

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P No. S-719 of 2025
[Ghulam Sarwar v. Ghulam Rabani & others]

Petitioner: Ghulam Sarwar through Mr. Dileep J.Mulani, Advocate.

Respondent No.1: Ghulam Rasool through his legal heirs Mst. Amtul and others through Mr.Muhammad Awais Shaikh, Advocate.

Respondents No.2to4: Nil.

Respondents No.5&6: Through Mr. Allah Bachayo Soomro, Additional A.G. Sindh.

Date of Hearing: **09.02.2026.**

Date of Judgment: **13.02.2026.**

JUDGMENT

RIAZAT ALI SAHAR, J: - Through this Constitutional Petition, the petitioner has challenged the legality, propriety, and validity of the impugned order dated 28.11.2025 passed by the learned 8th Additional District Judge, Hyderabad in Civil Revision Application No.193/2025, whereby the revision filed by the petitioner was dismissed and maintained the order 28.10.2025 passed by learned 5th Senior Civil Judge, Hyderabad on the application under section XXI Rules 97, 99, 100 &101 CPC filed by petitioner in F.C. Suit No.244/1993 [Re-Ghulam Rabani v. Abdul Hameed], which was dismissed. The petitioner contended that the impugned orders are illegal, without lawful authority, based upon misreading and non-reading of record and have resulted in grave

miscarriage of justice; hence, the petitioner seeks following reliefs:-

- a) That this Honourable Court may be pleased to set-aside the impugned orders dated 26.05.2022 passed by the Learned District Judge Mirpurkhas in Civil Revision App No.07/2022 (Re- Mir Muhammad Vs Muhammad Usman & others).
- b) That this Honourable Court may be pleased to set-aside the order dated 05.01.2022 passed by the Learned 1st Senior Civil Judge Mirpurkhas on Civil Misc App in F.C Suit No.245/2014.
- c) Any other relief which this Honourable Court deems fit and proper in the favour of petitioner.

2. The background of the case is that the controversy stems from F.C. Suit No.244 of 1993 instituted by respondent No.1 Ghulam Rabbani (since deceased, now represented through his legal heirs) against Respondent Abdul Hameed and others, wherein he sought declaration, possession and permanent injunction in respect of a portion of Survey No.419, measuring 0.09 ghuntas (1088 sq. ft.), situated in Deh Gujo, Taluka City, Hyderabad. The Respondent No.1 asserted exclusive ownership over the said portion and alleged encroachment by the respondents/defendants. Upon contest by respondents, the learned trial Court framed issues regarding maintainability, possession, ownership and entitlement to relief. After recording evidence of the parties, the suit was decreed on 30.10.1997 and decree was drawn on 04.11.1997, whereby the Respondent No.1/plaintiff was declared owner and entitled to possession of the decreed area measuring 1088 sq. ft.

3. Subsequently, execution proceedings were initiated by the decree-holder for delivery of possession of the decreetal property. During the pendency of execution, the present petitioner, Ghulam Sarwar, claiming to be a bona fide purchaser of plot Nos.80 and 81 measuring 2200 sq. ft. carved out of Survey

No.419, filed objections under Order XXI Rules 97, 99, 100 and 101 CPC. His claim was based on a chain of transactions: an alleged registered declaration of gift dated 15.04.1993 in favour of Respondent No.4 Muhammad Aslam by the original owners (defendants in the suit), followed by a registered sale deed dated 07.08.2003 executed by said Muhammad Aslam in favour of the petitioner. The petitioner stated that he was neither a party to the original suit nor bound by the decree and that the property sought to be taken in execution was distinct from the decreetal property.

4. The record, however, reflects that prior to filing the objections under Order XXI CPC, the petitioner had also filed an application under Section 12 (2) CPC seeking to set aside the judgment and decree dated 04.11.1997 on grounds of fraud and misrepresentation. The said application was dismissed by the learned Vth Senior Civil Judge, Hyderabad, vide order dated 03.07.2025, holding that the decree had been passed after full-fledged trial and that the petitioner's purchase was subsequent to the decree, hence subject to the rights of the decree-holder. Thereafter, the petitioner filed objections under Order XXI Rules 97, 99, 100 and 101 CPC, which were dismissed on 28.10.2025 on the ground that the objections were frivolous, repetitive and intended to delay execution. The learned Executing Court further observed that clerical errors in earlier writs of possession had already been rectified vide order dated 24.08.2024, clarifying that execution would strictly be confined to the decreed area of 1088 sq. ft. only. The petitioner's Civil Revision Application No.193/2025 was also dismissed by the learned 8th Additional District Judge, Hyderabad, on 28.11.2025, maintaining that the Executing Court had committed no illegality or material irregularity. Aggrieved thereby, the petitioner invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

5. Learned counsel for the petitioner contended that the petitioner is a bona fide purchaser for value through a registered sale deed dated 07.08.2003 and is in independent possession of Plot Nos.80 and 81 measuring 2200 sq. ft., carved out of Survey No.419. He contended that the petitioner was neither a party to F.C. Suit No.244/1993 nor a representative of the judgment-debtors and therefore, cannot be dispossessed without proper adjudication of his independent rights under Order XXI Rules 97, 99, 100 and 101 CPC. He contended that the decree pertains only to 1088 sq. ft. (0.09 ghuntas), whereas through manipulation in subsequent writs of possession, a larger area was sought to be delivered, affecting the petitioner's property. Learned counsel further contended that the executing Court failed to frame issues, record evidence or conduct an inquiry as mandated by law and dismissed the application mechanically by terming it frivolous. He also contended that neither the gift deed of 1993 nor the subsequent sale deed in favour of the petitioner was ever challenged in the original suit. According to him, both the Executing Court and the Revisional Court failed to exercise jurisdiction vested in them and passed orders contrary to law, facts and principles of natural justice, thereby causing serious miscarriage of justice. In support of his contentions, learned counsel has relied upon the cases reported in 1989 MLD 1955 Karachi, 2008 PLD 230 Lahore, 2019 YLR 943 Peshawar and 2021 CLC 746 Peshawar.

6. Conversely, learned counsel for the legal heirs of deceased respondent No.1 supported the impugned orders and contends that the decree dated 04.11.1997 has attained finality after full-fledged trial and cannot be frustrated by subsequent transactions. He contended that the petitioner admittedly derives title through respondents/defendants who were bound by the

decree; hence, any transfer made after the decree is hit by the doctrine that a decree prevails over subsequent alienations. He contended that the petitioner had earlier filed an application under Section 12 (2) CPC on identical grounds, which was dismissed on merits and the present application under Order X XI CPC was merely another attempt to delay execution. Learned counsel further contended that the Executing Court has already clarified that possession is to be delivered strictly in respect of 1088 sq. ft. only and no material has been produced by the petitioner to establish that any excess area is being taken. According to learned counsel, the repeated applications filed by the petitioner amount to abuse of process of law and are intended to deprive the decree-holder of the fruits of a decree which has remained unexecuted for decades.

7. Learned A.A.G., Sindh, while supporting the impugned orders submitted that the constitutional jurisdiction of this Court is not to be invoked where concurrent findings of fact have been recorded by the courts below without any jurisdictional defect or patent illegality. He contended that the petitioner has failed to demonstrate any violation of law or misreading of evidence warranting interference under Article 199 of the Constitution. He further contended that the matter pertains to execution of a valid decree and the petitioner's remedy, if any, lies within the parameters of civil law already exhausted by him.

8. I have considered the submissions advanced by learned counsel for the parties and have gone through the material available on record with their assistance.

9. The crucial question for determination is whether the learned Executing Court and the learned Revisional Court committed any illegality, material irregularity or jurisdictional error in dismissing the petitioner's objections under Order X XI

Rules 97, 99, 100 and 101 CPC. The record obviously demonstrates that the decree dated 04.11.1997 was passed after full-fledged trial in F.C. Suit No.244/1993. The rights of the decree-holder over the decreetal property measuring 1088 sq. ft. were conclusively determined therein. The petitioner was not a party to the original proceedings; however, his own case is that he purchased the property through a registered sale deed dated 07.08.2003 from respondent No.3 Muhammad Aslam, who allegedly acquired title through a gift in April 1993 from defendants of the suit. Significantly, the decree in favour of the respondent No.1/plaintiff was passed in November 1997 and it is not disputed that the defendants in the suit were bound by the decree. Any subsequent alienation by them or by persons claiming through them cannot defeat or override the rights preserved under a valid decree. It is a settled principle that ***a transferee pendente lite***¹ or subsequent purchaser steps into the shoes of his vendor and remains bound by the outcome of the litigation. The learned Executing Court has already clarified, vide order dated 24.08.2024, that execution shall strictly be confined to the decreed area of 1088 sq. ft. and not beyond. This order has attained finality and has not been challenged. The petitioner has failed to produce any cogent material demonstrating that the execution proceedings travel beyond the decreetal property. Bare allegations of excess delivery of possession, without substantiation, are insufficient to invoke constitutional jurisdiction.

10. Moreover, prior to filing objections under Order XXI CPC, the petitioner availed the remedy under Section 12 (2) CPC seeking to set aside the decree on grounds of fraud and misrepresentation. The said application was dismissed through a

¹ A *transferee pendente lite* is a person who acquires ownership or interest in a property while a lawsuit (litigation) regarding that specific property is already pending in court. Rooted in the legal doctrine of *lis pendens* (Section 52 of the Transfer of Property Act), this transferee is bound by the final court decree, meaning they "sink or swim" with the original owner's legal outcome, even if they bought it in good faith.

detailed order dated 03.07.2025, wherein it was categorically held that the decree was validly passed and did not suffer from any jurisdictional defect. Instead of challenging that order before a competent forum, the petitioner filed another application under Order XXI Rules 97, 99, 100 and 101 CPC on substantially similar grounds. The Executing Court, after considering the matter, found the objections to be repetitive and devoid of substance. The Revisional Court independently examined the record and concurred with the Executing Court, observing that the petitioner had failed to attract the ingredients of Order XXI Rules 97, 99, 100 and 101 CPC.

11. The scope of interference under Article 199 of the Constitution is limited. This Court does not sit as a Court of Appeal over concurrent findings of fact unless there is patent illegality, misreading or non-reading of evidence or assumption or refusal of jurisdiction. In the present case, both the courts below have given reasons for dismissing the petitioner's applications. It cannot be said that they have acted without jurisdiction or in excess thereof. The findings recorded are based on the admitted sequence of events, particularly the fact that the petitioner's purchase is subsequent to the decree and that he derives title from persons bound by it. The conduct of the petitioner, as reflected from the record, shows repeated attempts to obstruct the execution proceedings of a decree which has remained pending for nearly three decades. The law does not permit a decree-holder to be deprived indefinitely of the fruits of his decree through successive and unmeritorious applications. The Executing Court is bound to ensure that execution is carried out strictly in accordance with the decree and in the present case adequate clarification has already been issued to confine execution to the decreed area only. More so, it is also pertinent to clarify that the respondent No.1 in his F.C. Suit No.244/1993 sought declaration that he is lawfully

and exclusively owner of the portion of Survey No.419 admeasuring 0-09 ghuntas situated in Deh Gujo Taluka Hyderabad and respondent No.4 Aslam Shaikh may be ordered to vacate the portion of survey No.419 and deliver its possession to him. The petitioner is claiming to have purchased plots from said respondent No.4 Aslam Shaikh, against whom the Suit filed by the respondent No.1 had been decreed as prayed, as such, the principle that "***a transferee pendente lite***" is fully applicable in the instant case.² The case law relied by the learned counsel are distinguishable with the facts and circumstances of the present petition.

12. In view of the facts, circumstances and discussion, I am of the considered opinion that the petitioner has failed to establish any illegality, material irregularity or jurisdictional defect in the impugned orders dated 28.10.2025 and 28.11.2025 passed by the learned Vth Senior Civil Judge, Hyderabad and the learned 8th Additional District Judge, Hyderabad, respectively. The concurrent findings recorded by the courts below do not call for interference in constitutional jurisdiction. Accordingly, this Constitution Petition is **dismissed** with no order as to costs.

13. Let the R&Ps of the Courts below be returned forthwith.

JUDGE

Abdullah Channa/PS

² Section 52 of the Transfer of Property Act, 1882. **Transfer of property pending suit relating thereto.** Transfer of property pending suit relating thereto. During the [pendency] in any Court having authority in [Pakistan], or established beyond the limits of [Pakistan] by [the 'Federal Government, [any] suit or proceeding [which is not collusive and] in which any right to immovable property is directly and Specifically in question, the property cannot be transferred to otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.