FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory/Review Jurisdiction)

Present:
JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE ALI BAQAR NAJAFI

C.P.L.As.5383, 5384, 5385 & 5622/2024
[against the judgment dated 06.11.2024 passed by the Lahore High Court, Lahore in W.P. Nos.80553, 80539, 80547 & 80520/2023]

AND

C.M.A.12230/2024 IN C.P.L.A.5383/2024
C.M.A.12224/2024 IN C.P.L.A.5384/2024
C.M.A.12112/2024 IN C.P.L.A.5385/2024
[stay applications]

Kaniz Haider ***...Petitioner(s)***

Versus

Khaliq Dad and others ***...Respondent(s)***

For the Petitioner(s)	:	Mr. Muhammad Wajid Hussain Mughal, ASC
For Resp.1, 2 & 5	:	Maulvi Anwar ul Haq, ASC Syed Rifaqat Hussain Shah, AOR
For Resp. 3 & 4	:	Hafiz Ahsan Ahmed Khokhar, ASC
For Resp. 6 & 7	:	Mr. Khalid Masood Ghani, Addl. AG
Research Assistance by	:	Dr. Muhammad Mumtaz, Research Officer
Date of Hearing	:	29.10.2026

JUDGMENT

AMIN-UD-DIN KHAN, CJ.- The instant petitions, originally instituted before the Supreme Court of Pakistan under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution"), assail the judgment dated 06.11.2024 passed by the learned Single Judge of the Lahore High Court in W.P. No.80553/2023, etc. whereby the writ petitions were dismissed. Following the Constitution (Twenty-seventh Amendment) Act, 2025, the matter stood transferred to this Court for adjudication in accordance with law.

2. Briefly, upon the demise of Muhammad Asghar, Inheritance Mutation No.4659 dated 06.06.2018 was sanctioned, conferring one-fourth of his estate upon his widow and the remaining three-

fourth upon his two sisters, including the petitioner. Respondent No.3, a paternal cousin of the deceased, assailed the mutation, asserting entitlement as a residuary. The Assistant Commissioner rejected his claim on 29.06.2021; however, the Additional Commissioner reversed that order on 03.02.2023, relying upon PLD 2014 SC 779. The petitioner's revision and subsequent constitutional petitions were dismissed by the Member, Board of Revenue, and the Lahore High Court on 08.11.2023 and 06.11.2024, respectively. Hence, these petitions for leave to appeal.

3. We have heard learned counsel for the parties and carefully examined the record in light of their respective submissions.

4. The controversy centers upon whether the petitioner, being a full sister and Qur'anic sharer, excludes the deceased's paternal cousins from residuary succession or is entitled to the residue by way of *radd* (return). Its resolution requires a precise distinction between prescribed entitlement, residuary capacity and exclusion from inheritance. Each operates within its own juridical sphere; their conflation would yield a distribution inconsistent with the governing personal law.

2. The governing statutory mandate is contained in section 2 of the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, which, notwithstanding any custom or usage and subject to any enactment for the time being in force, prescribes Muslim Personal Law (Shariat) as the rule of decision in matters of succession, whether testate or intestate, where the parties are Muslims. The substantive entitlement to inherit must, therefore, be determined by that law; neither administrative practice nor an erroneous revenue entry can confer an entitlement contrary thereto.

3. This statutory mandate finds constitutional reinforcement in Article 227(1), which requires existing laws to conform to the Injunctions of Islam and prohibits the enactment of laws repugnant thereto. The Explanation expressly preserves, in matters of Muslim personal law, the interpretation of the Quran and Sunnah recognised by the sect concerned. The Sunni and

Ithna Ashari rules of succession must, therefore, be applied within their respective doctrinal frameworks. The present controversy falls to be determined under the Sunni principles applied in the proceedings below.

4. The prescribed shares relevant to the present controversy are expressly ordained in Surah Al-Nisa. Concerning the widow's entitlement, verse 12 provides:

وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكْتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ

"Your wives shall receive one-fourth of what you leave if you have no child."

Concerning the prescribed entitlement of a sister and two sisters, verse 176 provides:

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ ۚ إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ ۚ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ

"They seek your ruling. Say: Allah gives you a ruling concerning kalalah. If a man dies without a child and leaves a sister, she shall receive one-half of what he leaves. He inherits from her if she leaves no child. If there are two sisters, they shall receive two-thirds of what he leaves."

5. These prescriptions must be applied subject to the conditions governing the respective heirs' entitlement. Where those conditions are fulfilled, the widow receives one-fourth and the two full sisters receive two-thirds collectively. Both fractions relate to the distributable estate; the sisters' two-thirds is not calculated upon the balance remaining after satisfaction of the widow's share. The prescribed fractions consequently aggregate to eleven-twelfths, leaving one-twelfth whose devolution falls to be determined under the applicable rules of residuary succession or return.[1]

6. The treatment of the residue is elucidated by the Sunnah. The Holy Prophet (peace be upon him), as narrated by Ibn Abbas in *Sahih al-Bukhari*, Hadith No.6732, directed:

"أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَهُوَ لِأَوْلَى رَجُلٍ ذَكَرٍ"

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[1] (*The Holy Qur'an*, Surah Al-Nisa, 4:12 and 4:176; Ibn Kathir, *Tafsir al-Qur'an al-'Azim*, commentary on 4:176; Mufti Muhammad Shafi, *Ma'ariful Qur'an*, English edition, Vol. II, pp. 649–650, commentary on 4:176.)

The direction establishes the sequence of distribution: prescribed shares are first satisfied, following which the remainder devolves upon the nearest entitled male agnate. Priority in receiving a fixed share does not, therefore, confer an exclusive right to the entire estate. The Qur'anic prescriptions and the Prophetic direction operate together, each governing its respective component of the distribution.

7. Sunni jurisprudence recognizes succession through prescribed shares (*fard*) and residuary entitlement (*ta'sib*). These capacities perform distinct functions within the distribution of an estate: the prescribed shares are first satisfied, and any balance thereafter devolves upon the residuary legally entitled to receive it. Al-Sajawandi explains this sequence in *Al-Sirajiyyah*, distinguishing the entitlement of *ashab al-furud* from that of agnatic reliquaries. The existence of a Qur'anic sharer does not, therefore, necessarily extinguish residuary succession; the decisive consideration is whether the particular residuary remains entitled under the applicable rules of exclusion.[2]

8. A paternal uncle's son may inherit as an *'asabah bi-nafsihi*, that is, a residuary in his own right. His capacity arises from his relationship to the deceased through an exclusively male line, rather than through representation of his father's prescribed share. Nevertheless, membership of the agnatic class establishes only a potential capacity to succeed. Actual entitlement depends upon priority within that class and the absence of an excluding heir. Ibn Qudamah, in *Al-Mughni*, explains that residuaries receive the whole estate where no sharer exists, or the surplus where prescribed shares leave a balance, subject throughout to the preferential entitlement of nearer agnates.[3]

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[2] (Siraj al-Din Muhammad ibn Muhammad al-Sajawandi, *Al-Sirajiyyah* (السراجية), Introduction; *Fasl fi al-Nisa'* (فصل في النساء); and *Bab al-'Asabat* (باب العصبات), concerning the sequence of distribution and the circumstances in which sisters become residuaries)

[3] (Muwaffaq al-Din Ibn Qudamah al-Maqdisi, *Al-Mughni* (المغني), *Kitab al-Fara'id* (كتاب الفرائض), discussion beginning "وابن الأخ للأب والأم أولى من ابن الأخ للأب", numbered 4829 in the consulted text. This passage explains agnatic priority, including brothers' sons, paternal uncles and their descendants.)

9. The governing order is structured by the direction of relationship (*jihat al-qarabah*), proximity of degree (*darajat al-qarabah*) and, where relevant, strength of relationship (*quwwat al-qarabah*). Al-Quduri, in *Mukhtasar al-Quduri*, places descendants, ascendants, brothers and the paternal uncle's branch within the successive agnatic order. Ibn Qudamah further explains that brothers' male descendants precede paternal uncles, while paternal uncles and their sons succeed according to the prescribed order within their branch. Consequently, the respondents' description as paternal cousins cannot dispense with examination of the complete heirship: their entitlement must be established by locating them within that order and excluding the existence of a preferential claimant.[4]

10. The sister's capacity must likewise be determined independently. *Al-Sirajiyyah* distinguishes a full sister's prescribed entitlement from the circumstances in which she becomes a residuary with a full brother or with a daughter or qualifying son's daughter. Her position cannot be determined merely by comparing her genealogical proximity with that of a paternal cousin. Where she inherits as a sharer, her prescribed fraction must first be satisfied; where she acquires residuary capacity, the corresponding rules of priority and exclusion become applicable. The legal capacity in which each claimant succeeds must therefore precede the determination of exclusion.[5]

11. Nor can the doctrine of *radd* be invoked before resolving those questions. Al-Quduri states under *Bab al-Radd*:

وَالْفَاضِلُ عَنْ فَرْضِ ذَوِي السِّهَامِ إِذَا لَمْ يَكُنْ عَصَبَةٌ مَرْدُودٌ عَلَيْهِمْ بِقَدْرِ سِهَامِهِمْ، إِلَّا عَلَى الزَّوْجَيْنِ

The rule makes the absence of a residuary a prerequisite to proportionate return to eligible sharers, excluding spouses under the rule stated. Thus, *radd* is a consequence of the absence of an

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[4] .(Abu al-Husayn Ahmad ibn Muhammad al-Quduri, *Mukhtasar al-Quduri* (مختصر القدوري), inheritance section, *Bab al-'Asabat* (باب العصبات), *Bab al-Hajb* (باب الحجب), and *Bab al-Radd* (باب الرد).)

[5] (Muhammad Jawad Mughniyya, *Inheritance According to the Five Schools of Islamic Law*, chapters "The Inheritance of Paternal and Maternal Uncles and Aunts" and "The Return (*al-Radd*)." This is a comparative account; its treatment distinguishes Sunni rules from the Imamiyyah position.)

entitled residuary; it cannot itself furnish the means of excluding one. Mughniyya's comparative treatment similarly records the Sunni recognition of an entitled residuary's claim to the surplus, while identifying differences concerning its disposal where no residuary survives. Those differences do not justify conflating prescribed shares, residuary capacity and return.

12. The Ithna Ashari scheme warrants separate consideration. Under that scheme, siblings belong to a preferential class of heirs whose presence excludes paternal uncles and their descendants; an entitled sister would, therefore, exclude a paternal cousin. This rule must be applied within its own doctrinal framework. The Explanation to Article 227(1) preserves the interpretation of the Quran and Sunnah recognized by the sect concerned, requiring succession to be determined consistently under the applicable personal law. The Ithna Ashari rule of exclusion cannot, therefore, be transposed into a succession governed by Sunni law.

13. The distinction between prescribed entitlement and residuary succession is explained by D. F. Mulla in *Principles of Mahomedan Law*, under "Hanafi Law of Inheritance." In the discussion entitled "Residuaries," the author states that, where prescribed shares leave a balance, it devolves upon the residuaries in the order specified in the accompanying table. The table includes a full paternal uncle's son within the agnatic order, subject to the preferential entitlement of heirs preceding him. Consequently, a paternal cousin's entitlement depends upon his precise relationship, his position in that order and the absence of an excluding heir; the description "cousin" alone is insufficient.[6] Mulla further distinguishes residuaries in their own right, residuaries through another and residuaries with another. In explaining the latter two categories, he identifies the full sister's residuary capacity with a full brother, or with daughters or qualifying son's daughters. Her prescribed entitlement must therefore be distinguished from any conditional capacity to inherit the residue. Paragraph 66 further elaborates:

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[6] (D. F. Mulla, *Principles of Mahomedan Law*, 7th ed., para 65, "Residuaries," and the accompanying Table of Residuaries in Order of Succession—Sunni Law.)

> *"If there is a residue left after satisfying the claims of Sharers, but there is no Residuary, the residue reverts to the Sharers in proportion to their shares."*

The absence of an entitled residuary is thus indispensable to return. Once a paternal cousin's subsisting residuary entitlement is established under the applicable rules of priority and exclusion, the surplus cannot be allocated to the sisters through *radd*.[7]

14. The distinction between prescribed shares and residuary entitlement also finds expression in contemporary Arab legislation. Under Saudi Arabia's Personal Status Law, promulgated by Royal Decree No.M/73 dated 6 Sha'ban 1443 AH, Article 217 distinguishes a full sister's prescribed entitlement from the circumstances in which she becomes a residuary. Article 224 includes paternal uncles and their male-line descendants within the agnatic order; Articles 227 and 228 respectively govern entitlement to the residue and priority among agnates. Significantly, Article 231(1) provides:

> *إذا لم تستغرق الفروض التركة، ولم يوجد عاصب؛ رد الباقي على غير الزوجين من أصحاب الفروض بنسبة فروضهم.*

15. In substance, where prescribed shares do not exhaust the estate and no residuary exists, the surplus returns proportionately to the sharers other than the spouses. The absence of an entitled residuary is therefore an express prerequisite to *radd*.[8] A corresponding arrangement appears in Qatar's Family Law No.22 of 2006. Article 269 defines a residuary in his own right by reference to male-line relationship, while Article 270 includes paternal uncles and their sons within the agnatic hierarchy. Article 271 recognises the residuary's entitlement to the balance remaining after satisfaction of prescribed shares, and Article 272 regulates priority by direction, degree and strength of relationship. Article 279 permits return only where the prescribed shares leave a surplus and **"ولم يكن هناك عاصب"**—no residuary exists. These

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[7] (para 66, "Return," opening rule, *Mahomedan* Law by D.F Mullah.)

[8] (Kingdom of Saudi Arabia, *Personal Status Law* (نظام الأحوال الشخصية), Royal Decree No.M/73 dated 6 Sha'ban 1443 AH, Articles 217, 224, 227–228 and 231(1); published in *Umm Al-Qura*, 18 March 2022.)

provisions reinforce the need to determine residuary qualification and exclusion before considering return.[9]

16. These comparative provisions illuminate the doctrinal distinction under examination. Their relevance lies in their express separation of prescribed entitlement, agnatic priority and return; the present succession remains governed by the personal law applicable in Pakistan.

17. The petitioner's nearer relationship to the deceased does not, by itself, exclude the respondents under the applicable Sunni principles. Exclusion is governed by the prescribed order of succession and the capacity in which each heir inherits, rather than genealogical proximity alone. A full sister entitled to a prescribed share may inherit concurrently with a paternal cousin qualified to receive the residue. The cousin's presence neither diminishes her prescribed share nor converts her into a residuary. Such conversion depends upon recognised conditions, including succession with a full brother or qualifying female descendants, none of which arises from the heirship accepted below. Accordingly, where no preferential heir excludes the paternal cousin, the sister takes her prescribed share and the cousin succeeds to the residue.

18. The petitioner's invocation of *radd* is equally misconceived. Under the Hanafi rule stated in paragraph 66 of Mulla's *Principles of Mahomedan Law*, return operates where a surplus remains after satisfaction of the prescribed shares and no entitled residuary survives. The absence of such a residuary is a condition precedent to its application. The doctrine cannot itself extinguish a subsisting residuary entitlement so as to create the condition necessary for its operation. Consequently, once the paternal cousins' entitlement as residuaries is established, allocation of the entire balance to the sisters by way of *radd* would contravene the prescribed order of succession.

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[9] .(State of Qatar, *Law No.22 of 2006 Promulgating the Family Law* (قانون رقم 22 لسنة 2006 بإصدار قانون الأسرة), Articles 269–272 and 279; official text available through Al Meezan, Qatar Legal Portal.

19. The distinction finds further support in this Court's judgment in *Javed Iqbal Rana (deceased) through his legal heirs v. Abdul Waheed Rana (deceased) through his legal heirs and others* (F.C.P.L.A. No.172-L/2026, dated 19.08.2026). While that matter principally concerned the scope of section 4 of the Muslim Family Laws Ordinance, 1961, the Court also examined the classification of heirs and the sequence governing distribution under Hanafi law. In paragraph 19, it observed:

> *"The order of succession is equally well settled. After satisfaction of funeral expenses, debts and valid legacies, the prescribed shares are first allotted to the sharers. The residue, if any, thereafter devolves upon the residuaries."*

The Court further explained in paragraph 20:

> *"The law therefore does not proceed merely upon the numerical or genealogical proximity of blood relations. What is material is the juridical character of the relationship and the category of heir into which the claimant falls. Consequently, a person cannot claim precedence over a sharer or a residuary merely because he is also related by blood to the deceased. The principle of qarabat operates within, and not independently of, the established classes and rules of exclusion governing Muslim succession."*

20. These observations are relevant to the present controversy insofar as they require the entitlement of each claimant to be determined by the capacity in which that claimant succeeds and the corresponding rules of priority and exclusion. The petitioner's status as a full sister establishes her prescribed entitlement, subject to the applicable conditions; the respondents' claim to the residue requires a separate determination of their qualification as agnatic residuaries. Neither question can be resolved by genealogical proximity alone. Once their respective capacities and the absence of an excluding heir are established, the prescribed shares must first be satisfied and the residue distributed according to the governing order of succession.[10]

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[10] (*Javed Iqbal Rana (deceased) through his legal heirs v. Abdul Waheed Rana (deceased) through his legal heirs and others*, F.C.P.L.A. No.172-L/2026, judgment dated 19.08.2026, paragraphs 19–20.)

21. Applying these principles to the heirship accepted below, the widow is entitled to one-fourth and the two full sisters to two-thirds collectively, each receiving one-third. These prescribed shares exhaust eleven-twelfths of the distributable estate, leaving one-twelfth for the entitled residuaries. The allocation of three-fourths to the sisters necessarily included that residue and could be sustained by *radd* only in the absence of a qualified residuary. Once the respondents' agnatic status and entitlement under the applicable order of succession were established, their exclusion could not be sustained. Their entitlement extends to the remaining one-twelfth, without encroaching upon the prescribed shares of the widow or the sisters.

22. Nasreen Akhtar's subsequent death gave rise to a distinct succession, governed by the heirs surviving her and their respective legal capacities. The share lawfully inherited by her from Muhammad Asghar formed part of her estate. On the heirship accepted below, the petitioner, as the surviving full sister, was entitled to one-half, while the residue devolved upon the qualified paternal cousins. Their subsisting entitlement precluded recourse to *radd* for appropriation of the entire estate. Equally, an excessive allocation under the earlier mutation could neither enlarge Nasreen Akhtar's lawful share nor confer any derivative entitlement upon the petitioner beyond that recognized by the governing personal law.

23. The sanction of an inheritance mutation does not render the recorded distribution immune from legal scrutiny. Sections 42 and 42-A of the Punjab Land Revenue Act, 1967 provide the machinery for recording rights acquired, inter alia, by inheritance, while section 44 governs disputes concerning such entries. These provisions record entitlement arising under the substantive law; they do not independently confer it. Procedural regularity in sanctioning a mutation cannot, therefore, validate an allocation contrary to the governing law of succession. The petitioner's reliance upon completion of the requisite revenue formalities does not displace the substantive infirmity identified by the superior revenue authorities.

24. We clarify that the mere absence of a male sharer does not, by itself, establish a paternal cousin's entitlement. Such entitlement remains subject to the prescribed order of priority, the applicable rules of exclusion and the existence of a residue after satisfaction of the prescribed shares. Read with this clarification, the impugned judgment reflects a reasoned appreciation of the admitted relationships and the governing principles of succession. The learned High Court correctly distinguished the sisters' prescribed entitlement from the respondents' residuary claim and examined the invocation of *radd* in that context. Its conclusion rests upon an identifiable legal foundation and is supported by reasons bearing directly upon the controversy. The petitioner has demonstrated neither a material misreading of the record nor any error of law warranting interference.

25. Consequently, the petitions are dismissed and leave to appeal is refused. The impugned judgment dated 06.11.2024 is maintained. No order as to costs.

CHIEF JUSTICE

JUDGE

Islamabad,
29.10.2026
Approved For Reporting
RajaAhsan/-