

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.**

R.A. No.13 of 1998

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

For hearing of CMA No.109/1998.
For hearing of main case.

25-09-2023

Mr. Parkash Kumar advocate for the applicant.

This revision application is pending since 1998.

A Suit for declaration and permanent injunction was filed, being Civil Suit No.120/1988, as it was plaintiff's case therein that some part of his leased land was encroached by the defendant/respondent. After recording evidence, the wisdom of the parties prevailed and the parties compromised, and an application to such an extent was signed, which was allowed by court. The parties then again came to a dispute of overlapping the land in question, and consequently, an execution application was filed. The execution application was dismissed, and so also appeal of the appellant/ applicant on the count that it was only a declaratory decree. I have perused the compromise application, and in fact, it is not just a declaratory decree; it seeks a demarcation of the boundary line between plots No.35, 38 and 36, 39. Plots No.35, 38 belongs to plaintiff/applicant, and plots No.36 and 39 belongs to the defendant, and the "boundary wall" is to be erected in presence of the competent authority, that is Hyderabad Municipal Corporation, which is executant of the leases in favor of the respective parties. Why that part of the decree has not been given affect by the executing court, it is not explained in the two orders below. When I have inquired Mr. Parkash Kumar as to the status of the construction raised by the respondents, he informed that now a plaza has already been constructed and is operational. The additional land, which according to Mr. Parkash, has been overlapped, cannot be taken back, in view of the construction already made. He,

however, submits that he would exhaust the remedy available to him under the law but the two orders passed by two forums below, i.e., the executing court and the appellate court, are not lawful in the sense that decree was not only declaratory decree but a portion of it is likely to be executed by the executing court to the extent of raising boundary wall. Hence, in view of the above, two orders impugned in this revision application are set-aside, whereas the execution application is restored, and the executing court to see if such process of demarcation could still be carried out and if it is so, to what extent.

At this stage, Mr. Parkash submits that if it could not be demarcated and/or wall could not be erected, then the applicant/plaintiff be left to exhaust the remedy to claim damages if the land has been usurped by the builder. No such declaration is required from this court; if the land is trespassed/ overlapped by the adjacent owner, the consequences would follow but subject to law.

The revision application is allowed in the above terms.

J U D G E

Irfan Ali