

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Civil Revision Application No.189 of 2022

Applicant : Munawar Khan Zai s/o Sardar Khan Zai
(deceased) through his son Owais
Munawar Zai, present in person, acting as
an attorney on behalf of the L.R.'s of
Munawar Khan Zai

Respondent No.1 : Muhammad Akbar s/o Umar Daraz
present in person

Respondents No.1 to 3 : 1) Sub-Registrar, City Hyderabad
2) Mukhtiarkar (Rev.) City, Hyderabad
3) Province of Sindh
Through Mr.Wali Muhammad Jamari,
Assistant A.G Sindh

Date of hearing : **09.04.2026**

Date of decision : **21.05.2026**

ORDER

JAWAD AKBAR SARWANA, J: Owais Munawar Zai, son of the applicant/defendant no.1-Judgment Debtor, Munawar Khan Zai, submits that his father, who was defendant No.1 in F.C. Suit No. 674 of 2012, had filed this Civil Revision in the year 2022, aggrieved by the judgment and decree passed by the trial Court as well as the appellate forum, whereby the suit for Specific Performance of Contract was decreed in the following terms:-

“The above named plaintiff through his advocate has filed this suit for Declaration, Possession, Specific Performance of Contract & Permanent Injunction, against defendant and prayed for Judgment and Decree as under: -

- a. To declare that the plaintiff by virtue of sale agreement dated 05-05-2012 is the lawful owner of the suit property viz ground floor portion of city survey No.2128/1, Ward-E, admeasuring 102-4 square yards, situated at Abdullah Ka Pir, Fakir ka Pir, Hyderabad.*
- b. Direct the defendant No.1 to execute registered sale deed in respect of the suit property and get it registered before concerned Sub-Registrar in favour of plaintiff and hand over the vacant physical possession of the suit property to the plaintiff and on his failure to do so, the Nazir of this Court to do the same.*

- c. *Restrain the defendants permanently from alienating, or transferring, mortgaging the suit property to any one else except the plaintiff and further restrain them from creating any charge or encumbrance in any manner over the suit property by themselves, their agents, servants, assigns or anyone else.*
- d. *Cost of the suit be borne by the defendant.*
- e. *Any other relief.*

This suit came up for final hearing on 28.02.2018 before Rabab Fatim, VI-Senior Civil Judge, Hyderabad in presence of parties and their counsel and under these circumstances, the suit of the plaintiff is hereby decreed as prayed except prayer clause (a) with no order as to costs."

The Mukhtiarkar and City Survey Officer, Taluka City, Hyderabad, has filed a Statement of Facts dated 08.04.2026, which was taken on record, confirming that Nasir Hussain had sold the ground floor portion of City Survey No. 2128/1, Ward-E, admeasuring 1024 Sq. Yds., situated at Abdullah-ka-Pir, Fakir-ka-Pir, Hyderabad (hereinafter referred to as **"Suit Property"**), in favour of Munawar Khan Zai s/o Sardar Khan Zai [the applicant/defendant no.1-judgment debtor], through registered Sale Deed No. 2658 dated 11.06.2009, which still remains intact in the official record of Revenue as of 08.04.2026.

Given the above, it appears that the judgment and decree dated 28.02.2018 have not yet been enforced as of 08.04.2026. Under the said decree, the applicant/judgment debtor, inter alia, was directed to execute a registered sale deed in respect of the Suit Property and have it registered before the concerned Sub-Registrar in favour of the respondent No.1/decreed-holder Muhammad Akbar and thereafter hand over vacant possession of the Suit Property to the respondent/decreedholder. Now, as per the Statement of the Mukhtiarkar and City Survey Officer, the Suit Property still appears to continue to stand in the name of the applicant/defendant no. 1-judgment debtor, Munawar Khan, and has yet to be mutated in favour of the respondent no.1/plaintiff-decreed-holder-Muhammad Akbar s/o Umar Daraz.

Additionally, the litigants, who appeared in person before the Court, have placed on record an order dated 24.04.2019 passed by the VI-Senior Civil Judge, Hyderabad, in Execution Application No. 66 of 2018 (in F.C. Suit No. 674 of 2012), wherein the aforesaid execution application was dismissed for non-prosecution and non-compliance. The photocopy of the certified copy of the order dated 24.04.2019 and the application under Section 151, C.P.C, were taken on record on 09.04.2026. The parties present in person on the last date of hearing submitted that no subsequent or second execution application has been filed so far and that they have agreed to settle the matter in terms of the compromise application under Order XXIII Rule 1 read with Section 151 C.P.C., filed on 26.02.2026 (C.M.A. No. 601 of 2026), which is also supported by their affidavits. Pursuant to the terms and conditions of settlement as recorded in the Settlement Agreement attached to the compromise application, the parties have mutually agreed that the impugned judgment and decree passed by the trial Court and the appellate Court may be set aside in terms thereof. The applicant/judgment-debtor has also filed an application to bring on record all the L.R.'s of his father, Munawar Khan Zai (C.M.A No.599/2026).

Heard parties and reviewed the documents available on record. The C.M.A No.601/2026 was filed on 26.02.2026 along with an application to implead the legal heirs (C.M.A No.599/2026). Both applications will be decided by this order.

The applicant/judgment debtor Munawar Khan Zai passed away on 01.10.2024 during the pendency of the revision. Although the settlement/compromise between the parties does not mention the date of its execution, except that, as per the Stamp Paper issued on 03.10.2025, it may be presumed that the said settlement/compromise was executed after the death of the applicant/judgment-debtor, on 03.10.2025. The judgment and decree have crystallised the right of the respondent/decreed-holder, Muhammad Akbar, even though he has not

yet enforced the same. The execution of the judgment and decree remains the prerogative of the decree-holder, and by the compromise/settlement agreement, he has agreed to relinquish it. The only task left for this bench now, approvingly sighting the principles laid down in Humayon Akhtar Jalil and others v. Capital One Equities Limited and others, 2012 CLC 1674, is to determine whether anything has been brought on record such that even though the settlement/compromise maybe lawful on the face of it, it so shocks the conscience that it would be inequitable to enforce it or which works substantial injustice, if given effect to, and on the face of it is voidable or is found to be voidable on the basis of undisputed and/or admitted facts, then such compromise may not be enforced. The application of this test must be stringent, and the threshold to refuse a compromise application ought to be set fairly high.

To this end, first, the application filed by the parties is one under Order XXIII Rule 1 C.P.C, which concerns a simple withdrawal on account of an out-of-court settlement. Order XXIII Rule 1 C.P.C does not dislodge a judgment and decree. In the case at hand, the withdrawal of the revision reduces the challenge to the judgment and decree to a cipher, and does not vitiate the decree, which would remain in force. Such a situation would certainly come in the way of the L.R.s of applicant/judgment debtor, as and when they would approach the Land Registry for its mutation and/or apply to the concerned Court for a letter of administration. In the circumstances, the relief sought by the parties jointly in the settlement/compromise is that the judgment and decree be set aside. Such relief cannot be sustained by way of an application under Order 23 Rule 1 CPC. Thus, it appears that the application may have been under the wrong provision of law. During the hearing, the parties present in person, unrepresented by any Counsel, have accepted this predicament and have made an oral motion that the compromise/settlement be treated as one made under Order XXIII Rule 3 C.P.C, particularly as it is supported by the affidavits and the copy of the Settlement Agreement. Order accordingly.

I have perused the application, applying the provisions of Order XXIII Rule 3 C.P.C, and do not find any reason to interfere in the settlement/compromise agreed between the parties. Accordingly, the appellate judgment and decree dated 18.05.2022, and, the judgment and decree dated 28.02.2018 passed by the trial Court are set aside.

C.M.A No.599/2026, filed by the applicant, is also hereby **allowed**. The applicant shall file with the office an amended title reflecting the L.R.s as legal heirs of the applicant-Late Munawer Khan Zai, as mentioned in the NADRA FRC accompanying the said application. The FC Suit No.674/2012 stands dismissed.

For removal of doubt, the order passed today allowing the revision shall not be a substitute for letters of administration of the Suit Property..

Office to transmit notice of this order via WhatsApp messages on the cell numbers of the applicant's son, Owais Munawar Zai, and respondent No.1, Muhammad Akbar, as given in the affidavit in support of the compromise application.

Given the above, the Revision application and the two interlocutory applications mentioned above are allowed in the above terms.

Order accordingly.

JUDGE

AHSAN K. ABRO