

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Constitutional Petition No.S-62 of 2026

Petitioners : Mst. Jamila Wd/o Muhammad Ibrahim
Since dead through her legal heirs:
Through Mr. Santosh Kumar J. Kalal advocate

Respondents : Mst. Batool Wd/o Chotay Khan,
since deceased through her legal heirs:
Through Mr. Javed Chaudhry, Advocate

Mr. Muhammad Sharif Solangi
Assistant Advocate General for Sindh

Date of hearing & Order : 20.10.2026

ORDER

NISAR AHMED BHANBHRO, J: Through the instant petition, the petitioners have called in question the order dated 26.07.2018 (**2nd impugned order**) passed in Civil Revision Application No.8 of 2018 '*Re-Mst. Jamila and others versus Mst. Batool and others*' by the learned Additional District Judge-II, Mirpurkhas whereby the revision application was dismissed and order dated 30.04.2018 (**1st impugned order**) passed by the Court of learned 1st Senior Civil Judge, Mirpurkhas in Execution Application No.01/2017 '*Re-Mst. Batool versus Mst. Jamila and others* was maintained .

2. In nutshell, the facts of the petitioners' case are that the respondents filed S.C Suit No.07 of 1990 for Declaration, Injunction and Cancellation of Documents in the Court of learned 2nd Senior Civil Judge, Miprurkhas (**Trial Court**), which was decreed vide judgment dated 02-08-1997 and decree dated 09.08.1997. Petitioners filed Civil Appeal No.46/1997, which was dismissed vide judgment and decree dated 12-01-2004 by learned Ist

Additional District Judge, Mirpurkhas (**Appellate Court**). Thereafter, petitioners filed Civil Revision No.86/2004 before High Court of Sindh, Circuit Court Hyderabad that too was dismissed vide order dated 11-03-2014 for non-prosecution and restoration application Civil Misc. Application No.552/2014 was also dismissed on 15-12-2014. Respondents, on dismissal of revision application, filed execution application, which was allowed vide 1st impugned order and revision application maintained by the Petitioners was also dismissed vide 2nd impugned order. Hence this Writ Petition.

3. It is argued by Learned Counsel for Petitioner that Execution Application was not maintainable being time barred. It is stated that right from pendency of appeal No.46/1997 till dismissal order dated 15.12.2014 in revision application neither judgment and decree of Trial Court was suspended nor any status quo order was passed, and decree holder filed hopelessly time barred execution application on 24.03.2017 after the lapse of about 20 years, therefore, time cannot be excluded under Section 15 of Limitation Act for filing of execution application. Learned counsel further contended that the delayed execution application is not maintainable, unless any stay is operating against the judgment and decree, the limitation period for execution cannot be condoned. He further contended that under Section 48 C.P.C, time for filing of first execution application is three (03) years. He contended that decree cannot be executed, therefore execution application was liable to be dismissed. He prayed for allowing of this Petition and dismissal of the execution application by setting aside the impugned order(s).

4. Learned A.A.G, assisted by the learned counsel for the respondent No.1(iv) controverted the submissions and argued that judgment and decree were assailed in appeal and thereafter Civil Revision Application

was filed before this Court, which was decided in the year 2014, thereafter, execution application was preferred, which was within time span of three years as envisaged under Article 181 of the Limitation Act, therefore prayed for dismissal of the petition, as no illegality or infirmity was pointed out by the Petitioner in the impugned orders.

5. Heard learned counsel(s) for the parties, learned A.A.G and perused the record.

6. It transpired from the record that the suit of the Respondent No 1 was decreed vide decree dated 09.08.1997, Civil Appeal No.46/1997, was dismissed vide judgment and decree dated 12-01-2004 and thereafter Civil Revision No.86/2004 filed before this Court too was dismissed vide order dated 11-03-2014 for non-prosecution and restoration application (Civil Misc. Application No.552/2014) was also dismissed vide order dated 15-12-2014. The record further reflects that execution application was entertained by the learned Executing Court in year 2017 which was objected by the Petitioners on the ground of limitation.

7. No time frame has been provided under the Limitation Act, 1908 to get a decree executed, in absence of any specific provision for implementation of decree, the limitation shall be governed by residue Article 181 of the First Schedule of Limitation Act 1908, which provides a period of limitation of three years. The Respondent No 1 filed an application for execution in year 2017, which was within a period of three years from the date of final order in revision application.

8. Moot point involved in the present petition is whether non filing of an execution application with delay would tantamount to nullify the effects of the decree, particularly when the Decree pertained to the declaration of a right to share in the landed property and cancellation of

the Document. The Respondent No 1 sought incorporation of their share in the record of rights of landed property on the basis of the decree. Non filing of an execution application cannot in any manner nullify the decree passed by a Civil Court which remains intact and has the binding effect on the parties to the litigation. The Respondents cannot be non-suited for delay in seeking execution of decree, particularly when the parties remained under litigation until year 2014 and reason so explained for delay in filing execution application appears to be reasonable, as such respondents cannot be non suited for this score alone.

9. This view is fortified by the judgment of Honorable Supreme Court in the case of **Ali Ahmad and another Versus Muhammad Afzal and another** (1972 S C M R 322) wherein it was held that:

In support of the petition, Raja Said Akbar Khan, learned counsel for the petitioners, has contended that as the decree was not executed for six years, the Revenue authorities had no jurisdiction to sanction mutation and the Member, Board of Revenue and the other authorities were perfectly justified in refusing to do so. The contention of the learned counsel has not impressed us. A valid decree was passed in favour of respondent No. 1. He became the owner of the property on payment of the purchase price on the 26th October 1960, and became vested with right, interest and title in the land from that date. He was entitled to get the mutation effected on the basis of tile decree. Simply because it has barred by time, it has not lost its utility. In our opinion, the view of the High Court is correct that the Revenue authorities were under obligation to sanction mutation on the basis of the decree. It was next contended that the respondent has taken possession under a collusive decree from the tenants of the petitioners and that the order of the High Court is likely to affect the decision of the suit

filed by the petitioners under section 9 of the Specific Relief Act.

The apprehension of the petitioners is not well founded. The civil Court will decide the suit on its own merit. There is no force in the petition. The petition is dismissed.

10. The Petitioners had got mutated record of rights on the basis of a sale deed which was declared invalid by the competent court of law and rights of the respondents as to ownership in the property were affirmed. The revenue authority was under an obligation to revise the record of rights and to make it in consonance with the admitted facts as envisaged under section 42 of the Sindh Land Revenue Act, 1967 ("**the Act**"), which obligated the government to establish a cell in the office of the Mukhtiarkar for the purpose of preparation of record of rights. Person who acquired a right or interest in the property is required to furnish such information to the Mukhtiarkar concerned orally or in writing within a period of three months of acquiring of such right for making an entry in the record of rights. In case of a right acquired through registered sale deed the person acquiring the right or interest in the property was not required to inform the Mukhtiarkar about such acquisition but concerned Registrar was mandated to send such information to the Mukhtiarkar within a period of three months of the interest created.

11. For the determination of disputes as to the correctness of any entry in the record of rights, the revenue officer is empowered under section 44 of "the Act", to initiate inquiry of his own motion, or on the application of any party interested, to determine the entry to be made as to that matter and record his reasons therefor. If in any such dispute, the Revenue Officer is unable to satisfy himself as to which of the parties there to is in possession of any property to which the dispute relates, he shall ascertain through an inquiry for best entitlement to the property, after giving an

opportunity of hearing to all the parties to dispute and adducing evidence in support of their claims, and shall by written order direct that the person be put in possession thereof, and that entry in accordance with that order be made in the record or register which shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction. All such variations in the record of rights were subject to the provisions contained in section 45 of “the Act”, which reads as under:

45. Restriction on variations of entries in records.

Entries in a record-of-rights shall not be varied in subsequent records otherwise than by

(a) making entries in accordance with facts proved or admitted to have occurred;

(b) making such entries as are agreed to by all the parties interested therein or are supported: by a decree or order binding on those parties.

12. The entries in record of rights were not a proof of title though attached with a presumption of correctness. Section 52 of “the Act”, accentuated that the entry in the record of rights was presumed to be correct until the contrary is proved or new entry is lawfully substituted therefor, Section 52 reads as under:

52. Presumption as to correctness of the record. *An entry in a record of rights shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.*

13. Any person aggrieved of the entry in the record of rights may seek its cancellation by instituting a suit for declaration as envisaged under section 53 of “the Act”, which reads as under:

53. Suit for declaratory decrees by persons aggrieved by an entry in a record. If any person considers himself aggrieved by an entry in a record of rights as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877).

14. Bare reading of the Sections 52 and 53 of “the Act” made it vivid and clear that a mutation in the record of rights can be effected at any time by the Revenue Officer competent to revise the periodical record. Language contained in section 52 makes the intent and wisdom of legislature quite clear that an entry in record of rights is presumed to be correct until the contrary is proved or a lawful entry is substituted. “The contrary is proved” or “lawfully substituted” are self-explanatory words, suggesting that an entry in the record of rights can be altered at any time when found otherwise or not genuine. Revenue hierarchy in exercise of its revisional powers conferred under section 164 of “the Act” can pass appropriate orders regarding the entries in record of rights at any time on receiving information.

15. It is settled phenomena that rights conferred through a decree of the Court, not brought for execution, remain intact. The Petitioners have acquired an interest in the suit property and their claim of ownership has been authenticated by a Competent Court of law, therefore Revenue Officers are under obligation to incorporate such entry in the record of rights.

16. In nutshell and to sum up the discussion, provisions of “the Act” underscored that Revenue Authority was obligated to mutate the entry in record of rights upon a fact proved. The Respondent No 1 proved the

existence of a fact before a competent court of law, thus were entitled to get its fruits. Even otherwise, the learned Executing Court acted within the scope of Section 48 C.P.C in entertaining the execution application, as execution of decree sought thereof was a decree of permanent injunction and bar of limitation was expressly did not apply to such decrees.

17. For what has been discussed herein above, no illegality or infirmity has been pointed out in both the impugned orders of the Courts below warranting interference of this Court to exercise the powers of judicial review in its extra ordinary writ jurisdiction conferred under article 199 of the Constitution of Islamic Republic of Pakistan of, 1973. Consequently, the Petition fails and is hereby dismissed, along with the listed applications.

JUDGE

Approved for reporting

“Chander Kumar”