

Stereo. HC JD A 38.
Judgment Sheet
IN THE LAHORE HIGH COURT
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

WRIT PETITION No.8843 of 2010

Muhammad Hussain and another

Versus

Akbar Ali and others

JUDGMENT

Date of hearing:	07.12.2017
Petitioners by:	Ch. Abdul Ghani, Advocate.
Respondents No.1,2,3(i),(viii), (ix),(x) & (xiv) by:	Mr. Saghir Ahmad Bhatti, Advocate.
Respondents No. 3 (ii to vii, xi to xiii, xv and xvi)	Proceeded exparte.

MUJAHID MUSTAQEEM AHMED, J: The instant petition filed in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, calls in question the order dated 18.01.2010 passed by learned Civil Judge/Executing Court, Burewala, whereby objection petition of present petitioners stood dismissed, and subsequent order dated 23.07.2010 of learned Additional District Judge, Burewala/Revisional Court affirming the aforesaid order, mainly on the grounds of against facts, law and as such not sustainable.

2. Background of filing of instant writ petition necessary for its fair adjudication is that suit for specific performance of contract titled as "*Khan Muhammad vs. Mst. Anwar Bibi and 03 others*" (including present petitioners) was decreed by learned Civil Judge 1st Class, Burewala vide judgment and decree dated 24.09.1995. The present petitioners filed an appeal against the said judgment and decree, which stood dismissed vide judgment dated 27.09.2000 passed by learned first appellate Court. Subsequent thereto, initially respondents No.1 & 2/deGREE-holders filed an execution petition against judgment debtors (including present petitioners). During pendency of that execution petition, respondents No.1 & 2/deGREE-holders filed an amended execution petition, wherein remaining decree-holders (legal heirs of Khan Muhammad, deceased) were also impleaded as proforma respondents. On 27.03.2006, the present petitioners and Mst. Anwar Bibi/judgment-debtors filed an objection petition (subject matter of this writ petition), mainly on the premises (i) that during pendency of aforementioned appeal, all legal heirs of Khan Muhammad/deGREE-holder, except respondents No.1 & 2, through their general attorney got recorded statement that they have no objection for dismissal of suit for specific performance of contract to their extent, (but learned first appellate court decided the appeal on merits and dismissed it) and if their shares are excluded from suit property, rest of decree is not executable and as such aforesaid respondents are estopped by their words and conduct to pray for execution of decree; (ii) in decree under execution there was no order regarding delivery of possession to decree-holders, whereas such relief has been prayed for in execution petition. This objection petition has been vehemently resisted by respondents No.1 & 2/deGREE-holders. Vide impugned order

dated 18.01.2010, learned Civil Judge, Burewala has partly allowed this objection petition, while observing as under:-

“However, as Manzoor Ahmad who is one of the decree holders does not want execution of decree to his extent, therefore, the sale deed should not be got registered to his extent. However, the sale deed to the extent of remaining nephews of Khan Muhammad deceased, namely, Faiz Ahmad, Ghulam Mustafa, Zulfiqar, Abdul Ghafoor and Jan Muhammad is ordered to be got registered through representative of the court appointed vide order dated 4.1.2010.”

The present petitioners, dissatisfied with this order, have assailed the same by filing revision petition, which was dismissed vide impugned order dated 23.07.2010 passed by learned Additional District Judge, Burewala, while observing as under:-

“In the light of above discussion and from the perusal of record, it is observed that Khan Muhammad had filed a suit for specific performance of contract against Natho and that was decreed on 24.07.1995. That decree was assailed by present petitioners and Anwar Bibi and during the proceedings of appeal, the general attorney of some of legal heirs of Khan Muhammad deceased recorded statement that Khan Muhammad deceased decree holder had not made any payment of amount of consideration so; he had no objection as to acceptance of appeal and dismissal of suit. The statement recorded by Manzoor, general attorney, was against the claim as well as rights which had been accrued to them under the decree of the court. The appeal was dismissed and the said judgment was not assailed anywhere. Hence, the present petitioner cannot now ask for giving effect to statement recorded by Manzoor, general attorney. Further, the said general power of attorney of Manzoor had been revoked by one of its executants namely Abdul Ghafoor on 19.03.1998 hence; the same has lost ground. It is further contended that except respondents No.1 & 2, other decree holders have not filed execution petition so; the same is not executable to the extent of those decree holders that have not filed the same. Under order XXI, rule 15, CPC, the execution petition can be filed by any one of the decree holders because the decree has to be

satisfied in its entirety. The learned executing court has taken into consideration all the relevant facts available on record and no illegality or infirmity has been found in the impugned order. Hence, the revision petition, in hand, stands dismissed with costs...”

3. The petitioners have filed instant writ petition to assail the above referred orders passed by learned courts below, mainly on the grounds of against facts, law, without jurisdiction and as such liable to be set aside.

4. Arguments heard. Record perused.

5. Learned courts below have rightly observed that if consent/compromise statement, made by some legal heirs of Khan Muhammad, was not taken into consideration by learned first appellate court in judgment and decree dated 27.09.2000, the petitioners were obliged to assail that judgment before this Court and as such it has attained finality. Whereas under Section 47 of Code of Civil Procedure, 1908, learned Executing Court is bound to execute the decree as it is and it cannot go beyond it. This objection, raised by petitioners, pertains to merits of the case, which stood settled in first round of litigation and as such contention of learned counsel for the petitioners that in light of such compromise statement execution petition is not maintainable, is devoid of any force.

6. So far as next ground of attack taken by learned counsel for the petitioners that in original execution petition all the legal heirs of the decree holder were not impleaded in the array of petitioners and as such the execution petition is bad in law, is concerned the same has no force of law. As rightly maintained by learned counsel for the respondents, Order XXI Rule 15 C.P.C., contemplates that one or more persons can submit application for execution of joint decree. It would be

advantageous to reproduce the said provision of law, which runs as under:-

“Application for execution by joint decree-holder. – (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.”

In case *“Nasirud-Din and others versus Dost Mohammad and others”* (A.I.R. 1933 Lahore 655), while interpreting Order XXI Rule 15 CPC, it was held that where decree holder omits in execution petition names of all persons interested in decree, it would not invalidate execution proceedings and Court has discretion to give notice to other decree holders, but in any case judgment debtor cannot object to execution on such ground (emphasis supplied). Similar view has been taken in case *“Ghanaya Lal versus Madho Parshad”* (A.I.R. 1931 Lahore 600 D.B), *“Kamal Kishore Prasad Singh and another versus Hari Har Prasad Singh and others”* (A.I.R. (36) 1951 Patna 645), *“Chimna versus Chunnilal and another”* (A.I.R. 1955 RAJ 197), *“Rampalli Ramachandrudu versus Bakraj Gulab Chand Firm by Gulabchand and others”* (A.I.R. 1958 ANDHRA PRADESH 709 D.B) & *“Khadim Husain Khan and others versus Abdur Rahman Khan”* (1956 ALLAHABAD 575).

7. Plain reading of above provision of law would reveal that in case of joint decree holders it is not necessary for all the decree holders to apply for execution of decree and any one or more of such decree holders may apply for execution of whole

decree. Rather it is permissible by law that one or more, out of several decree-holders, can present an application for execution of decree. This is a special provision, which has been made in order that a judgment debtor may not be harassed by a number of applications for executing against him. It is not laid down in Order XXI Rule 15 CPC that the omission on the part of the decree-holder to state in his application the names of all the persons who are interested in the decree is such a defect, as would invalidate the execution proceedings, of course such an omission does not render the execution proceedings invalid. Thereafter, if any one or more decree holders have relinquished their rights in decree their such conduct will not make the whole decree redundant and unexecutable. Moreover, in the present case, afterwards rest of the decree-holders have been included in the array of proforma respondents and as such learned Executing Court has rightly protected rights of other decree-holders as well while observing that sale deed will be executed and registered in favour of all of them (except Manzoor Ahmad, who is disinterested to get the decree executed). As such the objection No(i) raised by present petitioners has rightly been discarded by concurrent orders passed by learned courts below.

8. No doubt, respondents No.1 & 2 in execution petition have also prayed for delivery of possession in their favour, but so far learned Executing Court has not passed any order in this regard, so any observation of this Court in this regard will be pre-mature and unwarranted. As and when such relief is pressed by respondents/decree-holders, petitioners may oppose it as per law and in such eventuality learned Executing Court will pass a speaking order, of course after hearing the learned counsel for the parties.

9. The resume of above discussion is that learned counsel for the petitioners could not point out any illegality, material irregularity or jurisdictional defect in the impugned orders. Whereas perusal of the orders impugned herein makes it crystal clear that learned courts below have passed the same while properly and fairly exercising their discretion in accordance with law and as such the same do not warrant any interference by this Court in its constitutional jurisdiction. Consequently, the instant writ petition, being devoid of merits, is dismissed.

10. Before parting with the judgment, I may observe that suit of the respondents was decreed in their favour on 24.09.1995 and it attained finality on dismissal of appeal on 27.09.2000, but in-spite of lapse of twenty two years the decree holders are still embroiled in an uncalled for complex and expensive litigation. The Hon'ble Supreme Court of Pakistan in case "Muhammad Abdullah versus Yatim Khana Khalqia, Sargodha through its Manager and others" (2004 SCMR 471), has observed the plight of decree-holder, as in the case in hand, as under:-

"The process of execution as, in vogue in our system has totally shattered the confidence reposed by the general public in our judicial system. Firstly, it takes years for a suit of any kind to reach its logical conclusion. Thereafter, the decree-holder has to file execution proceedings, which more or less is contested like a suit. Sufficient time is spent before the Executing Court and the matter is contested by the judgment-debtor like a suit by filing number of applications just to prolong the matter. It takes years to finalize the same.

8. As already stated the Privy Council made remark about this malady prevalent in our judicial system hundred and thirty years earlier. This situation has not improved after all this long period of more than one and quarter of century. Rather it has got worsened and the parties suffer

agonies of litigation without final determination respecting their cause for generations. Having noticed unfortunate facts of this case as also the gimmickry of the petitioner whereby in an unscrupulous manner he successfully stalled the execution and deprived the respondent Yatim Khana for more than two decades, I am constrained to observe that unless and until this malady in the judicial system is remedied at the earliest otherwise it would be too late to mend the same as the poor litigants are losing their confidence in the prevalent judicial system...”

11. Having noticed the miseries, hardships, rigors and pains of the decree-holders in this judicial system, with the aim and object to redress the same, the learned Executing Courts are directed to make all sincere, serious and dedicated efforts to ensure execution of decrees/orders at the earliest by accelerating the pace by observing the provisions relating to execution of decree enumerated in Sections 36 to 56, 58, 60 to 74 and 135 read with Order XXI of the Code of Civil Procedure, 1908 and this task be not assigned to their subordinate staff. The learned District Judges should also boost up their role as assigned in Chapter 12, Execution of Decrees Part A - General, Volume 1 of the Rules and Orders of the Lahore High Court, Lahore by (i) pressing the executing courts to expedite execution petitions (ii) supervising their working in monthly meetings and regular inspection/s (iii) even backlog of execution petitions can be assigned to designed court/Model Court of the District (iv) the working of revenue courts/revenue officers to whom the decrees/warrants are sent for execution be closely supervised and if any negligence is found on their part the matter may be reported to their “Authority” for legal/departmental action. In this regard District Collectors should extend full support and co-operation with the Courts. The learned Senior Civil Judges should also keep a vigilant eye on the working of “Nazarat

Branch” and the staff of that branch be made accountable for their willful lapse, default and negligence in execution of decrees/orders of court.

Now coming to the case in hand, the learned Executing Court will ensure that the decree is executed within three months from date of receipt of this Judgment, under intimation to this Court through Deputy Registrar (Judicial).

(Mujahid Mustaqeem Ahmed)
Judge

APPROVED FOR REPORTING.

Judge

Khalid