

THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1409 of 2026

[Dost Muhammad (deceased) through his Legal heirs v. Province of Sindh and others]

Before:

Justice Arbab Ali Hakro

Justice Muhammad Osman Ali Hadi

Petitioner by : Mr. Jawad Hussain Rajper, Advocate

Date of Hearing : 02.09.2026

Date of decision : 02.09.2026

ORDER

ARBAB ALI HAKRO, J. – Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners seek a declaration that the official respondents are bound to mutate the Foti Khata and issue a sale certificate in their names in respect of land bearing Survey Nos.392, 393, 473 and 477, admeasuring 8-36 acres, situated in Deh Luqman, Taluka and District Khairpur. A consequential direction has also been sought against the Sub-Registrar to receive and register the sale deed.

2. The relevant facts, stated briefly, are that respondents Nos. 6 and 7 instituted F.C. Suit No. 02 of 2024 against, amongst others, the predecessor of the petitioners. The suit was disposed of by a compromise decree dated 22.06.2024. Under the terms of the compromise, private defendant No. 5 agreed to execute a registered sale deed in favour of the plaintiffs in respect of the aforementioned land, with 6-00 acres to plaintiff No. 1 and 2-36 acres to plaintiff No. 2. It was further stipulated that the land would be officially demarcated and that the compromise decree would be executable if either party failed to fulfil its obligations.

3. Upon non-compliance with the decree, the decree-holders initiated Execution Application No.11 of 2024. By order dated 15.10.2024, the learned Senior Civil Judge-III, Khairpur, directed judgment-debtor No.3 to issue the sale certificate in the name of defendant/judgment-debtor No.5 for execution of the registered sale deed, and directed the competent survey and revenue officials to demarcate the land. The petitioners, claiming through the

deceased judgment-debtor, now seek mutation of the inheritance entry and the issuance of the sale certificate directly in their own names.

4. Learned counsel for the petitioners contends that, after the death of their predecessor-in-interest, the revenue authorities were legally bound to mutate the Foti Khata and issue the sale certificate in the names of his legal heirs. According to learned counsel, despite repeated approaches and the notification issued by the Board of Revenue for expeditious disposal of revenue grievances, the official respondents have failed to discharge their statutory duties. It is further argued that, in the absence of an appeal against the execution order, the petitioners have no adequate or efficacious remedy except the invocation of the constitutional jurisdiction of this Court

5. We have heard learned counsel for the petitioners and, with his assistance, have perused the material on the record.

6. The first and foremost requirement for the issuance of a constitutional direction in mandamus is the existence of a clear, subsisting and enforceable legal right in the person seeking the direction, coupled with a corresponding statutory duty resting upon the public functionary. Constitutional jurisdiction is ordinarily invoked to enforce an established right, not to determine or create a right that is itself uncertain or dependent on the adjudication of disputed facts. In Special Secretary-II (Law & Order), Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa and others¹, the Supreme Court reiterated that proceedings under Article 199 are meant for enforcement, rather than establishment, of a legal right and that disputed questions requiring a detailed factual inquiry are not amenable to constitutional jurisdiction. The same principles were earlier recognized².

7. On the touchstone set out above, the petitioners have failed to demonstrate an unqualified right to the relief claimed. The revenue report placed on record states that, according to Entry No.16 of VF-VII-A, the land stands entered in the names of Ameer Bux and Gaman, whereas Entry

¹ Special Secretary-II (Law & Order), Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa and others v. Fayyaz Dawar (2023 SCMR 1442)

² In Asadullah Mangi and others v. Pakistan International Airlines Corporation (2005 SCMR 445), Col. Shah Sadiq v. Muhammad Ashiq and others (2006 SCMR 276), Fida Hussain and another v. Mst. Saiqa and others (2011 SCMR 1990) and Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others (2011 SCMR 1813)

No.07 of VF-VII-B, dated 14.03.2007, records Dost Muhammad as a possession holder. Thus, the record relied upon by the petitioners does not, on its face, establish an undisputed proprietary title in their predecessor. Whether the petitioners are entitled to inheritance mutation, in what shares, and with what legal effect upon the existing revenue entries are matters for examination by the competent revenue authority after notice to all persons whose recorded rights may be affected. These questions cannot be conclusively determined in summary constitutional proceedings.

8. There is another fundamental impediment. The compromise decree dated 22.06.2024 has neither been challenged nor shown to have been varied or set aside. The petitioners, therefore, claim to step into the deceased judgment-debtor's position, subject to the decree and its lawful execution. The decree and the order dated 15.10.2024 contemplate the issuance of the sale certificate in the name of defendant/judgment-debtor No.5 for the specific purpose of executing the registered sale deed in favour of the decree-holders. In contrast, the petitioners ask this Court to direct the issuance of the certificate in their own names, without first obtaining an appropriate order from the court seized of the execution proceedings. Acceptance of such a prayer would have the effect of introducing a new mode of performance and altering the operative arrangement embodied in the subsisting compromise decree.

9. An executing court is required to execute the decree according to its tenor and cannot travel beyond, rewrite or materially vary its terms. Nor can a party indirectly achieve, through constitutional jurisdiction, what it has not sought from the court supervising execution. The legal heirs of a deceased judgment-debtor may bring the subsequent event before the Executing Court and seek such procedural or consequential directions as are permissible under the Code of Civil Procedure, 1908. However, it is not the function of this Court under Article 199 to parallel the execution proceedings or prescribe a different mode for satisfaction of the decree. The principle that the final decree in the hierarchy is the decree enforceable in execution has

also been recognized by the Supreme Court in Sahabzadi Meharunisa and another³.

10. The contention that no remedy is available against the execution order is equally misconceived. The petitioners are not, in substance, seeking to set aside the order dated 15.10.2024. Rather, they seek to implement the decree by a course different from the one already directed. Any difficulty arising from the death of a judgment-debtor, mutation of succession, substitution of legal representatives, or the execution of the conveyance is integrally connected with the execution, discharge, or satisfaction of the decree and must first be placed before the Executing Court. The mere assertion that no appeal lies against a particular interlocutory order does not convert constitutional jurisdiction into a substitute for the jurisdiction lawfully vested in the civil court.

11. The notification issued by the Board of Revenue also does not advance the petitioners' case to the extent urged. It provides an administrative mechanism for recording and forwarding complaints relating to mutations, inheritance entries, sale certificates and demarcation, followed by disposal on merits after affording an opportunity of hearing and observing the prescribed formalities. It does not dispense with scrutiny of the revenue record, establish title in favour of an applicant, or authorize mutation to the prejudice of recorded persons without due process. The petitioners may avail that mechanism, but no writ can be issued commanding the revenue authorities to record a particular mutation or issue a certificate in a predetermined manner before completion of the inquiry contemplated by law.

12. The extraordinary jurisdiction of this Court is discretionary and is not intended to provide a solitary remedy for every grievance, even when an appropriate statutory or judicial forum exists. The doctrine of exhaustion requires a litigant ordinarily to pursue the remedy already provided by law before seeking constitutional intervention. In Jameel Qadir and another⁴, the Supreme Court emphasized that writ jurisdiction cannot be treated as the

³ Sahabzadi Meharunisa and another v. Mst. Ghulam Sughran (PLD 2016 SC 358)

⁴ Jameel Qadir and another v. Government of Balochistan and others (2023 SCMR 1919)

sole avenue for ventilating every alleged deprivation where controversy falls within the competence of another forum.

13. In the present case, the compromise decree remains intact; execution proceedings are stated to be pending; the revenue record does not disclose an admitted title in favour of the petitioners' predecessor; the rights of recorded persons may be affected, and the questions of inheritance mutation and the appropriate manner of executing the decree require consideration by the respective competent forums. No patent want of jurisdiction, unlawful refusal to exercise jurisdiction, or infringement of a presently established fundamental right has been demonstrated. Constitutional interference at this stage would, therefore, be premature and risk overlapping with the proceedings before the Executing Court.

14. For the foregoing reasons, the petition is misconceived and not maintainable in its present form. It is accordingly dismissed in limine, along with any pending application, if any, with no order as to costs. The petitioners shall, however, be at liberty to approach the learned Executing Court regarding substitution, the effect of the death of the judgment-debtor and the lawful mode of satisfaction of the compromise decree, and may also pursue their application for inheritance mutation before the competent revenue authority. Any such proceedings shall be decided independently, strictly in accordance with law, after notice to all persons likely to be affected, without being prejudiced by observations in this order beyond the question of maintainability of the present petition.

JUDGE

JUDGE

Naveed Ali