

# **HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

**C.P No.S-753 of 2025**

[Faisal Ali Khan and others vs. Asif Ali Khan and others]

Petitioners by : Mr. Shanker Lal Meghwar advocate

Respondents by : Nemo

Date of Hearing : **26.01.2026**

Date of Decision : **26.01.2026**

## **O R D E R**

**ARBAB ALI HAKRO, J:-** The petitioners have invoked the constitutional jurisdiction of this Court to challenge the Order dated 25.11.2025<sup>1</sup>, in Civil Revision Application No.145 of 2024, whereby the revision was dismissed and the Order dated 31.08.2024<sup>2</sup>, passed on an application under Order XXI, read with Section 151 C.P.C was maintained.

2. The material facts, necessary for the present determination, reveal that the petitioners instituted F.C Suit No.212 of 2001, seeking a declaration, possession, mesne profits, permanent injunction and cancellation of a sale deed in respect of the properties left by deceased Hashim Ali Khan. The suit was decreed as prayed through Judgment dated 22.09.2010 and decree dated 29.09.2010. The appellate forum, seized of Civil Appeal No.301 of 2010, maintained the decree vide Judgment dated 08.09.2011 and decree dated 12.09.2011. The decree thus attained finality. The petitioners thereafter filed an execution application bearing No.17 of 2011, which was allowed on 14.11.2011. Subsequently, they moved an application under Order XXI, read with Section 151, C.P.C., seeking mesne profits in terms of the decree. That application was initially allowed on 30.10.2023. The Judgment debtors challenged the said Order before the appellate Court, which allowed the revision and remanded the matter to the Executing Court. The petitioners have already questioned the remand order before this Court

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<sup>1</sup> passed by the learned V-Additional District Judge, Hyderabad (available on Page-23)

<sup>2</sup> of the learned 1st Senior Civil Judge/Executing Court (available on Page-51)

in C.P. No.S-454 of 2025, wherein notices have been issued, and the matter remains pending adjudication. Despite the pendency of the said constitutional petition, the learned Executing Court dismissed the petitioners' application afresh on 31.08.2024, and the learned Appellate Court, by the impugned Order dated 25.11.2025, affirmed the dismissal.

3. Learned counsel for the petitioners contends that both Courts below failed to appreciate that the suit had been decreed as prayed, and therefore the relief of mesne profits stood granted. It is argued that the impugned orders suffer from misreading and non-reading of the original Judgment and decree, which have already attained finality. On this premise, the petitioners seek an order of interference from this Court.

4. Heard learned counsel for the petitioners at considerable length and examined the material placed on record.

5. The petitioners have approached this Court under Article 199 of the Constitution, seeking interference with the concurrent orders passed by the Executing Court on 31.08.2024 and the Revisional Court on 25.11.2025. Both Courts below have declined the petitioners' plea for recovery of mesne profits in execution of the decree arising out of F.C. Suit No.212 of 2001. The factual background, the nature of the decree and the procedural history have already been detailed in the impugned orders and need not be reproduced in extenso. The question of determination is whether the petitioners have demonstrated any jurisdictional defect, perversity, or misapplication of law warranting interference in constitutional jurisdiction.

6. The record reveals that the suit filed by the petitioners was decreed by the Trial Court "as prayed." That decree was carried in appeal by the Judgment-debtors through Civil Appeal No.301 of 2010. The appellate Court, after examining the evidence and the nature of possession, came to the categorical conclusion that the plaintiffs were "not entitled to mesne profits" because the defendants were not trespassers or wrongful occupiers, but co-sharers in joint property. The appellate Court expressly held that the

plaintiffs' entitlement extended only to their respective shares in the inheritance, and not to any monetary claim for mesne profits. The appellate Judgment dated 08.09.2011, followed by the decree dated 12.09.2011, thus modified the Trial Court's decree to the extent of mesne profits and declined that relief.

7. It is an admitted position that the petitioners never challenged the appellate Judgment before any higher forum. No second appeal, no constitutional petition, and no review was filed against the appellate findings. The decree, as modified by the appellate Court, therefore attained finality long ago. Once a decree has merged into the appellate Judgment, the operative part of the decree is the one emerging from the appellate forum, not the original decree of the Trial Court. This principle is too well-settled to require elaboration.

8. The petitioners nevertheless sought to revive the claim of mesne profits through an application under Order XXI read with Section 151, C.P.C, before the Executing Court. The Executing Court initially passed an order on 30.10.2023, which was later challenged by the judgment-debtors in Civil Revision No. 13 of 2024. The Revisional Court, through its Order dated 02.07.2024, set aside the Executing Court's Order and remanded the matter with a clear direction that the Executing Court must decide the applications strictly in the light of the appellate Judgment dated 08.09.2011. The Revisional Court also observed that the Executing Court had overlooked the appellate Court's explicit finding that mesne profits were not payable.

9. Upon remand, the Executing Court reconsidered the matter and, by Order dated 31.08.2024, dismissed the petitioners' application for mesne profits. The Executing Court held that it could not grant a relief which had already been declined by the appellate Court. The Revisional Court, seized of Civil Revision No.145 of 2024, examined the matter afresh and affirmed the Executing Court's Order through the impugned Order dated 25.11.2025. Both Courts below have proceeded on the foundational principle that an

Executing Court cannot go behind the decree, nor can it enlarge or vary the terms of a decree which has attained finality.

10. Learned counsel for the petitioners attempted to argue that the appellate Court had mistakenly referred to “prayer clause B” instead of “prayer clause C” and therefore the finding regarding mesne profits should not be treated as a refusal of that relief. This argument, however, does not withstand scrutiny. The appellate Court’s reasoning is unambiguous; it declined to award mesne profits because the defendants were co-sharers and not in wrongful possession. Whether the appellate Court referred to clause B or C is immaterial when the substance of the finding is clear and categorical. Courts interpret judgments by their reasoning, not by clerical labels. A mere mis-description of a prayer clause cannot dilute or undo a conscious judicial determination.

11. It is equally significant that the petitioners themselves have repeatedly acknowledged that the appellate Judgment has attained finality. Once that is so, the petitioners cannot, through execution proceedings, seek to enforce a relief which the appellate Court has expressly refused. The doctrine of merger, the finality of appellate findings, and the limited jurisdiction of an Executing Court all converge to the same conclusion; the petitioners’ claim for mesne profits is no longer open for adjudication.

12. The scope of constitutional jurisdiction is supervisory, not appellate. This Court does not reappraise evidence nor substitute its own view for that of the subordinate Courts unless the impugned orders suffer from patent illegality, jurisdictional defect or perversity. The petitioners have been unable to point out any such infirmity. Both Courts below have truly applied the appellate Judgment and have acted strictly within the bounds of their jurisdiction. No misreading, non-reading or misconstruction of the record has been demonstrated. The petitioners’ grievance is, in essence, an attempt to reopen relief that was finally declined by the appellate Court more than a decade ago.

13. In these circumstances, no case for interference is made out. The impugned orders are well-reasoned, consistent with the decree as modified by the appellate Court, and do not call for constitutional correction. Accordingly, this petition stands **dismissed in limine**. No order as to costs.

**JUDGE**

Sajjad Ali Jessar