

**IN THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the nature of a matter of an Appeal under
section 5C of the High Court of the Provinces
(Special Provisions) Act read together with
Articles 127 and 128 of the Constitution.*

Sithy Fareeda Jeganathan
No. 11/2, 47th Lane,
Wellawatte.

Respondent - Appellant - Appellant

SC Appeal No. 36/2018

HC CALA No. MT/23/2010/LA

HC CALA No. MT/105/2010/F

DC Mt. Lavinia No. 1048/99/T

v.

Mohamed Osman Sufiyan
No. 16, 42nd Lane,
Wellawatte.

Petitioner - Respondent - Respondent

Before:

**Yasantha Kodagoda, PC, J.
Kumudini Wickremasinghe, J.
Arjuna Obeyesekere, J.**

Counsel:

Farman Cassim, PC with Vinura Kularatne
instructed by Lanka Dharmasiri for the
Respondent - Appellant - Appellant.

Kamran Aziz with Samadhi Mahagodage and
Sarah Nada for the Petitioner - Respondent -
Respondent.

Argued on:

13th October 2025

Written Submissions tendered on: For the Appellant on 23rd April 2018 and 24th December 2025.
For the Respondent on 4th September 2019 and 5th December 2025.

Judgment delivered on: 20th March 2026

JUDGMENT

Yasantha Kodagoda, PC, J.

Introduction and Background

- 1) The Appellant - Sithy Fareeda Jeganathan nee Sufiyan and the Respondent - Mohamed Osman Sufiyan are siblings (elder sister and younger brother). Their father pre-deceased their mother (Haji Jamladeen Noor Safina - hereinafter referred to as 'Safina'). She passed away intestate on 25th September 1998. On 2nd September 1999, the Respondent instituted testamentary proceedings in the District Court of Mt. Lavinia (No. 1048/99/T) with the aim of causing the administration of the estate of the deceased mother, valued by the Respondent in 1999 as Rs. 1,536,300.00 (following the reduction of funeral expenses). The deceased mother's estate comprised of several items of movable property and two lots of land adjacent to each other on which a building is situated.

- 2) It is common ground between the Appellant and the Respondent that Safina, the Appellant and the Respondent together with Safina's late husband are of Muslim ethnicity. The entire family had been of Islamic faith (religion), as it is the situation with regard to almost all persons of Muslim ethnicity in Sri Lanka. However, the Respondent asserts that the Appellant had ceased to be of the Islamic faith at a time prior to the death of Safina. That had allegedly been on the occasion of her marriage to her husband Jeganathan, who is admittedly of Tamil ethnicity and Catholic faith. The assertion of the Respondent that the Appellant had ceased to be of Islamic faith and a further assertion that she had converted into Catholicism was heavily contested by the Appellant. These two assertions were vehemently denied by the Appellant and had formed the epicenter of litigation in the District Court of Mt. Lavinia and the High Court of Civil Appeals. The dispute remained

the centre of focus even during the appellate proceedings in the Supreme Court and constituted the fact in issue of this Appeal.

- 3) At the testamentary proceedings in the District Court (No. 1048/99/T), the Respondent alleged that, though born to the Islamic faith, the Appellant had left that faith by the time of Safina's death, and therefore she was not entitled to any property of their mother Safina (who died intestate and undisputedly remained a Muslim of Islamic faith till her death). According to the Respondent, it is due to such reason that he did not cite the Appellant as a Respondent in the testamentary proceedings, as she was not entitled to inherit from the estate of Safina. In these circumstances, he asserted that he was the sole heir of the deceased Safina. On 24th November 1999, on the premise that the Respondent was the sole heir to the estate of Safina, the learned District Judge issued Letters of Administration in favour of the Respondent.
- 4) However, on 29th March 2000, ostensibly after getting to know of the issue of the Letters of Administration, the Appellant sought to intervene in the testamentary proceedings, petitioned to the District Court, and prayed for the revocation and cancellation of the Letters of Administration. By an order dated 4th April 2001, the learned District Judge recalled the Letters of Administration and permitted the Appellant to intervene in the testamentary proceedings and to put into issue her entitlement to the estate of Safina. Accordingly, the Appellant was permitted to contest the claim of the Respondent to be the sole heir of the estate of Safina.
- 5) Following the conduct of an inquiry into the matter, on 8th January 2003, the learned District Judge pronouncing an order held that, in terms of Muslim law, the Appellant was not entitled to inherit any part of the estate of Safina, due to the reason that she had left the Islamic faith and had become a Catholic.
- 6) It is common ground that had the learned District Judge concluded that at the time of the death of Safina, the Appellant had remained in the Islamic faith, in terms of Muslim law on intestate succession, she (being the daughter of the testator) would have inherited 1/3rd share of the estate of Safina, while the Respondent (being the son of the testator) would have inherited 2/3rds share.
- 7) Being aggrieved, the Appellant appealed against the afore-stated order of the learned District Judge to the Court of Appeal (No. CA/212/2003/F). Following a

preliminary objection raised on behalf of the Respondent, the Court of Appeal which upheld that objection, delivering the Judgment dated 26th May 2004, dismissing the Appeal.

- 8) Aggrieved by the Judgment of the Court of Appeal, the Appellant sought Special Leave to Appeal from the Supreme Court (No. SC/SPL/LA 169/2004) to appeal against the Judgment of the Court of Appeal. By an order dated 17th December 2008, the Supreme Court had made an order directing the learned District Judge to conduct an inquiry into the matter and then make a fresh order.
- 9) In view of the foregoing, the learned District Judge conducted an inquiry (at which evidence was presented by both parties) and on 1st July 2010 once again held that the Appellant was not entitled to inherit any part of the estate of Safina.
- 10) Aggrieved by the order of the learned District Judge, the Appellant appealed to the High Court (Civil Appeals). Following an appellate hearing, by its Judgment dated 24th May 2016, the High Court dismissed the Appeal, affirming the order made by the learned District Judge on 1st July 2010. It is sequel thereto, that the Appellant appealed to this Court. It is that Judgment of the High Court of Civil Appeals dated 24th May 2016 which was impugned during the appellate hearing held before us. That Judgment contains an unambiguous finding that the Appellant had left the Islamic faith at a time before the death of Safina and converted into Catholicism, and that therefore she is not entitled under Muslim law to inherit from the estate of Safina.
- 11) Following a consideration of the Application of the Appellant seeking Leave to Appeal, a differently constituted bench of this Court had granted Leave to Appeal on the following questions of law:
 - a) *Did the Judges of the High Court of Civil Appeals misdirect themselves in coming to the finding that the Petitioner had left Islamic faith?*
 - b) *Did the High Court err in law and facts in coming to the finding that the Petitioner has converted to another religion?*
 - c) *Did the Judges of the High Court of Civil Appeals err in coming to the finding that the Petitioner is not entitled to inherit from the estate of the deceased mother?*[The reference to 'Petitioner' in these three questions, is a reference to the present Appellant.]

Facts and circumstances adduced in favour of the Appellant in support of her position that she remained a disciple of the Islamic faith at the time of Safina's death and that she did not convert into Catholicism

12) The evidence in support of the Appellant's assertion that though in 1992 (several years before the death of Safina) she got married to Jeganathan - a Tamil gentleman of Catholic faith, she never left the faith of Islam and did not convert into Catholicism, stems from her oral testimony given during the inquiry conducted by the learned District Judge. According to her testimony, though she got married to Jeganathan, in her mind, she did not divorce herself from the Islamic faith. She has also sought to clarify that when giving evidence in the Magistrate's Court (in certain other proceedings) and when making several statements to the police (pertaining to several matters), she introduced herself as a Catholic, because her children were attending Catholic schools at that time. She has also testified that, though she does not attend a Mosque, she engages in Islamic prayers at home.

Facts and circumstances adduced against the Appellant in support of the Respondent's position that the Appellant had departed from the Islamic faith at a time prior to the death of Safina and had become a Catholic

13) The following facts and circumstances have been elicited before the District Court in support of the Respondent's claim that the Appellant had left the Islamic faith and had converted into Catholicism:

- a) That in 1992, the Appellant married Jeganathan, a gentleman of Tamil ethnicity and Catholic faith.
- b) That in a statement made to the Wellawatte police station on 3rd December 1997, she has introduced herself as a Tamil Christian ("Pe 1").
- c) That in a complaint made to the Wellawatte police station on 7th April 1999, she introduced herself as a Muslim Catholic ("Pe 2").
- d) That in an Affidavit dated 29th June 1999 tendered to the District Court in case No. 420/99 (Special), the Appellant has introduced herself as a Christian ("Pe 6").
- e) That in the Affidavit dated 29th March 2000 which accompanied the Petition presented to the District Court of Mt. Lavinia seeking intervention in the testamentary proceedings (Case No. 1048/99/T) and seeking the recalling of the Letters of Administration, the Appellant introduced herself as a Christian ("Pe 5").

- f) In case No. 420/99 (Special) filed in the District Court of Mt. Lavinia, on 16th January 2001, as a prelude to giving evidence, when taking the oath, she introduced herself as a Christian (“Pe 8”).
- g) That on 6th September 2001, when giving evidence in case No. 51037, she took oath as a Muslim Catholic (“Pe 10”).
- h) That in a complaint made to the Wellawatte police station on 4th October 2001, she introduced herself as a Roman Catholic (“Pe 3”).
- i) That on 17th January 2002, in Magistrate’s Court case No. 51037, as a prelude to giving evidence, took the oath as a Roman Catholic (“Pe 9”).
- j) In case No. 51037, in response to a question put to her, she has testified that following her marriage, she became a Christian. Furthermore, she has testified that for the purpose of becoming a Christian, she took an affirmative step. When she was asked at what church she was baptized, she has said that the associated rituals were performed at the Kadalana church. She has also testified that her husband participated at her baptizing event. Following baptism, her name had been changed to ‘Mary’. Furthermore, she has said that in order to practice Catholicism, she attends church (“Pe 9aa”, “Pe 9ae”, “Pe 9aee”, “Pe 9ie”, “Pe 9ii” and “Pe 9uu”).
- k) That in the complaint made to the Wellawatte police station on 15th June 2002, she has identified herself as a Christian (“Pe 4”).
- l) That in an Affidavit dated 13th August 2002 given to the District Court in case No. 1271/00/L, she has identified herself as a Christian (“Pe 1”).
- m) That she admitted that she does not attend a Mosque.
- n) That she admitted that her children attend Catholic schools.

Submissions of Counsel

14) **Learned President’s Counsel for the Appellant**, citing religious teachings which contain criteria to be used when determining whether a person who had previously been of the Islamic faith is deemed to have left such faith, insisted that at all times material to this matter, the Appellant had remained in the Islamic faith. Furthermore, he asserted that the Respondent had not presented evidence to contradict that position. Furthermore, he submitted that there was no evidence presented by the Respondent which could be used to contradict the evidence given by the Appellant that even after marriage, she remained in the Islamic faith. He submitted that on a balance of probabilities, it was clear that the Appellant was a disciple of Islam and throughout she had entertained that faith.

15) Learned President's Counsel for the Appellant also submitted that, unless overridden by a significant personal law, it is the Matrimonial Rights and Inheritance Ordinance, No. 15 of 1876 that would generally apply to matters pertaining to intestate succession. However, if one were to consider the applicability of the Muslim Intestate Succession Ordinance, No. 10 of 1931, it is imperative that it be applied subject to appropriate construction as to its provisions with regard to whom and in what respect it would apply. He submitted that section 2 of the Muslim Intestate Succession Ordinance would apply to the intestacy of the estate of a deceased Muslim, who at the time of his death was domiciled in Sri Lanka or was the owner of any immovable property in Sri Lanka. He submitted that the religious beliefs and or the manifestation of the faith of the heirs of the deceased was irrelevant, as there is no reference to it in section 2 of the Ordinance. Following up such submission, learned President's Counsel for the Appellant submitted that the property of Safina should be dealt with as provided by Muslim Law with 1/3rd share of her estate devolving to the Appellant and 2/3rds share devolving to the Respondent.

16) In response, **learned Counsel for the Respondent** submitted that the question of intestate succession from a deceased Muslim in Sri Lanka is governed exclusively by the Muslim Intestate Succession Ordinance. He further submitted that the Ordinance imports into the body of Sri Lankan law the entire body of Muslim law applicable to the relevant sect of the deceased Muslim person. Accordingly, learned Counsel submitted that intestacy of Safina (being a Muslim lady of the Shafi sect) must be governed solely by the Shafi Muslim law. He further submitted that according to Shafi Muslim law, an apostate or a person of a non-Muslim faith is specifically barred from inheriting from a Muslim deceased person.

17) Learned Counsel for the Respondent insisted that, based on the series of 'self-admissions' made by the Appellant, the Respondent had proven that the Appellant had renounced Islam and become an apostate, well before the death of Safina. He submitted that there was strict proof that the Appellant had converted to Catholicism, particularly since, a litigant before Court cannot be permitted to assume inconsistent positions in Court, to 'play fast and loose', to 'blow hot and cold' and to 'approbate and reprobate' to the detriment of his opponent. Learned Counsel further submitted that, under such circumstances, the Appellant would not be entitled to inherit any property from the estate of Safina. Learned Counsel submitted that by renouncing her faith in Islam, the Appellant had attracted to her

a disqualification with regard to inheritance. Learned Counsel cited a series of authorities in support of his contention that a non-Muslim (an apostle) cannot inherit from a Muslim.

Analysis of the Evidence, the applicable Law and Conclusions

- 18) **Analysis of the evidence** - It is apparent that the Respondent has not presented direct evidence in support of his position that at the time of the death of Safina, the Appellant had left the Islamic faith and had converted into Catholicism. He has sought to prove his assertion by successfully eliciting from the Appellant a series of 'admissions' by having presented to her a series of documents and eliciting answers in favour of his position. The documentary evidence presented to the Appellant by counsel who represented the Respondent in the District Court, had taken the form of a series of unambiguous averments (which in terms of the Evidence Ordinance can be referred to as 'statements') made by the Appellant herself since 3rd December 1997 (well before the death of Safina) that she is a Muslim Catholic (which must be distinguished from being a Muslim of Islamic faith). An examination of these statements which have been made to courts of law and to the police, in my view, takes the manifestation of 'admissions' coming within the ambit of section 18(1) read with section 17(1) of the Evidence Ordinance.
- 19) In terms of section 21 of the Evidence Ordinance, an admission can be proved *inter alia* against its maker. Thus, the series of admissions elicited from the Appellant while she was under cross-examination, can be used against the interests of the Appellant to prove the case of the Respondent. From these admissions, it is clear that even before the controversy arose as to the religion of the Appellant, she had identified herself as a Christian / Catholic. Furthermore, even after the debate arose as to her religion, in her Affidavit dated 29th March 2000 presented to the District Court in testamentary proceedings No. 1048/99/T, she has sworn to such affidavit as a Christian. Furthermore, in her Affidavit dated 17th January 2002 (filed in the District Court of Mt. Lavinia case No. 51037), she has acknowledged that she converted her religion after her marriage to Jeganathan and giving birth to a child in 1998. She has also admitted that she (the Appellant) was baptized and that she acquired the Christian name "Mary". In view of these admissions, if I were to quote from the submissions of learned Counsel for the Respondent, "*what more does one need to establish that the Appellant is a Catholic*"?

20) Furthermore, it is unnecessary under such circumstances to examine and conclude on whether the Appellant's conduct amounted to formally renouncing her faith in Islam and whether she thereafter remained an atheist or whether she converted into Christianity / Catholicism. That is because she herself has introduced herself to be a Christian / Catholic. In my view, this Court must take her word for it. When the Appellant herself has introduced herself on multiple occasions as a Christian / Catholic, and has been very emphatic that she is a Muslim Catholic (specifically stating her Muslim ethnicity and Catholic religion), one must necessarily assume that she did so, because she had renounced her faith in the Unity of God and the messenger-ship of Holy Prophet Mohamed (those being admittedly the fundamental features of belief in Islam), while retaining her ethnic identity of being a Muslim. However, venturing into any of these aspects are not necessary, since either to facilitate her marriage with Jeganathan or for other reasons, she appears so evidently to have divorced herself from her faith in Islam (thereby becoming an Apostate), and developed faith in Christianity / Catholicism, presumably by accepting that Jesus Christ is the son of God and the Saviour.

21) The afore-stated core features of being a person of Islamic faith is said to be augmented by other beliefs such as the beliefs in (i) the oneness of God (the almighty Allah), (ii) the existence of Angels who serve God, (iii) the Holy Quran containing the final and preserved revelation, (iv) Prophets who guide humanity, (v) all humans being resurrected and judged by God, and thereby being fated to either paradise or hell, and (vi) everything happening according to God's will and knowledge, though humans are responsible for their choices.

22) Similarly, the core features of faith in Christianity / Catholicism is said to be augmented by additional beliefs in the (i) Holy Trinity, (ii) incarnation of Jesus Christ, (iii) seven Sacraments as channels of God's grace, (iv) Holy Bible and sacred traditions interpreted through the teaching authority of the Church, (v) Salvation being achieved through God's grace, faith in Christ, and cooperation with that grace through good work and participation in the sacraments, (vi) Communion of Saints, (vii) moral teachings including the ten Commandments, and (viii) Eschatology.

23) I would add that my attention has not been drawn by either Counsel to a requirement contained in local written law as to what amounts to being a person of either the Islamic faith or the Catholic faith. Nor has the examination of the

written law revealed such existence. Understandably, that is not a matter to be regulated by written law and is a matter for religious theoreticians and preachers and not for Judges. Possibly, legal recognition can be accorded to what amounts to being a Christian / Catholic or a person of Islamic faith and what amounts to renouncing faith in Christianity / Catholicism or in Islam, by considering principles contained in the applicable unwritten – common law. I refrain from venturing into that matter, as it is not necessary to do so for the purpose of adjudicating this Appeal. That is due to the availability of the Appellant’s own admissions that she is a Muslim Catholic (of Muslim ethnicity and Catholic religion).

- 24) Though some amount of debate took place before this Court as to what amounts to leaving the Islamic faith, I must emphasize that it is immaterial as to whether or not such requirements were fulfilled by the Appellant. That is because, she herself has admitted that she is a Muslim Catholic. It is necessary to add that, whether any one or more of the features listed in the preceding paragraphs have been satisfied, is not necessary, due to the afore-stated admissions made by the Appellant, in order to determine whether the Appellant had left the Islamic Faith and become a Catholic.
- 25) Furthermore, for the same reason, I shall not venture into arriving at a finding on whether to renounce faith in Islam, it is necessary to engage in any overt act of renunciation. That must be left to be decided by this Court in an appropriate case.
- 26) The Appellant’s position appears to be that, when making statements claiming that she is a Catholic, she lied (though she has not specifically admitted that she uttered falsehood), since her children attended Catholic schools (St. Peters’ College and Holy Family Convent). In my view, that explanation is totally unacceptable to this Court, as what she professed to the police on several occasions, to a court of law (in unrelated proceedings) and to the District Court of Mt. Lavinia (in the related testamentary proceedings) on the one hand and the schools to which her children attended to on the other hand, have nothing to do with each other. Furthermore, if the Appellant did in fact profess lies before courts of law, it would amount to a serious offence which takes the form of perjury. Thus, I must take into account the admissions made by the Appellant that she is a Muslim Catholic.

27) **Conclusions reached on the evidence** - Therefore, I conclude that based on the earlier mentioned admissions made by the Appellant, the Respondent has on a balance of probabilities successfully established that as at the time of Safina's death, the Appellant had left the Islamic faith and had converted into Catholicism.

28) **Intestate succession under Muslim Law** - It did not appear to be in dispute, and I too am of the opinion that, as quite rightly observed by both the learned Judges of the High Court of Civil Appeals and the District Court, the intestate succession of the estate of deceased Safina is governed by provisions of the Muslim Intestate Succession Ordinance, No. 10 of 1931. As held by Chief Justice Sharvananda in *Ghouse v. Ghouse*, [(1988) 1 Sri L.R. 25], the Muslim Intestate Succession Ordinance is a special law dealing with the rules relating to Muslim Intestate Succession. Muslim law specifies as to who can or cannot inherit property of a deceased Muslim and to what proportion etc. Further, it has been held by Chief Justice Sharvananda (*supra*) that the Muslim Intestate Succession Ordinance is a special law. Thus, to me, it is clear that the provisions of the Muslim Intestate Succession Ordinance shall prevail over the provisions of the Matrimonial Rights and Inheritance Ordinance, No. 15 of 1876, which is the general law of this country governing intestate succession (*'generalia specialibus non derogant'*). Furthermore, that the Muslim Intestate Succession Ordinance was enacted after the enactment of the Matrimonial Rights and Inheritance Ordinance is another factor to be taken into consideration.

29) Section 2 of the Muslim Intestate Succession Ordinance provides as follows:

*"It is hereby declared that **the law applicable to the intestacy of any deceased Muslim** who at the time of his death was domiciled in Sri Lanka or was the owner of any immovable property in Sri Lanka shall be **the Muslim law governing the sect to which such deceased Muslim belonged.**"*

30) Thus, section 2 of the Muslim Intestate Succession Ordinance declares the applicability of the '*Muslim law governing the sect to which a deceased Muslim belonged*' with regard to the intestacy of the deceased Muslim person, in instances where he had been domiciled in Sri Lanka or was the owner of any immovable property in Sri Lanka. It is not in dispute that Safina was a Muslim and belonged to the Shafi sect. It is also not in dispute that she was domiciled in Sri Lanka and was the owner of immovable property situated in Sri Lanka (though the satisfaction of one of those requirements with regard to domicile and location of

property in Sri Lanka would be sufficient to attract section 2 of the Ordinance). Thus, there is no doubt regarding the applicability of the Muslim Intestate Succession Ordinance to the determination of this Appeal. Accordingly, it would be the Muslim law of the sect to which Safina had belonged, that would apply to the intestacy of her estate.

31) The position of learned President's Counsel for the Appellant (in addition to his fundamental position that, throughout the period relevant to this matter, the Appellant had remained a person of Islamic faith) was that, the question of Islamic faith related only to the deceased person, and is not a relevant factor as regards to persons to whom the deceased Muslim person's estate would be inherited. In other words, the submission of learned President's Counsel was that, irrespective of the religion of the Appellant, she should be entitled to inherit property from the estate of Safina, and the Muslim personal law (unwritten Muslim personal law) on inheritance would be applicable only for the purpose of determining the share of the property to be inherited. Thus, he submitted that, while the Respondent should be entitled to receive 2/3rds of the estate of Safina, the Appellant should be entitled to 1/3rd of Safina's estate.

32) In order to determine the soundness of that submission, I must consider the applicability of the term '*the Muslim law governing the sect to which such deceased Muslim belonged*' contained in section 2 of the Muslim Intestate Succession Ordinance. As stated previously, it is not in dispute that deceased Safina belonged to the *Shafie* sub-sect (*Madhab*) of the *Sunni* sect (*Mazhab*) of the Islamic faith. In any event, as held by Justice Vythialingam in *Ummul Marzoonah v. Samad* (79 NLR 209), this Court in the absence of specific evidence to the contrary, can presume that Safina belonged to the *Shafie* sub-sect. Therefore, inheritance of the estate of Safina will be regulated by the principles contained in the Muslim Law relating to the *Shafie* sub-sect. Those principles are not part of the written law (black letter of the law) of this country, and is contained in the body of the 'unwritten law', which forms a part of the body of common law of this country (personal to members of the Muslim ethnicity - Islamic faith), and more particularly classified as the 'Muslim personal law', which is both a religious and personal law. Thus, since Safina was a Muslim (more specifically a person of Muslim ethnicity and Islamic faith), it is the Muslim personal law pertaining to the sect to which Safina belonged, that will govern the intestate succession of her estate. Accordingly, section 2 requires importation of the applicable Muslim personal law and its

application for the purpose of determining the distribution of the deceased person's (Safina's) estate.

- 33) In these circumstances, the issue to be determined is whether according to Shafie Muslim law (*Sharia'at law* also referred to as *Sharia law*) on intestacy, an adult person of non-Islamic faith (such as the Appellant) who is a child of a deceased woman of Islamic faith (Safina) is entitled to inherit from the estate of such deceased woman, in the context of the deceased woman not having executed a Will and therefore having died intestate.
- 34) My understanding is that Hanafi, Shafie, Maliki and Hanbali schools of jurisprudence come under the broad tradition of 'Sunni Islam'. Thus, it would be necessary to consider the Sunni Muslim law applicable to members of the Shafie sub-sect.
- 35) It is widely accepted that the Holy Quran is the primary source of Islamic Law (*Sharia'at Law - Muslim law*). Verses 11, 12 and 176 of Chapter 4 titled "*Surah An-Nisa*" of the Quran stipulates rules pertaining to intestate succession (*Llm al-fara'id*). However, it appears on a plain reading of Chapter 4, that the Quran itself does not explicitly prohibit a non-Muslim from inheriting from the estate of a Muslim. It is well accepted that while the Holy Quran is the primary source (foundational text) of Islamic law, it is not the only source. Additionally, *Sunnah / Hadith* (traditions and practices of the Prophet Muhammad), *Ijma* (consensus among Islamic scholars), and *Qiyas* (analogical reasoning arising out of applying existing principles to new situations) are also well-recognized as sources of Islamic law.
- 36) The exclusions on intestate succession appears to be primarily based on the recorded preachings of Prophet Muhammad (*Hadith*).
- 37) Erudite jurist Justice M.T. Akbar, [onetime Judge of the Supreme Court and Solicitor General and in his capacity as an 'official member' of the Legislative Assembly, functioned as the Chairman of the Select Committee (1930) of the Legislative Assembly (Parliament) that drafted the 'Muslim Law (Amendment) Bill' which was later transformed by the Legislative Assembly into the 'Muslim Intestate Succession Ordinance' of 1931], contributing an article to the Ceylon Law Recorder (Volume I - 1919) under the title "*Muhammadan Law of Intestate*

Succession” to which my brother Justice A.H.M.D. Nawaz most generously drew my attention to, has expressed the following views:

“ ... exclusion of heirs from inheritance is of two kinds, namely, total or partial.

Under the Muhammedan Law there are several causes which may operate to prevent a person from inheriting the Estate or a share in the Estate of a deceased person, which prohibitions will hold good in Ceylon.

The first and foremost cause for total exclusion is Kufr, or a non-belief in the Islamic faith. In other words, if a Muhammedan dies leaving an heir who does not profess the Moslem faith, he will get nothing.

This is one of the cardinal rules of the Muhammedan Law of succession and there is no doubt that it will be followed in Ceylon. The opposite rule is also followed in the Muhammedan Law, namely, that a Moslem cannot inherit from a non-Moslem (except where the non-Moslem is a woman). Kufr means a denial of one of two things, namely a denial of the unity of God or of the Prophet’s messengership. Therefore, according to this rule, Muhammedans belonging to the various different sects cannot be excluded on the ground of Kufr.”

38) Syed Ameer Ali (distinguished author and onetime Member of the Judicial Committee of the Privy Council) in the last book that he authored prior to his demise on *“Mahommedan Law”*, 5th Edition (1929), Thacker, Spink & CO, Calcutta, India, at pages 87 – 88 discussing ‘Causes of Exclusion from Inheritance’ focusing on ‘Total Exclusions’ has provided as follows:

“Under the Musulman Law several causes debar a person from succeeding to the estate of the propositus notwithstanding that he may stand to the deceased in the relation of an inheriting kinsman.

The first is difference of faith technically called kufr (infidelity). Kufr means the denial of the unity of God (wahdaniyet) and Mohammed’s Messengership (risalat), the two cardinal principles on which Islam is founded. Every person who acknowledges the Divine Unity and the Messengership of the Arabian Prophet is regarded as within the pale of Islam; nothing more is required. Those, however, who deny these cardinal principles are considered beyond the benefit of its rules. Accordingly, when a person dies leaving an heir who by birth or apostasy is a “denier”, i.e. repudiates God’s Unity and Mohammed’s Ministry, such heir would be excluded from succession in preference to another who does accept those doctrines. Consequently, those who profess a different faith from Islam have no title to the inheritance of a deceased Musulman. So that if a Musulman die leaving behind him an heir who does not profess the Islamic faith, he is debarred from

inheriting, even though he be nearest to the deceased. For example, if a man die leaving behind him a son who is a non-Moslem, and a grandson who is a Moslem, the son would be evicted from the succession, and the grandson would take the inheritance to the absolute exclusion of his father."

39) In "*The Muslim Law of Inheritance*" by Al-Haj Mahomed Ullah ibn S. Jung, (1934), S. Sultan, Law Publisher, Allahabad India, Chapter XI, Section IX, at page 222 contains the following dicta:

"An apostate cannot inherit from anybody, neither from a Muslim nor from another apostate like himself; similarly, a woman apostate cannot inherit; but if the whole of the city has been apostatized, in that case they would inherit inter-se among themselves."

40) M.S. Jaldeen on "*The Muslim Law of Succession, Inheritance & Waqf in Sri Lanka*", 1st Publication (1993), Federation of Assemblies of Muslim Youth in Sri Lanka (FAMYS), discussing 'Rules of Succession' and under that subject 'Rules of Exclusion' (at page 167) has opined that certain categories of persons are excluded from inheriting, although they may be heirs and otherwise entitled to succeed. He has said that these impediments or disabilities are personal in nature and constitute the grounds for exclusion from inheritance. According to the author, Muslim law recognizes the following as grounds for exclusion: (i) Doctrine of Exclusion (or *Hujub*), (ii) Homicide, (iii) Illegitimacy, (iv) Slavery and (v) Differences of religion.

Under the 5th ground, he has cited the following quotation from the Minhaj:

"An infidel cannot succeed to the estate of a Moslem, nor vice versa. An apostate cannot inherit nor be inherited from. Infidels inherit among themselves, whatever their respective religions may be; but between infidel subjects of a Moslem prince and infidels not so subject there is no right of inheritance."

Explaining the doctrine, the learned author has stated that a Muslim cannot inherit from a person who is a non-Muslim and vice versa. A corollary of this rule would be that an heir competent to inherit would be disbarred from such inheritance if he becomes a *Murtadd* (an apostate – a person who abandons or renounces the faith).

41) In *“Mohammadan Law of Inheritance and Rights and Relations affecting it – Sunni Doctrine”* by Almaric Rumsey, 3rd Edition (1994), Sang-E-Meel Publications, India, at page 184, has expressed the following view:

“Generally, an infidel (a person not of the Moohummudan religion) cannot inherit from a believer (a person professing that religion), nor, on the other hand, can a believer inherit from an infidel; but infidel subjects of a Mussulman state (or, as elsewhere stated, infidels generally), can inherit from one another. And, it is immaterial, for such a purpose, whether they be of the same religion or not; all unbelievers being considered as of one class. On the other hand, an apostate infidel has no claim to inherit from an infidel residing in the Mussulman territory. ...

An apostate, stands in many respects, on a different footing from other infidels. Neither a male nor a female apostate can inherit from a believer; nor can either of them inherit from another apostate, except when the people of a whole district become apostates together, in which case they inherit among themselves.”

42) In *“Muslim Law of Succession – A Guide”* by Sri Lankan author A.H.G. Ameen, 2nd Edition (2012), Al-Ameen Publishers, in the Chapter on ‘Exclusion from Inheritance (Al-Hajb and Al-Hirman)’ at page 95, it is stated as follows:

“Change of religion will immediately prevent inheritance (Mirath) subject to certain conditions. Holy Prophet said, ‘A Muslim cannot inherit an unbeliever and an unbeliever will not inherit a believer’. The majority of Muslim jurists are of the opinion that a Muslim will not inherit from his deceased relative who happens to be a non-Muslim and vice versa. Supposing a Muslim husband dies leaving behind his non-Muslim wife, she will not inherit him, but she will be entitled through wasiyyah, Last-Will which will not be more than one-third of the net estate. Some jurists say that the share must not be more than the share of her co-Muslim wives of the deceased husband.”

43) Erudite and much respected jurist in *Shari’at Law*, Justice Dr. Saleem Marsoof, PC contributing an article to the Meezan (2025), Law Students’ Muslim Majlis, Sri Lanka Law College, under the topic *“The Muslim Law of Succession applicable in Sri Lanka”* has expressed the following view:

“ ... generally speaking, there could be several impediments to inheritance under the Sharia’at law, namely, (1) slavery, which is no longer important, (2) nationality, which is diminishing in importance due to the phenomenon of globalization that has engulfed the whole world, (3) differences of religion, which ironically are becoming more and more acute, (4) homicide, which is a common

problem everywhere, and (5) illegitimacy, which even in modern times remains a major cause for concern.

...

The repeal in 1931 of the First Title of the Mohammedan Code of 1806 and the introduction in its place into our legal system the Muslim law or Sharia'at law relating to intestate succession as provided in section 2 of the Muslim Intestate Succession Ordinance has ensured the application of the principles laid down in the Holy Quran and the Sunnah (traditions) of the Prophet of Islam in a very pure form. While this is very salutary, it is unfortunate that the same cannot be said of testamentary succession. ..."

- 44) The foregoing series of pronouncements reveals clearly that, according to Muslim law (*Sharia'at law*) on intestate succession, a person who is not (or no longer) of the Islamic faith cannot inherit from the estate of a deceased person of Islamic faith. That must be taken as the law applicable to Safina's estate.
- 45) **Application of the law** - Thus, the question to be answered is whether the Appellant (who had left the Islamic faith and become a Catholic at the time of Safina's death) is entitled to inherit property from the estate of Safina and if so, what amount of Safina's estate would she be entitled to? In view of the status of the applicable law and the conclusions reached on the evidence, I have no hesitation in answering the question in favour of the Respondent. It is my view that, according to applicable Islamic law on intestate succession, the Appellant would not be entitled to inherit any part of the estate of her mother Safina, due to her leaving the Islamic faith. In other words, the Respondent shall be the sole heir to the estate of his mother Safina.

Outcome of the Appeal

- 46) In view of the foregoing conclusions reached, I answer the questions of law in respect of which Leave to Appeal had been granted in the following manner:
- a) *The learned Judges of the High Court of Civil Appeals have not misdirected themselves in coming to the finding that the Appellant had left the Islamic faith.*
 - b) *The learned Judges of the High Court of Civil Appeals have not erred in law and facts in coming to the finding that the Appellant had converted to Catholicism.*
 - c) *The learned Judges of the High Court of Civil Appeals have not erred in arriving at the finding that the Appellant is not entitled to inherit from the estate of the deceased mother.*

47) Therefore, this Appeal is dismissed.

Orders of Court

48) The learned District Judge of the District Court of Mt. Lavinia is directed to issue Letters of Administration as prayed for by the Petitioner before that Court (Respondent before the Supreme Court) - Mohamed Osman Sufiyan.

49) I must hasten to add that, the finding contained in this Judgment should not be viewed as a judicial finding which infringes upon Article 10 of the Constitution that confers a fundamental right on all persons to exercise the freedom of religion, including the freedom to have or to adopt a religion or belief of his choice. Furthermore, it is necessary to note that the voluntary conversion from one religious-belief to another religious belief does not contravene the law and is a component of the fundamental right recognized by Article 10. Thus, the Appellant had such right, which she so evidently has exercised at or about the time of her marriage to Jeganathan, a gentleman of Tamil ethnicity and Catholic faith. She has exercised that choice, for which she should not be penalized. However, she has done so at her own peril of facing consequences arising out of the application of the Muslim personal and religious law applicable to the estate of her mother. That is founded upon her mother's religion. In that regard, it would be pertinent to be reminded of Article 16(1) of the Constitution, which provides that, all existing written and unwritten law shall be valid and operative, notwithstanding any inconsistency with fundamental rights enshrined in Chapter III of the Constitution. By conversion from Islamic faith to Catholicism, regrettably though, the Appellant has lost her entitlement to inherit from her mother's estate, since intestate succession of her mother's estate is in terms of section 2 of the Muslim Intestate Succession Ordinance, governed by Muslim law applicable to her mother's faith, that being the *Sharia'at law*.

Postscript

Prophet Muhammad has emphasized on kindness and benevolence many a times in his teachings, one example of which is exemplified by the following quotation: *"Every act of kindness is charity. A part of kindness is that you offer your brother a cheerful face and you pour some water from your bucket into his water vessel."* [From Book 14, **Hadith 304**] This highlights that even small gestures of goodwill towards a sibling is valued as an act of charity. It is also said that the Prophet consistently preached

that kindness strengthens family bonds, urging believers to treat relatives with mercy, generosity, and respect. Thus, it is to be seen whether, following the enforcement of this Judgment, the Respondent being a person of Islamic faith, who will inherit the entire estate of his mother, would engage in a voluntary charitable gesture of magnanimity, by gifting a share of that estate to his sister, the Appellant.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court

Justice Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court