

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.S-480 of 2025

[*Shoaib v. Province of Sindh and 20 others*]

Petitioner by : Barrister Jawad Ahmed Qureshi, Advocate
Respondent No.8 by : Mr.Aqeel Ahmed Siddiqui, Advocate
Respondents No.10, 18 to 21 by : Mr.Kashif Hussain Agha, Advocate
Respondent No.11 by : Mr.Muhammad Afzal Meo Rajput, Advocate
: Mr.Muhammad Ismail Bhutto, Additional
A.G Sindh
Date of Hearing & Decision : **16.02.2026**
Date of Reasons : **26.02.2026**

ORDER

ARBAB ALI HAKRO, J:- The petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, calling into question the Order dated 30.04.2025 passed by the Revisional Court¹, whereby the revisional Court upheld the Order dated 14.01.2025 of the trial Court². The impugned Order affirmed the trial Court's decision allowing an application under Section 151, C.P.C., filed by respondent No.8 seeking sealing of the suit properties and directing the Nazir to undertake further steps in continuation of the compromise-based preliminary decree.

2. The record reflects that respondent No.8 instituted F.C. Suit No.963 of 2019 seeking declaration, possession, partition, mesne profits, settlement of accounts and injunctive relief against the petitioner and other family members. The suit pertained to various immovable properties allegedly forming part of the estate of late Raees Khan, as well as certain commercial assets acquired jointly by the parties.

3. During the pendency of the suit, the parties filed a joint compromise application under Order XXIII Rule 3 C.P.C., which was accepted by the

¹ III-Additional District Judge, Hyderabad, in Civil Revision Application No.16 of 2025

² 1st Senior Civil Judge, Hyderabad

learned IV-Senior Civil Judge vide Order dated 19.07.2023, followed by the preparation of a compromise preliminary decree dated 25.07.2023. The compromise delineated the status of several properties, provided for partition or auction where necessary, and acknowledged the entitlement of respondent No. 8 to rental income from certain assets.

4. Subsequent disputes arose regarding the implementation of the compromise. Respondent No.8 filed an application under Section 151 C.P.C. seeking directions for the deposit of income generated from the "King Club" and other properties and for sealing of the suit properties due to alleged non-compliance by the defendants.

5. The trial Court, through its detailed Order dated 14.01.2025, allowed the application, appointed the Nazir as Commissioner and issued extensive directions for verification of title, collection of accounts, inspection of properties, determination of partitionability and steps toward private or public auction where required.

6. Aggrieved, the petitioner challenged the said Order through Civil Revision No.16 of 2025. The revisional Court, however, dismissed the revision, holding that the trial Court had rightly exercised its inherent jurisdiction under Section 151 C.P.C. and powers under Order XX Rule 18 C.P.C. in aid of converting the preliminary decree into a final decree.

7. Learned counsel for the petitioner contended that once the compromise was accepted and the suit stood disposed of, the trial Court became *functus officio* and could not entertain or decide an application under Section 151 C.P.C. He argued that the compromise did not contain any direction authorising the Nazir to undertake post-decree proceedings, nor did it constitute a "preliminary decree" in the legal sense. He submitted that any grievance regarding a breach of the compromise terms could only be agitated by a fresh suit, not by execution-like proceedings. Counsel further argued that the revisional Court failed to appreciate that no execution application under Order XXI Rule 11 C.P.C. was ever filed, rendering the impugned directions without jurisdiction. Learned counsel for the petitioner

further submitted that the conduct of the trial court in entertaining and allowing the application under Section 151, C.P.C. on 14.01.2025 stands in stark contradiction to its own earlier view expressed in the Order dated 27.05.2024, wherein the same court had dismissed an application under Order XXI Rule 68 read with Section 151, C.P.C. filed by the plaintiff. In that earlier order, the trial court had categorically held that execution of a decree must be sought through a formal execution application under Order XXI Rule 11 C.P.C, and that without such an application, the request for attachment or ancillary relief merits no consideration. He contended that the subsequent departure from this view in the order dated 14.01.2025 is not only inconsistent but also legally untenable. He maintained that the orders suffer from misreading, non-reading and contradictions, including incorrect assumptions regarding the nature of the suit and the scope of the compromise. In support of his contentions, he has relied on case law reported as **2009 SCMR 1268 and an unreported Order dated 22.4.2024, passed in R.A No. 190 of 2022.**

8. Learned counsel for respondent No.8 supported the impugned orders, submitting that the compromise itself contemplated continued supervision of the Court, including partition, auction and settlement of accounts. He argued that the petitioner, having consented to the compromise, is estopped from challenging the procedural steps necessary to translate the preliminary decree into a final decree. He maintained that the defendants had failed to deposit the rental income and had obstructed the implementation of the compromise, necessitating the trial Court's intervention under Section 151 C.P.C. to prevent abuse of process and to safeguard the rights of all co-sharers.

9. Learned Advocates appearing for respondents No.10, 18 to 21 and Respondent No.11 contended that the compromise decree is binding on all parties and that the trial Court merely facilitated its implementation. He argued that the petitioner's objections are an afterthought intended to delay

partition and the distribution of income. They relied upon case law reported as **PLD 2022 Sindh 423.**

10. Learned A.A.G. representing the official respondents submitted that the impugned orders do not prejudice the government functionaries, who are only required to effect mutation or correction of revenue entries in accordance with the compromise decree and subsequent directions of the Court. He supported the view that the trial Court acted within its jurisdiction to ensure proper implementation of the decree.

11. I have heard the learned counsel for the parties at considerable length and have carefully examined the material placed on record as well as the case law relied upon.

12. The petitioner's principal contention is that the trial Court became functus officio upon disposal of the suit and could not thereafter proceed to issue directions for sealing of properties, appointment of Nazir, collection of accounts, or steps toward partition or auction. This argument, though presented with emphasis, does not withstand judicial scrutiny when examined in the context of the nature of the decree passed, the statutory scheme of Order XX Rule 18 C.P.C., and the terms of the compromise itself. The compromise order expressly directed that a **preliminary decree** be prepared in accordance with the agreed terms. The decree so prepared on 25.07.2023 unmistakably bears the character of a preliminary decree, as it determines the rights and shares of the parties but leaves the actual division, separation and distribution of properties to be undertaken through further proceedings.

13. A preliminary decree, by its very nature, does not exhaust the jurisdiction of the Court. It merely crystallises the rights of the parties and requires subsequent steps for its working out. The Code of Civil Procedure, in its architecture, contemplates a two-stage adjudication in partition matters: first, the declaration of shares through a preliminary decree; second, the actual division or sale through a final decree. Order XX Rule 18, C.P.C. explicitly empowers the Court to pass a preliminary decree and thereafter

proceed toward a final decree, which may involve appointment of a commissioner, inspection of properties, ascertainment of partition-ability, and, where necessary, auction. The trial Court's Order dated 14.01.2025 is entirely consistent with this statutory framework.

14. The petitioner's argument that the compromise decree was not a "preliminary decree" in the legal sense is contradicted by the record. The compromise order itself directed preparation of a preliminary decree, and the decree prepared on 25.07.2023 is titled "Compromise Preliminary Decree." The petitioner and respondent No.9 not only participated in the compromise but also affirmed its contents before the Court. The decree contains multiple clauses expressly requiring future action by the Court, including partition, auction, mutation and settlement of rent accounts. These features are hallmarks of a preliminary decree.

15. The contention that the trial Court became *functus officio* is therefore misconceived. A Court becomes *functus officio* only after it has fully and finally adjudicated the *lis* and nothing remains to be done. In a partition suit culminating in a preliminary decree, the *lis* does not conclude; rather, it transitions into the second stage of proceedings. The Court retains jurisdiction to supervise the execution of the decree until a final decree is drawn up. The revisional Court correctly observed that execution of a preliminary decree is not possible and that the Court must proceed toward a final decree through further steps, including appointment of a commissioner.

16. The petitioner's reliance on the principle that a compromise is akin to a contract and breach thereof gives rise to a fresh cause of action is misplaced in the present factual matrix. While this principle may apply where a compromise decree is purely declaratory or self-executing, it does not apply where the compromise itself contemplates further judicial supervision and implementation. The compromise in this case expressly envisaged partition, auction, mutation and payment of rent through Court intervention. It is therefore not a self-executing compromise but one requiring judicial machinery for its

enforcement. The trial Court was thus justified in invoking Section 151, C.P.C., to ensure that the compromise decree does not become illusory.

17. The petitioner further argued that no execution application under Order XXI Rule 11, C.P.C., was filed and therefore the trial Court lacked jurisdiction to pass any order affecting the properties. This argument again overlooks the fundamental distinction between the execution of a decree and the proceedings for converting a preliminary decree into a final decree. Execution proceedings arise only after a final decree is passed. Until then, the Court retains seisin of the matter and may exercise its inherent powers to facilitate the transition from a preliminary to a final decree. The revisional Court rightly held that Order XXI Rule 11, C.P.C., has no application at this stage.

18. The petitioner's grievance that the trial Court issued directions without jurisdiction, including sealing of properties and collection of rent, must also be examined in the context of the compromise terms. Clause 9 of the compromise decree expressly obligates defendants No.9 to 11 to pay rent to the plaintiff and authorises recovery through execution proceedings in case of non-payment. The trial Court found, on the basis of material before it, that the defendants had failed to deposit or render accounts. That intervention was necessary to prevent further income dissipation. The directions issued by the trial Court are supervisory in nature and fall squarely within the inherent jurisdiction preserved by Section 151, C.P.C.

19. The petitioner's allegation that the trial Court misread the compromise or acted in haste is not borne out by the record. The Order dated 14.01.2025 is detailed, structured, and demonstrates a careful application of the judicial mind. The trial Court meticulously set out the steps required for verification of title, ascertainment of partitionability, collection of rent and preparation of accounts. These directions are neither arbitrary nor excessive; they are necessary for the working out of the preliminary decree.

20. The revisional Court, in turn, examined the legal position and concluded that the trial Court acted within its jurisdiction. The revisional Court's reasoning is cogent and firmly anchored in settled law. No

jurisdictional defect, material irregularity, or perversity has been demonstrated that would justify interference by this Court in its constitutional jurisdiction.

21. The petitioner has also raised allegations of fraud in relation to the compromise, but such allegations were already adjudicated upon when the trial Court dismissed the application under Section 12(2), C.P.C. in *limine*. That Order is the subject of a separate revision pending before the competent forum. This Court cannot, in the present proceedings, reopen or indirectly examine issues that are sub judice elsewhere.

22. The argument advanced by learned counsel for the petitioner regarding the trial court's earlier Order dated 27.05.2024 has been examined with the care it deserves. It is correct that in the said order, the trial court dismissed an application under Order XXI Rule 68 read with Section 151, C.P.C on the ground that execution must be sought through a formal application under Order XXI Rule 11, C.P.C. However, this argument loses all legal force when viewed in the light of the subsequent Order dated 30.04.2025 passed by the learned III -Additional District Judge, Hyderabad in Civil Revision No.78/2024.

23. The revisional court, in its order, categorically held that the trial court's earlier view was erroneous, set aside the order dated 27.05.2024 and restored the application under Order XXI Rule 68 read with Section 151, C.P.C, to the file of the trial court for fresh adjudication. The revisional court further held that a preliminary decree is not executable, that Order XXI Rule 11, C.P.C., has no application at this stage, and that the appropriate course is to proceed toward a final decree through the steps contemplated under Order XX Rule 18, C.P.C., supplemented by inherent powers u/S 151, C.P.C.

24. The petitioner has not challenged the revisional court's order dated 30.04.2025. This omission is not a mere procedural lapse; it has substantive legal consequences. The revisional order has attained finality and binds the parties and the trial court. Once the revisional court declared that the trial court's earlier reasoning was erroneous and that the application under Order

XXI Rule 68 read with Section 151, C.P.C. must be decided afresh, the foundation of the petitioner's present argument collapses entirely.

25. The petitioner cannot, in these proceedings, resurrect an order that has been set-aside. Nor can he rely on reasoning that has been expressly rejected by a competent revisional court. The doctrine of merger also applies: the earlier order dated 27.05.2024 stands merged into the revisional court's order dated 30.04.2025, and it is the latter that governs the field.

26. The revisional court's order is not merely declaratory; it contains a clear finding that the trial court must proceed under Section 151, C.P.C., and Order XX Rule 18, C.P.C., to work out the preliminary decree. This finding directly supports the legality of the trial court's subsequent order dated 14.01.2025, which is impugned in the present petition. The petitioner's attempt to treat the earlier, set-aside order as a benchmark for assessing the trial court's jurisdiction is therefore legally untenable.

27. It is also significant that the revisional court's order dated 30.04.2025 was passed before the present constitutional petition was filed. The petitioner, fully aware of the revisional court's findings, chose not to challenge them. A party cannot selectively accept the beneficial portions of a judicial order while repudiating the portions that operate against it. The law does not permit such ambidextrous litigation.

28. In sum, the petitioner's reliance on the earlier order dated 27.05.2024 is misplaced, legally unsustainable, and contrary to the binding effect of the revisional court's order dated 30.04.2025. The argument is accordingly repelled.

29. The cumulative effect of the record, the statutory scheme and the judicial precedents is that the trial Court acted within its lawful authority in issuing directions necessary for the conversion of the preliminary decree into a final decree. The revisional Court committed no error in affirming such exercise of jurisdiction. The petitioner has failed to demonstrate any violation of law, excess of jurisdiction, or failure of justice warranting interference under Article 199 of the Constitution.

30. The petition is therefore devoid of merit. The impugned orders are well-reasoned, legally sustainable and do not call for constitutional intervention. Consequently, this petition is **dismissed**.

Above are the reasons for my short Order dated 16.02.2026.

JUDGE

AHSAN K. ABRO