

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Yahya Afridi  
Mr. Justice Jamal Khan Mandokhail

**Civil Misc. Application No. 3492/2022 in  
Civil Petition No. Nil/2022**

(On appeal against the judgment dated 12.04.2022  
passed by the Islamabad High Court, Islamabad,  
in W. P. No. 213/2022)

*Munir Hussain, etc.* ... *Applicants*

**Versus**

*Riffat Shamim, etc.* ... *Respondents*

For the Applicants/  
Petitioners:

Ch. Afrasiab Khan, ASC

For the Respondents:

N.R.

Date of Hearing:

14.11.2022

**ORDER**

**Qazi Faez Isa, J.**

**C.M.A. No. 3492/2022:** Through this application the petitioners seek permission to array Tuba Sahab (respondent No. 2) as the daughter of Muhammad Zareef.

2. The petitioners had filed a suit alleging that Tuba Sahab was not the daughter of Azhar Hussain but of Muhammad Zareef. However, the learned Judge of the High Court held that Tuba Sahab was in fact the daughter of Azhar Hussain. Nothing much turns on this application as the petition for leave to appeal has been filed within time and the application could only be granted if the impugned judgment of the High Court was to be set aside. Therefore, even though the petition for leave to appeal has not been numbered we, after the learned counsel said he was ready to proceed with

the case on merits, proceeded to hear the petition. The office is directed to number the civil petition for leave to appeal ('**CPLA**').

3. **CPLA No. 3842/2022**: The learned counsel for the petitioners states that the petitioners are the siblings of Azhar Hussain who died issueless on 4 June 2013. The learned counsel submits that Azhar Hussain adhered to the Sunni Hanafi *fiqh* of Islamic *Shariah*, therefore, if Tuba Sahab is taken to be the daughter of Azhar Hussain then their share in the estate of Azhar Hussain would be significantly reduced. It is admitted that Azhar Hussain was married to Riffat Shamim (respondent No. 1). The case of the petitioners (plaintiffs in the suit) was that Tuba Sahab was actually the daughter of Muhammad Zareef and not of Azhar Hussain. The suit was filed on 29 January 2014, that is, about seven months after the death of Azhar Hussain and at a time when Tuba Sahab was, as per learned counsel, aged about 17 years. Admittedly, Tuba Sahab was brought up by Azhar Hussain and Riffat Shamim as their daughter and as long as Azhar Hussain lived her paternity was not questioned by the petitioners who, for the first time, did so after the father, Azhar Hussain, had departed from this world. The mother (respondent No. 1) testified that Tuba Sahab was her and Azhar Hussain's daughter.

4. The learned Judge of the High Court had referred to a number of decisions including the decision in the case of *Laila Qayyum v Fawad Qayyum* (PLD 2019 Supreme Court 449) which had considered in detail the scope of a declaratory suit filed under section 42 of the Specific Relief Act, 1877 and like in that case the paternity of another was denied by the plaintiffs. In other words the plaintiffs (petitioners herein) through their suit sought a negative declaration. After considering the scope of the said section 42 and precedents this Court held in *Laila Qayyum's* case that to challenge another's paternity/legitimacy was not an assertion of one's own *legal character* in terms of section 42. However, a person whose *legal character*, including paternity, was being denied such person could file a suit to claim it, but the instant case is not such a case. In *Laila Qayyum's* case the plaintiffs lacked *legal character* under section 42 of the Specific Relief Act, 1877, and the same principle is attracted in this case. The

learned counsel has also not been able to distinguish the decision in *Laila Qayyum's* case from the instant one.

5. In the impugned judgment the learned Judge had correctly applied the law, which had been interpreted in the case of *Laila Qayyum*. Therefore, to grant leave is not warranted and, consequently, the petition (numbered as CPLA No. 3842/2022) and CMA No. 3492/2022 are dismissed, but with no order as to costs as *caveat* was not filed by any respondent. Copy of this order be sent to respondents No. 1 and 2.

Judge

Judge

Judge

Islamabad  
(*Farrukh*)

Dated: 14.11.2022

Approved for Reporting