

# IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

**Mr. Justice Muhammad Iqbal Kalhoro**  
**Mr. Justice Dr.Syed Fiaz Ul Hassan Shah**

Ist Appeal No.150 of 2025

*Habib Ahmed*

*Vs.*

*Syed Mansoor Ahmed & 2 others*

APPELLANT : Through Mr. Muhammad Nazir Tanoli,  
Advocate

RESPONDENTS : None is present on their behalf.

Date of Hearing : 07.11.2025

Date of Order : 07.11.2025

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## **ORDER**

**DR. SYED FIAZ UL HASSAN SHAH, J :--** The Appellant has challenged the Order dated 18.09.2025 (**impugned Order**) passed by the learned IIIrd Additional District Judge, Karachi Central (the **Executing Court**), whereby an application under Section 47, Code of Civil Procedure filed by the appellant/intervener in Execution Application No.03 of 2016 emanating from Summary Suit No.01 of 2016 was dismissed.

2. Briefly, the facts as stated in the plaint of suit are that the appellant has filed a suit seeking specific performance of contract, recovery of mesne profits and permanent injunction against respondent No.2, which was ex-parte decreed through Judgment

and Decree dated 29.01.2015. Thereafter, the appellant filed execution application, which was allowed. However, the Nazir was directed to perform his lawful duty as per the judgment and decree dated 29.01.2015. Sale Deed was executed in favour of the appellant through Registered No.12122 on 29.12.2015. Subsequently, an application under Section 12(2) CPC was filed by the intervenor Syed Muhammad Irfan Hussain and the same, being meritless, was dismissed vide order dated 22.09.2016 by the learned VI-Senior Civil Judge, Karachi East. Being aggrieved with the aforesaid order, respondent No.2 Adnan Ahmed preferred a Civil Revision No.105 of 2016, which was allowed vide order dated 25.02.2017 by the learned IX-Additional District Judge, Karachi East, whereby, the order dated 22.09.2016 was set aside and the parties were directed to produce their evidence on the issues framed thereby. Thereafter, the matter for deciding the application under Section 12(2) CPC read with Order IX Rule 13 and Section 151 CPC filed by the respondent No.2 was proceeded and such application was, being meritless, was dismissed alongwith all pending application having been infructuous by learned IIIrd Senior Civil Judge, Karachi East, hence this appeal.

3. Learned counsel appearing on behalf of the appellant while reiterating the aforesaid facts has vehemently argued that the impugned judgment and decree have been passed by the learned trial Court without applying its judicious mind; that the trial Court

has failed to appreciate the theme and spirit of section 47 CPC which provides that all the questions relating to discharge, satisfaction of decree shall be determined by the executing Court and no separate suit shall lie, in the present case, as the subject property was ordered to be taken over by the Nazir and to be auctioned vide order dated 08.02.2018; that learned trial Court has failed to appreciate the spirit of section 47 CPC which provides that the application under section 47 CPC may be treated as suit and/or suit as proceeding as provided under section 47(2) CPC. Per learned counsel, learned trial Court has also failed to appreciate that the subject property situated within the jurisdiction of District East Karachi cannot be auctioned by the District Courts Karachi Central rather decree has to be transferred to District East Karachi and/or precept is to be issued as provided under section 46 CPC, hence all proceeding before the learned trial Court, being coram non-judice are liable to be set aside.

4. We have considered the arguments advanced by the learned counsel for the appellant and minutely perused the record.

5. We do not find any merits in the contention of the learned Counsel for the Appellant that the Executing Court cannot dismiss application under section 47 CPC without deciding the point of controversy and title of the Appellant. Section 47 of the Code empowers the executing court to decide all questions arising between the parties to the suit relating to the execution, discharge, or satisfaction of

the decree. However, this provision does not authorize the court to revisit or alter the rights and obligations already determined by the decree. The jurisdiction under Section 47 is confined to post-decree matters and does not extend to modifying the decree itself.

6. A "decree" is defined under Section 2(2) of the Code as the formal expression of an adjudication which conclusively determines the rights of the parties with respect to all or any of the matters in controversy in the suit. A decree may be either preliminary or final. Similarly, a "decree-holder" is defined under Section 2(3) as any person in whose favour a decree has been passed or an order capable of execution has been made. The mechanism for the execution of decrees is comprehensively provided under Sections 36 to 47 of the Code of Civil Procedure, 1908, read with the provisions of Order XXI. It is a well-settled proposition of law that an executing court cannot travel beyond the scope of the decree. It is a cardinal principle of execution jurisprudence that a decree must be executed in the spirit of its express terms and not in derogation thereof. Any deviation from the decree's language or intent would amount to judicial overreach and undermine the finality of adjudication. The court is bound to execute the decree strictly in accordance with its terms and has no jurisdiction to expand or modify its scope. This principle was authoritatively affirmed by the Hon'ble Supreme Court in **ALLAH DITTA v. FEDERATION OF PAKISTAN (2003 SCMR 1202)**, wherein it was held that the executing court cannot question the correctness of the decree or entertain objections that would alter its substance. The executing court may refer to the judgment to ascertain whether the property brought for execution

actually belongs to the judgment-debtor. However, it cannot adjudicate upon disputes of title or ownership that would effectively modify the decree. Such inquiries fall outside the jurisdiction of the executing court and must be resolved through independent proceedings. This principle is further supported by the precedent laid down in **PROVINCE OF PUNJAB THROUGH COLLECTOR, BAHAWALPUR v. GHULAM RASOOL AND OTHERS** (1990 SCMR 1106).

7. Undoubtedly, Sub-section (2) of Section 47 of the Code of Civil Procedure, 1908, confers jurisdiction upon the executing court to treat an execution petition as a suit or a suit as an execution petition. Where a suit itself is to be treated as an execution petition, the court may proceed accordingly with exception of question of limitation or jurisdiction. This view finds support in judicial precedent. In **BROKEN HILL PROPRIETARY COMPANY LIMITED v. GHEE CORPORATION OF PAKISTAN** (2001 CLC 707), the High Court of Sindh held that the executing court, subject to objections as to limitation and jurisdiction, is empowered to treat proceedings under Section 47 CPC as a suit or vice versa. Similarly, in **MANZOOR ILAHI THROUGH LEGAL REPRESENTATIVES v. CH. MUHAMMAD AKBAR AND OTHERS** (1999 MLD 901), the Court held that where a pre-emption suit was decreed on the basis of compromise including land beyond the subject matter of the suit, the decree relating to the original suit land could be executed by the executing court, while the decree concerning the additional land could be enforced by treating the execution petition as a suit.

8. The expression “court executing the decree” under Section 47 of the Code of Civil Procedure (CPC) refers to the court that is seized of an application for execution initiated by the decree holder. Although the term is not explicitly defined in the CPC, its interpretation must be broad and purposive and it must avoid any narrow or artificial construction. Section 47 embodies a salutary principle that all questions concerning the execution, discharge, or satisfaction of a decree—arising between the parties to the original suit—must be adjudicated within the execution proceedings, rather than through a separate suit. The jurisdiction of the executing court under Section 47 is not contingent upon the pendency of an execution application by the decree holder. These questions must be determined by the executing court alone, reinforcing the comprehensive scope of Section 47 CPC. A judgment debtor may independently raise issues related to execution, discharge, or satisfaction of the decree, provided such issues arise between parties to the suit or their representatives and not otherwise.

9. In light of the foregoing discussion, the observations and findings of the learned Executing Court recorded in the impugned order are found to be factually and legally correct. Section 47 of the Code of Civil Procedure, 1908, which are confined to disputes arising between parties to the suit relating to the execution, discharge, or satisfaction of the decree and not open to a stranger to undermine Decree which has drawn up following judicial findings. Knowingly, the legislature in its wisdom has provided adequate provisions in the procedural law. In such scenarios, law may govern in either of two distinct provisions operative under the procedure law. One, to file appeal and second to file

application under section 12(2). But both have different supplication. It is a settled legal proposition that the remedy of appeal and the remedy under Section 12(2) CPC operate in separate spheres. The choice between them depends on the specific factual matrix of the case, the nature of the grievance, and the procedural posture adopted by the aggrieved party. An appeal against the judgment or order can be filed by an *aggrieved person*, as recognized in the precedent **S.M. SAYA v. WAZIR ALI INDUSTRIES (PLD 1969 SC 265)** that a stranger may file an appeal if the impugned decision adversely affects his legal rights or alternatively, a person may invoke Section 12(2) of the CPC if it is alleged that the judgment, Decree or any order was obtained through *fraud, misrepresentation, or passed without jurisdiction*. This remedy is distinct from an appeal and is contingent upon the nature of the allegations, the rights prejudiced, and the relief sought in the pleadings.

10. In the present case, the Appellant has obtained Decree of Specific Performance of Contract and in performance of Decree, the Nazir, District East has executed Sale Deed dated 29.12.2015 (registered) in favor of the Appellant in respect of same property which has subsequently been put for auction in Execution No.03 of 2016 in view satisfaction of money Decree passed in Summary Suit No.1/2016. The Appellant urged that the Respondent No.1 malafidely filed execution for auction of the property in question which was not available for auction being it has been transferred in favor of the Appellant in the year 2015 prior to the filing of Summary Suit No.1 of 2016 before the 3<sup>rd</sup> Addl. District Judge Karachi East. Neither the Nazir of the same District East nor the Sub-Registrar concerned have pointed out such factum of Sale

Deed registered in the year 2015 in favor of the Appellant. Therefore, the provision of section 47 CPC is not attracted and we do not find any illegality in the impugned Order. However, the Appellant is at liberty to exhaust remedy under Section 12(2) of the CPC against the Judgment or Orders passed in Execution Appl. No.03 of 2016 in view of his judicial record, prior Decree and satisfied execution followed by registered title deed and the learned Executing Court will pass order after hearing the parties in accordance with law.

11. In view of above, we do not find any illegality or material irregularity in the impugned order. Consequently, this appeal is dismissed with pending application.

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