# JUDGMENT SHEET

# IN THE ISLAMABAD HIGH COURT, ISLAMABAD

**R.F.A No. 395/2020**

**MST. SHAGZANA WALAYAT.**
**Vs.**
**MST. SHABANAM TABASSUM, ETC.**

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| **Appellant by** | **:** | **Abid Maroof Mughal, Advocate.** |
| **Respondents by** | **:** | **Rasheed ul Musawar, Advocate.** |
| **Date of hearing** | **:** | **29.03.2021** |

**LUBNA SALEEM PERVEZ, J.** Through instant Regular First Appeal, the appellant Mst. Shagzana Walayat has assailed the Judgment dated 18.11.2020, whereby the learned Civil Judge 1st Class (West), Islamabad, decreed the suit for declaration filed by Respondents Mst. Shabnum Tabassum w/o Yasin Younis (Respondent No. 1) and Eilyah Yasin s/o Younis Yasin (Respondent No. 2) in their favour as prayed for.

2. Facts in brief are that, the parties belong to Christian Religion. The Respondent No. 1 filed a suit for declaration against the present appellant before Civil Judge 1st class (West) Islamabad seeking following prayer:-

> *"It is most respectfully prayed that a decree for the declaration to the effect that first wife Mst. Shabnum is the only widow of the deceased Yasin Younas and she along with her minor son of the plaintiff No. 1 Eilyah Yasin are the only legal heirs of the deceased and entitled to receive pensionary benefits and other funds of the deceased and a decree for the declaration to the effect that second marriage performed between the Mst. Shagzana Bibi and the deceased Yasin Younas stands null and void and the defendant No.1 has no right to inherent property or receive pension & other funds of the deceased may kindly be passed in favour of the plaintiffs against the defendants with cost.*
>
> *Any other relief deemed fit, just, appropriate and proper by the Hon'ble Court may also be granted to the plaintiffs.".*

The learned Trial Court on the basis of documentary evidence as well as witnesses produced by the parties and after discussing the provision of

Christian Marriage Act, 1872, decreed the suit in favour of Respondent Nos. 1 & 2 (plaintiff No. 1 & 2 in the suit). Being aggrieved with the judgment of the learned trial Court dated 18.11.2020, the appellant (defendant No. 1 in the suit) filed the present Regular First Appeal.

3. Learned counsel for the appellant submitted that the appellant was lawfully married to Yasin Younis *(herein after referred to as deceased)* expired on 12.11.2015), after he divorced his first wife (respondent No. 1) on 02.05.2014 and produced *'Nikah Nama'* of marriage performed by Pastor Nazir Jan according to the Christian Rites on the basis of divorce pronounced in *'Jirga'* (Mark-D-B/1-2); that therefore, declaring the marriage of the appellant and deceased to be null and void is against the law; that the learned Trial Court has misread the facts and evidence; that deceased Yasin Younis had divorced his first wife (Respondent No. 1) which was not challenged by her during the life time of the deceased husband which fact has also been concealed from the Court; that Respondent No. 1 had never challenged the second marriage of deceased Yasin Younis but when the appellant was granted succession certificate by the Court, she out of the blue filed the suit for entitlement to receive the pensionary benefits and funds of the deceased; that the judgment and decree dated 18.11.2020 is liable to set-aside as the appellant and her children have been deprived of their legal rights of receiving pensionary benefits and other funds of the deceased as legal heirs.

5. On the other hand, learned counsel for the respondents opposed the contention of the learned counsel for the appellant and submitted that the deceased Yasin Younis and Respondent No. 1 got married on 07.05.2010 at the International Healing Ministry of the Jesus Christ Church according to the Injunction of the Christian Religion and from the wedlock, minor Eliyah Yasin was born on 14.01.2012; that the deceased was performing all the married obligations and was living with Respondent No. 1 till his death; that Yasin Younis (deceased) constable in the Punjab Police was Martyred

along with another constable namely Muhammad Tanveer by unknown terrorists while performing duty; that being a lawful wedded wife, the Respondent No. 1 and her son is the only legal heirs of the deceased; that Christian law does not permit another marriage as it strictly enforce monogamy and any marriage against the provisions of the Act and Christian Law is void under Section 4 of the Christian Marriage Act, 1872; that the Civil Court, vide Section 18 of the Divorce Act, 1869, may declare any marriage null and void by issuing decree in terms of Section 19 of the said Act; that except provided under the Divorce Act, 1869, no person or Jirga, whatsoever, has the right or authority to declare or issue divorce between the lawfully wedded husband and wife; that therefore, in the presence of first wife, solemnizing second marriage has no legal status rather punishable under section 193 PPC; that any marriage performed by the Minister of Religion having knowledge of first marriage of deceased Yasin Younis without publishing notice is violation of Christian Marriage, Act, 1872, and punishable under Section 71 of Act *ibid*. The learned counsel submitted that judgment and decree dated 18.11.2020 is in accordance with the law and the appeal of the appellant is liable to be dismissed.

6. I have heard the learned counsel for the parties and carefully gone through the record. The appellant's case is that the marriage between her and deceased Yasin Younis was performed at International Full Gospel Fellowship Church Pakistan, vide marriage certificate dated 02.05.2015 as the deceased had already divorced his first wife (respondent No. 1) and produced certificate of a 'Jirga' held on 27.05.2011 (Mark-D-B/2) regarding divorce between the deceased and Respondent No. 1. Whereas, Respondent No. 1 with vehemence asserted to be the only lawfully wedded wife of the deceased and to support her version, produced the marriage certificate solemnized on 07.05.2010 at International Healing Ministry of Jesus Christ Church, At House No. 333 Street No. 20, Sector G-8/1,

Islamabad, and alleged that the Nikahnama and the certificate of divorce issued by Jirga produced by the Appellant are fake and fabricated. She claimed to be the widow and true legal heir to receive the service and pensionary benefits of the deceased.

7. It has been contended by learned counsel for the respondents that there is no provision of second marriage in the subsistence of first marriage due to strict enforcement of monogamy in Christianity and there is no concept of divorce between the parties on the basis of mutual agreement by the 'Jirga'. The marriages are performed strictly in accordance with Christian Marriage Act, 1872, and the applicable law for dissolution of marriage between the parties under the Christian law is the Divorce Act, 1869.

8. Perusal of the impugned judgment dated 18.11.2020, revealed that the learned Trial Court framed three legal questions regarding pronouncement of divorce in Christian law and scope of second marriage on the basis of which divorce can be given without intervention of Court. While deciding the controversy learned Trial Court relied on the provision of Section 10 of the Divorce Act, 1869, and observed as under:

> *"Unlike Islamic law, there is a meager and narrow scope* for a *spouse to get divorce from his life partner and the only way to get divorce is to file a petition for dissolution to the concerned Civil Court and he has to mention therein his wife has committed adultery and after proving the same a judicial separation through court will be effected between the spouses and thereafter, the husband would be at liberty to enter into another marriage contract. In the case in hand it is not the stance of defendant No. 1 that Yasin Younas has got judicial separation from plaintiff and thereafter entered into a second marriage with her, rather it is in her defence that a divorce occurred between the plaintiff and Yasin Younas in the presence of Jirga and thereafter deceased Yasin Younas entered into a second marriage with her. If this was the stance of the defendant No. 1 then it was incumbent upon the defendant No. 1 to explain and justify as to how it the presence of legislative requirement of getting judicial separation from the court of law for the purpose of entering into second marriage, the deceased Yasin Younas was absolved himself from obtaining judicial separation from competent court of law and enter into a second marriage and that too only relying upon an alleged divorce occurred through intervention of alleged Jirga. The defendant No.1 has not produced even a single evidence any precedent of Apex Court, in support of her defence wherefrom it could be*

> *believed that the deceased Yasin Younas was legally permitted to divorce the plaintiff without leveling the allegations of adultery and without obtaining judicial separation from competent court of law and moreover divorce took place between the plaintiff and deceased Yasin Younas because neither the defendant No. 1 produced any independent witness in this regard nor produce any valid document. Thus on this score alone it is sufficient to hold that the neither the divorce took place between the plaintiff and deceased Yasin Younas nor the deceased was competent to enter into a second marriage contract with defendant No. 1."*

9. The statement of DW-3 (Pastor Nazir Jan) and his cross examination was also of importance as he in his statement stated that he was pressurized by deceased who happens to be the first cousin of Pastor and he promised to provide him document of divorce. The learned Trial Court thus arrived at the conclusion that no formal divorce or judicial separation in accordance with the provisions of Divorce Act, 1869, was effected and the second marriage was performed during the subsistence of first marriage without giving divorce to the first wife.

10. The concept of marriage in the Christian religion is that the marriages are instituted by God and therefore, a lifelong union which ends on the death of one partner and it strongly discourages divorce. However, for certain inevitable grounds, the divorce is permitted in Christianity. Divorce Act, 1869, effective from 1st April, 1869 conferred jurisdiction to the civil courts in matrimonial matters to make decrees for dissolution of marriages or to make decree of nullifying of marriage for the persons professing Christian religion. The perusal of the Act, 1869, reveals that it provides strict and stringent grounds for dissolution of marriages as the marriages have been considered as a sacred covenant established before God. Section 10 of the Divorce Act, 1869, provides for dissolution of marriage on the petition of husband or a wife on the ground of adultery and the court, if satisfied on the basis of evidence of the alleged commission of adultery, may issue decree of dissolution of marriage. The Civil Court under Section 18 has also been granted jurisdiction to declare the marriage null and void on the petition by husband or wife strictly for the grounds of

decree provided in section 19 of the Divorce Act, 1869. Vide Chapter V of the Act, 1869, the husband or wife may obtain a decree of judicial separation on the ground of adultery or cruelty. Thus, there is no other way for dissolution or separation of Christian marriage except through civil courts under the Divorce Act, 1869. The Hon'ble Lahore High Court in judgment titled as ***Mst. Parveen Amanual vs. Additional District Judge-III, Rahim Yar Khan, etc*** **(PLD 2009 Lahore 213)** has discussed the provisions for dissolution of marriage under Divorce Act, 1869 and observed as under:-

> *"6. The bond of marriage between Christian husband and wife is of a permanent nature and as such the wife has to prove her case on the concrete facts after leading reliable and cogent evidence to the facts on which the claim of dissolution of marriage is based. Only then the Court can grant a decree for a judicial, separation within the meaning of section 22 of the Divorce Act, 1869 or to dissolve the marriage under section 10 of the same Act. Therefore, mere assertion of the wife that she is not ready to live with the husband is not sufficient for dissolving the marriage between the petitioner and respondent No.1."*

11. In the present case the appellant, to support the validity of her marriage with the deceased, strongly relied on a hand written note of a Jirga according to which the deceased and Respondent No.1 amicably agreed to divorce themselves in the presence of witnesses in the Jirga. In my view the law of divorce in respect of Christian marriages does not grant or authorizes any person or any so called Jirga to pronounce divorce between husband and wife. Thus, the divorce deed issued by Jirga is patently illegal and unlawful document having no legal effect and as such the second marriage preformed between the deceased and the appellant during the subsistence of first marriage has been rightly declared to be null and void in accordance with the injunctions of Christian religion which strictly prohibit the second marriage while the first marriage is intact.

12. After thoroughly perusing the record of the case and impugned judgment dated 18.11.2020, I am of the considered opinion that the view formed by learned Trial Court is based on correct appreciation of law as

well as the documentary evidence and evidence produced by both the parties, thus no reason or ground for interference by this Court has been found ,hence, judgment and decree dated 18.11.2020, passed by the learned Trial Court is hereby upheld and the titled RFA is **dismissed,** accordingly.

**(LUBNA SALEEM PERVEZ)**
**JUDGE**

**Announced in open Court on _____**

**JUDGE**

***Approved for Reporting***
***Blue Slip added.***