

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Constitutional Petition No. S-316 of 2025

'Yasir Ali S/o Late Muhammad Anwar vs. Mst. Hooran and another'

Petitioner	:	Through Mr. Muhammad Ibrahim Lashari Advocate
Respondent No.1	:	Through Mr. Abdul Sattar Janvri, Advocate
Respondent No.2	:	Through Mr. Mohsin Ali Khan, Assistant Advocate General
Date of Hearing	:	14.05.2026

JUDGMENT

MUHAMMAD HASAN (AKBER) J.- The Order dated 07.08.2025 [**impugned Order**] passed by the learned Family/Civil Judge, Ghari Khairo, in Execution Application No.01/2025 has been assailed in this writ petition. The petitioner prays for dismissal of the execution application filed by Respondent No.1, on the sole ground of the demise of his father, against whom the decree was passed and therefore, according to him, the execution application has become infructuous and cannot be filed against the petitioner.

2. This petition was dismissed earlier for non-prosecution however, the same was restored to its original position by consent of learned counsel for Respondent No.1, and was also heard at length on 13.05.2026 and finally decided on 14.05.2026.

3. Heard the learned counsels for the parties, learned Assistant Advocate General and have gone through the record. To avoid repetition, the respective contention of the parties will be discussed at the relevant portions in this Order, for brevity's sake.

4. Brief facts are that Muhammad Anwar [since **deceased/ husband**] was married to Mst. Hooran [**wife**]. Matrimonial difference arose between the spouses, resulting in the filing of Family Suit No.06 of 2024 by the wife before the learned Family Judge, Ghari Khairo, for maintenance and recovery of dowry articles. The suit was duly contested by the deceased, and evidence from both parties was recorded, resulting into passing of Judgment and decree dated 27.03.2025 in wife's favour, whereby the alleged divorce was held to be ineffective; and Muhammad Anwar was directed to pay past monthly maintenance to the wife @ Rs. 3,000/- since the year 2013; along with present monthly maintenance @ Rs. 5,000/- from the date of institution of the suit till her legal entitlement. The prayer for the recovery of dowry articles was declined.

5. After the passing of the decree, Muhammad Anwar passed away. The wife filed Execution Application No.01 of 2025 for the implementation of the decree against the judgment debtors, being heirs of the deceased. On 07.08.2025, the learned Executing Court admitted the execution application and issued notices to the Judgment Debtors, including the petitioner, which has been assailed herein, by contending that he and his family members were never parties to the original family suit, and therefore they cannot be treated as Judgment Debtors, and the decree cannot be implemented against them.

6. The petitioner's contention appears to be in conflict with the provisions of section 50 CPC. which provides that where a judgment debtor dies before the decree has been fully satisfied, the execution of that against his legal representative can only be to the extent of the property of the deceased that has come to his hand and has not been duly disposed of (section 50 CPC. Section 52 CPC., as a consequence, provides that where a decree is passed against a party as the legal representative of a deceased person, and the decree is for payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property (section 52 CPC). Section 50 CPC. provides:

“50. Legal representative--- (1) Where a judgment debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been fully disposed of; and, for the purpose of ascertaining such liability, the court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.”

[emphasis added]

7. The petitioner's argument is also unsustainable in view of the ratio settled by the Honourable Supreme Court while elucidating the extent to which obligation was binding on the legal representative of a party to a contract, in the case of *'Agricultural Development Bank Of Pakistan v. Sanaullah Khan and others'* (1988 PLD Supreme Court 67), by this Court in *'Niazul Haque through Legal Heirs v. Rafi Ahmed Qureshi'* (2016 MLD 493).

8. While rejecting bank's claims, the same principle was applied by the Honourable Supreme Court in *'Summit Bank Limited through Manager v. Qasim And Co. through Muhammad Alam and another'* (2015 SCMR 1341) and in *'Muhammad Amin v. Manager, Agricultural Development Bank of Pakistan and another'* (2001 YLR 2101).

9. Such a principle was implemented even under Hindu law, by the Privy Council in *'Rao Bhim Singh v. Sher Singh and others'* (PLD 1947 Privy Council 259).

10. Admittedly, the decree was not assailed, and the same has attained finality, thus the executing court cannot go behind the decree. The petitioner, therefore, cannot be permitted to re-agitate the merits of the case at this stage in writ jurisdiction. Even otherwise, the petitioner and other legal heirs shall have every opportunity to agitate their respective contentions under the mechanism provided in CPC. before the learned

executing Court. Moreover, this writ petition, arising out of a decree passed in a family suit being a matrimonial dispute, cannot be admitted routinely, as held by the Honourable Supreme Court in '*Arif Fareed v. Bibi Sara and others*' (2023 SCMR 413), and since a short legal point was involved, the petition was restored, heard, and decided expeditiously. No case for interference under writ jurisdiction is made out; this petition was therefore dismissed on 14.05.2026 by my short order, and these are the reasons for the same.

J U D G E