

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No. S-49 of 2025

[Mst. Zohra Iqbal through legal heirs v. VIth Additional District Judge & others]

Petitioner : Mst. Zohra Iqbal since dead through her legal heirs Nadeem Khan and others through Mr. Muhammad Noman Jaffar, Advocate.

Respondents No.1&2 : Formal party.

Respondent No.3 : Nemo.

Applicant/Intervener : Iftikhar Ahmed through Mr. Aqeel Ahmed Siddiqui, Advocate.

Date of Hearing : **23.02.2026**

Date of Judgment : **02.03.2026**

JUDGMENT

RIAZAT ALI SAHAR. J. - The petitioner has filed the instant Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. The background of this case is that the petitioners are legal heirs of late Mst. Zohra Iqbal, who became owner of property bearing City Survey No.2318/1, 2 and 3 (now amalgamated into City Survey No.2318/2), measuring 388 square yards, Ward-D, Hyderabad, through a registered Gift Deed dated 18.05.1987. The original tenant, Abdul Razzaque, had been depositing rent since 1980. After issuance of notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 (SRPO), ejectment proceedings were initiated through Rent Application No.119 of 1990, which ultimately culminated in an order dated 18.08.2004 directing eviction of the tenant within 30 days. The said order was

maintained up to appellate forum and execution proceedings (Rent Execution No.05 of 2005) were allowed on 14.04.2006 with direction for issuance of writ of possession.

3. During pendency of execution, multiple litigations were initiated by the tenant's brother Abdul Sattar and subsequently by Iftikhar Ahmed, claiming title through a registered sale deed. Applications under Section 12 (2) CPC and other proceedings were filed but ultimately dismissed up to appellate stages. Legal heirs of both parties were brought on record and on 03.10.2023 a fresh writ of possession was issued in favour of the petitioners. When bailiff attempted execution on 13.10.2023, Iftikhar Ahmed obstructed delivery of possession, asserting that no room existed on the property and claiming ownership. Though his application under Section 151 CPC was dismissed by the Rent Controller on 16.11.2023, the Executing Court simultaneously declared Rent Execution Application No.05 of 2005 as infructuous. The First Rent Appeal No.72 of 2024 was dismissed by the learned VIth Additional District Judge, Hyderabad on 28.10.2024, holding that the impugned order was interim and not appealable under Section 21 SRPO, hence, this Constitutional Petition.

4. During pendency of instant petition, one Iftikhar Ahmed filed an application under Order I Rule 10 read with Section 151 CPC seeking impleadment as respondent on the ground that he had purchased the subject property through a registered sale deed from Abdul Sattar and was in possession. He alleged concealment of facts by the petitioners and pendency of related litigation before this Court. The application was opposed on the ground that he was a stranger to rent proceedings and had no *locus standi* in execution. The Executing Court dismissed the impleadment application, holding that a third party claiming independent title cannot be joined in rent execution proceedings, particularly when prior applications under Section 12 (2) CPC had already been dismissed and attained finality.

5. Pursuant to order dated 27.03.2025 passed in the instant petition, the learned Commissioner visited the site on 11.04.2025 in presence of legal heirs of petitioner, Iftikhar Ahmed, Mukhtiarkar/City Survey Officer, Assistant Director SBCA and SHO PS City Hyderabad. The Commissioner reported that:

- (a) The property measuring 388.6 sq. yards (C.S. No.2318/2) stands entered in city survey record in favour of legal heirs of deceased Mst. Zohra Iqbal (entry dated 26.04.2023).
- (b) The site is presently an open plot without boundary wall.
- (c) Two RCC-constructed shops exist on a portion of the plot.
- (d) SBCA confirmed no permission/NOC was issued for construction of said shops.
- (e) Iftikhar Ahmed claimed possession of both shops and open plot.
- (f) Fifteen photographs were annexed confirming factual position.

Thus, the land remains recorded in petitioners' names, construction is unauthorized and possession is presently with Iftikhar Ahmed.

6. Learned counsel contended that the Executing Court exercised jurisdiction not vested in it by declaring execution infructuous without satisfaction of decree. He contended that under Section 22 SRPO, all questions arising in execution must be decided by the Rent Controller and fresh suit is barred. He contended that the decree was for eviction of demised premises forming part of the property and subsequent demolition cannot defeat execution. He also contended that the Executing Court cannot go behind or beyond the decree and the appellate Court erred in treating the impugned order as interim despite it conclusively terminating execution proceedings. He further contended that rights under Articles 23 and 24 of the Constitution

protect lawful ownership and possession and obstruction by a stranger cannot nullify a valid decree.

7. Learned counsel for applicant/intervener Iftikhar Ahmed contended that he is a *bona fide* purchaser through registered sale deed and mutation entries. He contended that the original structure no longer exists and the decree was confined to one room, not an open plot. He contended that subsequent developments and demolition rendered execution impossible. He further contended that parallel litigation regarding title is pending before this Court and execution after lapse of long time is inequitable. According to him, execution against a third party without adjudication of title would violate principles of natural justice.

8. Heard and perused the record.

9. The core question before this Court is whether the Executing Court was justified in declaring Rent Execution Application No.05 of 2005 infructuous and whether the appellate Court rightly dismissed the appeal as non-maintainable. The Executing Court dismissed the application filed by applicant/intervener Iftikhar under Section 151 CPC but simultaneously observed that the ejectment decree pertained to “one room on ground floor”; Bailiff’s report indicated no such structure existed; instead, open plot was found; Iftikhar claimed possession through registered sale deed; since decree related to demised premises and not open land and subsequent developments (sale deed and demolition) had occurred, execution proceedings were declared infructuous. The appellate Court dismissed First Rent Appeal No.72 of 2024 holding that the Appeal under Section 21 SRPO lies only against final orders, not interim orders; Order dated 16.11.2023 was passed on application under Section 151 CPC and it was treated as interim in nature and not deciding the case finally, therefore, appeal was held not maintainable.

10. The record reflects that ejectment order dated 18.08.2004 attained finality up to appellate stages. Execution was allowed on 14.04.2006 directing delivery of possession of demised premises forming part of City Survey No.2318/1,2,3 (now 2318/2). Numerous challenges under Section 12 (2) CPC were dismissed. Legal heirs were duly substituted and fresh writ of possession was issued on 03.10.2023. The Executing Court dismissed the obstructionist's application but illogically declared execution infructuous on the ground that the room no longer existed. This reasoning is legally unsustainable. **It is settled principle that Executing Court cannot go behind the decree nor refuse execution on account of subsequent events unless decree becomes in-executable in law.** Demolition of structure by judgment-debtor or third party cannot defeat decree-holder's vested right. The decree related to demised premises forming part of identifiable survey property measuring 388 sq. yards. The Commissioner's report conclusively establishes that the land subsists, remains recorded in petitioners' names and unauthorized construction exists thereon in possession of Iftikhar Ahmed. **Section 22 SRPO¹ mandates that all questions arising between parties relating to execution shall be determined by the Controller.** The Executing Court had jurisdiction to adjudicate resistance or obstruction but not to terminate execution without satisfaction of decree; however, declaration of execution as infructuous effectively amounts to refusal to execute decree, which is a final determination affecting valuable rights.

11. In my humble opinion, the appellate Court erred in treating the order as interim without going into the roots and conclusion of the matter. An order which conclusively terminates execution proceedings and deprives decree-holder of fruits of decree is final in nature and appealable under Section 21 SRPO. The appellate Court failed to exercise jurisdiction vested in it and misapplied the test of "interim order". Furthermore, the plea of

¹ Section 47 CPC. Questions to be determined by the Court executing decree.

bona fide purchaser cannot override final ejectment decree, particularly when earlier proceedings under Section 12 (2) CPC have failed and city survey record supports petitioners' ownership. Questions of independent title, if any, are subject to separate adjudication but cannot stall execution of rent decree. Moreover, Commissioner's findings negate contention that property ceased to exist; rather, only structural alteration had occurred.

12. For what has been discussed above, the order dated 16.11.2023 passed by learned Senior Civil Judge-II / Rent Controller, Hyderabad, declaring Rent Execution Application No.05 of 2005 as infructuous is declared without lawful authority and is, therefore, **set aside**. Consequently, judgment dated 28.10.2024 passed by learned VIth Additional District Judge, Hyderabad in First Rent Appeal No.72 of 2024 is also **set aside**. Resultantly, **Rent Execution Application No.05 of 2005 is remanded to the Executing Court with direction to decide the same strictly in accordance with law, to adjudicate objections (if any) under Section 22 SRPO and to proceed towards satisfaction of decree, including demarcation through competent revenue authority, if necessary and removal of unlawful obstruction. The Executing Court shall conclude proceedings expeditiously, preferably within forty five (45) days.**

13. Instant petition stands **allowed** in the above terms. The pending application also stands disposed of accordingly.

JUDGE

Abdullah Channa/PS