faziyabi and Others** (supra), learned counsel for defendant nos. 1 to 6, had relied upon paragraph '10' and paragraph '12' of the said judgment, which reads as under: -

“10. It is fairly well settled that the heirs of a Muslim can claim their shares only in what remains, if at all, after all the statutory liabilities have been met out of the property and the debts and valid legacies and death-bed gifts (if any) paid, out of the property of the propositus. A person who according to Muslim law is an heir of the deceased remains so and gets his legal due. He or she cannot be excluded either by other heirs and survivors of the deceased or even under a specific direction left in that behalf by the deceased himself. One can be excluded from inheritance only under a rule of Muslim law, if applicable in India. It is also well settled that only that relative can be an heir of the deceased who is alive at the moment of the latter's death. A person who died before the deceased cannot be his heir. The

¹ 2004 SCC OnLine Kar 327

² (1999) 3 SCC 733 at para 4



survivors of such a person can in some cases inherit direct from the propositus, but not in place of or in the right of the said person who died before the propositus (Ref: Muslim law of India by Tahir Mahmood). (Underline is mine).

11. Therefore, what is clear, to me is that a pre-deceased son or a daughter gets excluded in view of the prior death in the given circumstances. This proposition is also considered by various Courts.

12. In AIR 1951 SC 327, the Court has ruled in para 52, as under:

"It is well known principle of Mohammadan law that if any of the children of a man dies before the opening of the succession to his estate, leaving children behind, these grandchildren are entirely excluded from the inheritance by their uncles and aunts. This is what their lordships of the P.C. have stated in *MOOLLA CASSIM v. MOOLLA ABDUL RAHIM*, 33 Cal 173 at Page 178. Clearly, therefore, the whole of Amin Ali's line is excluded from succession to the estate."

10. In this judgment, the High Court of Karnataka held that the widow of a predeceased son does not inherit the property left behind by her mother-in-law. The facts of this case are set out in paragraph 1 of the judgment. In the facts of the case, the deceased Chotima (a Muslim woman) was survived by three children on the date of her demise and she also had a predeceased son. The widow of the predeceased son also claimed right in the estate of Chotima, which was denied by the trial court. The appeal was filed by the widow of a predeceased son, who also claimed share in the estate. The High Court held that the estate of the mother-in-law devolved upon her surviving children. And, held that the widow of the predeceased son cannot claim in the estate.

11. In the said judgment of the High Court, the Supreme Court judgment quoted at paragraph 12, which clarifies that where a Muslim man dies



leaving behind surviving children and grandchildren of the predeceased child, the grandchildren of the predeceased child are excluded. And, the estate devolves upon the surviving children. This judgment of the Supreme Court explains that grandchildren cannot succeed if uncles and aunts are alive at the time of the demise of the grandfather.

12. However, in the facts of the case in hand, Mohd. Arif only had one son Mohd. Muneer and therefore on the date of his death in the year 2021, he had no other surviving children. Whereas he had grandchildren through his deceased son Mohd. Muneer. The plaintiffs (grandchildren) were the only surviving lineal descendants of Mohd. Arif on the date of his demise.

13. This Court has been unable to understand the contention of defendant nos. 1 to 6 as to on what legal basis the estate of Mohd. Arif can be claimed by the children of his predeceased brothers Mohd. Farooque and Mohd Adil. Defendant nos. 1 to 6 are not the lineal descendants of Mohd. Arif. The judgments relied upon by defendant nos. 1 to 6 do not support their claim to the estate of Mohd. Arif.

14. Learned counsel for the defendant had also relied upon the judgment of the Division Bench of the High Court of Karnataka in **Abdul Subhan vs. Khyroonibi**³, more specifically upon paragraph '8' of the said judgment, which reads as under: -

"8. To a very limited extent only the learned Civil Judge was right. Under Muslim Law, no person has a right in the property by birth. It is known that there is no such thing as 'joint family' among the Muslims. So long as the father is alive, the children do not possess any right in the property. It is only on the death of the father, the children living at that time would inherit. However, if any son dies earlier to the father, then the son's issues would not succeed to the father of the deceased son. Principle of 'representation' is entirely unknown to this

³ 1992 SCC OnLine Kar 209



Law, governing the Muslims (Sunni Law). Right of inheritance arises on the death of the person owning the property and the question of devolution of inheritance rests entirely decided at that point of time when the person through whom the heirs claim dies - death being the sole guide. The illustration given by Mulla on the Principles of Mohamedan Law (Sixteenth Edition) deriving the same from a reported Decision in Moolla Cassim v. Moola Abdul [(1905) 33 Calcutta 173.] makes the position very clear. It is as follows:

“A, a Sunni Mohamedan, has two sons B and C, B dies in the life time of A, leaving a son D, A then dies leaving C, his son, and D, his grand-son. The whole of A's property will pass to C to the entire exclusion of D. It is not open to D to contend that he is entitled to B's share as representing B: Moolla Cassim v. Molla Abdul(1905) 33 Cal. 173, 32 I.A. 177.

In the case cited above, their Lordships of the Privy Council observed: ‘It is well-known principle of Mohamedan Law that if any of the children of a man dies before the opening of the succession to his estate, leaving children behind, these grandchildren are entirely excluded from the inheritance by their uncles and their aunts’. The son of a predeceased son is therefore not an heir.”

15. In this judgment at paragraph no. 8, an extract from Mulla on the principles of Mohamedan law has been cited, which clearly explains the circumstances in which grandchildren are excluded. The grandchildren are excluded only if the grandfather has other surviving sons and daughters. As noted above, in the facts of this case, the deceased Mohd. Arif had no other surviving son or daughter and therefore the plaintiffs herein would inherit the said estate. This judgment of the Division Bench does not lend any support to the claims of defendant nos. 1 to 6 qua their entitlement to the estate of late Mohd. Arif.

16. Neither of the three (3) judgments would apply to the facts of this case, where Mohd. Arif only had one son, who had pre-deceased him. In the judgments relied upon by the defendants, it is a case where the deceased



Muslim had more than one child, and one of his/her children was alive at the time of his death; and therefore, the heirs of the deceased child i.e. grandchildren were held to have been excluded.

17. This Court therefore prima facie finds no merit in the submission of defendant nos. 1 to 6 that the estate would be inherited by them to the exclusion of the plaintiffs.

18. In the meantime, considering that I.A. No. 9391/2022 is pending and the rights and contentions arising for consideration in these applications are identical, the interim order dated 02.06.2022 passed in I.A. No. 9391/2022 is hereby extended to properties mentioned at paragraph 13 of this application.

19. Till the disposal of this application, defendant nos. 1 to 6 are directed to maintain status quo with respect to these properties, in addition to the properties, which already form subject matter of paragraph '14' of the plaint.

20. List before learned Joint Registrar on 07.08.2025, the date already fixed.

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21. Learned counsels for the parties state that parties are willing to have the matter referred to Samadhan-Delhi High Court Mediation and Conciliation Centre, Delhi High Court, Shershah Road, New Delhi ['Mediation Centre']. Learned counsel for the parties jointly request for appointment of Ms. Veena Ralli, Senior Mediator.

22. With the consent of the parties, the parties are referred to Mediation Centre under the aegis of Ms. Ralli.

23. In order to enable the parties to have a meaningful mediation and even otherwise for adjudication of the disputes on merits; the plaintiff is directed to file an affidavit setting out the details of all the existing tenants



and the rate of rent being collected from these tenants, in the suit properties, within four (4) weeks.

24. Similarly, defendant nos. 1 to 6 will also file an affidavit within four (4) weeks giving complete details of the existing tenants and the rate of rent being collected from the existing tenants.

25. Copy of the Order be sent to the Organizing Secretary of the Mediation Centre for information and compliance.

26. List the matter before the Mediation Centre on 01.07.2025 at 03:30 P.M.

27. List the matter before the Ld. Joint Registrar (J) on the date already fixed i.e., **07.08.2025**.

MANMEET PRITAM SINGH ARORA, J

MAY 28, 2025/rhc/MG

Click here to check corrigendum, if any



28. In the said case, the deceased was survived by two (2) children and it was in these facts that the grandchildren of the pre-deceased son were set to have been excluded due to the presence of the other sons of the deceased.

29. However, in the facts of this case since Mohd. Arif only had one (1) son, late Mohd. Munir, who pre-deceased Mohd. Arif, the only legal heirs that Mohd. Arif would be plaintiff nos. 1 and 2.