

**IN THE COURT OF ADDITIONAL DISTRICT  
JUDGE-II, ORAKZAI AT BABER MELA**

**Miscellaneous Civil Appeal No.2/14 of 2020**

Date of institution: 05.08.2020

Date of decision: 21.09.2020

Mst; Gulshad Bibi (widow) & Seven others r/o Tappa  
Jesal Khel Chota Bezot District Orakzai.

*(Appellants)*

Versus

Public at large, Abdul Salam & others r/o Tappa Jesal  
Khel Chota Bezot District Orakzai.

*(Respondents)*

***Represented by:***

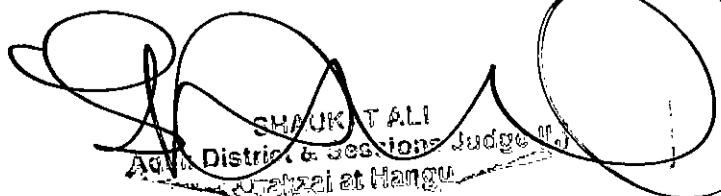
Mr. Muhammad Iftikhar Khan Advocate, counsel for  
appellants

Mr. Sanna Ullah Khan Advocate, counsel for respondents

**JUDGMENT**

This judgment is intended to dispose of the instant Civil Miscellaneous Appeal filed against the order of Learned Senior Civil Judge, Orakzai dated 24.07.2020, vide which the application of respondent No. 5 for her impleadment in the application for succession certificate was accepted and she was made party to the petition for succession certificate in the panel of respondent.

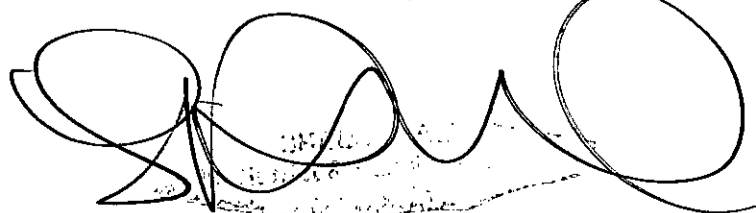
Brief facts of the case are that the appellants on 31-01-2020 instituted application bearing No.68/5 for succession certificate in respect of inheritance; salary, bonus gratuity and other arrears in Kuwait of deceased Seyed Meen Akbar s/o Jan Akbar r/o Feroz Khel Tappa

  
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Jesal Khel Chota Bezot. In the application for secession certificate respondent No. 5 who is the widow of deceased and respondent No. 4; son of the deceased were not made party to the application for succession certificate. On 11-07-2020 they submitted application for their impleadment in the application for succession certificate. The appellants submitted their reply to the said application and the application was allowed to the extent of respondent No.4 Siraj Akbar on no objection of the appellants whereas the application of respondent No.5 was accepted by the learned SCJ after hearing arguments vide order dated 24-07-2020. Feeling aggrieved from the impugned order, the instant appeal was preferred.

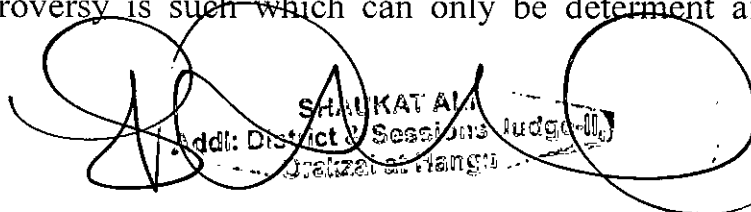
Arguments of learned counsel for the parties heard and record perused.

The appellants contested the application of respondent No. 5 Mst; Ayata Gula for her impleadment in the application for succession certificate instituted by the appellants on the sole ground that she was divorced by her husband deceased Seyed Meen Akbar during his life time, therefore she being divorced is not entitled for the inheritance of deceased Seyed Meen Akbar and not a necessary party to the application. The record reflects that the appellants never denied the fact that respondent No.5 was the wife of deceased Seyed Meen Akbar and she is now widow of deceased Seyed Meen Akbar. The

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appellants in their reply to the impleadment application questioned the status of Mst; Ayata Gula and alleged that she has been divorced by her husband, therefore the status of respondent No.5 is thus became controversial.

Section 373 (1) of the Succession Act 1925 provides that the proceedings to decide the application for issuance of succession certificate is a summary proceeding and under sub section 3 of section 373 of Succession Act 1925 it is provided that if the judge cannot decide the right to the certificate without determining questions of law or fact which seems to be so intricate and difficult for determination in a summary proceedings, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie best title thereto. In the case of respondent No. 5 Mst; Ayata Gula, she is admittedly the widow of deceased Seyed Meen Akbar and this fact never denied by the appellant, therefore she is prima facie entitled for her shares in the legacy of her husband deceased Seyed Meen Akbar and a necessary party to the application for succession certificate instituted by the appellants, therefore she is rightly impleaded in the application. The question that whether respondent No. 5 was divorced by deceased Seyed Meen Akbar during his life time could not be determent without recording pro and contra evidence of the parties and the learned lower court has rightly held that the nature of controversy is such which can only be determent after

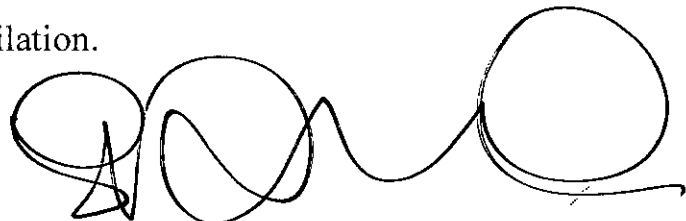
  
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Addl: District & Sessions Judge  
District of Hangzhou

recording evidence of the parties. The fact that respondent No. 5 is the widow of deceased Seyed Meen Akbar is sufficient ground for her impleadment in the application for succession certificate.

As sequel to the above discussion, the impugned order dated 24-07-2020 passed by Senior Civil Judge Orakzai is upheld and the instant appeal being devoid of merits stands dismissed, with no order as to costs.

File be consigned to record room after necessary completion and compilation.

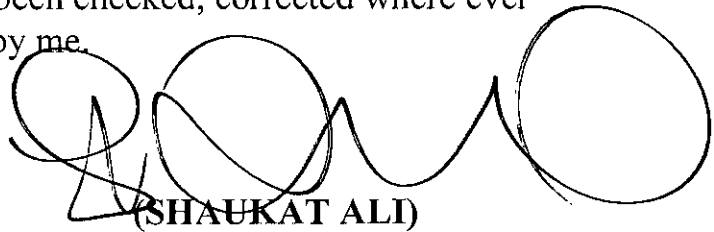
**Announced**  
21-09-2020



(SHAUKAT ALI)  
Additional District Judge-II,  
Orakzai at Baber Mela Hangu

CERTIFICATE

Certified that this judgment consists of 04 pages. Each page has been checked, corrected where ever necessary and signed by me.



(SHAUKAT ALI)  
Additional District Judge-II,  
Orakzai at Baber Mela Hangu