

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**MINGORA BENCH (DAR-UL-QAZA), SWAT**  
**(Judicial Department)**

**C.R No. 399-M/2021**

(Bakht Alam Khan vs. Waseem Khan & others)

Present: Mr. Abdul Halim Khan, Advocate for the petitioner.

Mr. Aziz-ur-Rahman Swati, Advocate for the respondents No. 1 & 3.

**Date of hearing: 04.08.2022**

**JUDGMENT**

**MUHAMMAD IJAZ KHAN, J.-** Through the instant revision petition, petitioner has challenged the order and judgment of the learned Additional District Judge/Izafi Zilla Qazi Khwazakhela, Swat dated 29.06.2021, whereby his appeal was dismissed, which he had filed against the order and judgment of the learned executing Court dated 19.12.2020, who vide the same had dismissed the execution petition filed by the present petitioner.

2. Precisely the facts of the case are that respondent No. 1 namely Wasim Khan brought a suit for a declaration to the effect that he is owner-in-possession of the suit property to the extent of his 1/5<sup>th</sup> share on the basis of a will deed dated 12.06.2015 fully mentioned in the heading of the plaint. It has also been pleaded that defendants have no right to deny this right of the respondent No. 1/

plaintiff. He has also challenged the inheritance mutation No. 1452 attested on 24.02.2016 and the subsequent entries in the revenue record in which the respondent No. 1/ plaintiff was not shown as owner to the extent of 1/5<sup>th</sup> share and as such, such entries were pleaded as illegal, unlawful and ineffective upon the rights of the respondent No. 1/plaintiff.

3. The aforesaid suit was contested by the present petitioner, then defendant, and ultimately the same was decreed by the learned trial Court in favour of the respondent No. 1/plaintiff to the extent of 1/5<sup>th</sup> share against the defendant, now petitioner, vide judgment and decree dated 05.06.2018. This judgment and decree was challenged before the learned appellate Court through an appeal, however, the appeal was also dismissed vide judgment and decree dated 08.05.2019 and later on it was put to execution and was implemented by making necessary entries in the revenue record, whereby mutation No. 1692 was entered and attested on 12.07.2019.

4. Later on, the present petitioner also filed an execution petition for execution of the decree dated 05.06.2018 on the ground that he

being the legal heir of Sohrab Khan is also entitled to derive benefit from the said decree as was extended to respondent No. 1/ plaintiff, however, his execution petition was dismissed by the learned executing Court vide one of the impugned order and judgment dated 19.12.2020 and thereafter, appeal was filed by the present petitioner before the learned appellate Court, however, the same was also dismissed vide the impugned order and judgment dated 29.06.2021. Petitioner has now challenged the aforesaid two orders and judgments of the two Courts below before this Court through the instant revision petition.

5. Arguments of learned counsel for the parties were heard in detail and the record perused with their able assistance.

6. The main stance of learned counsel for the petitioner was that since the judgment as well as the decree is based on a will deed dated 12.06.2015, where other legal heirs of Sohrab Khan including the present petitioner has also been allocated his share, therefore the learned executing Court has wrongly dismissed his execution petition. He also made reference to some subsequent developments,

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which took place as a result of execution of the aforesaid decree.

7. As against this learned counsel representing the respondents states that since no decree was passed in favour of the present petitioner, then defendant, therefore the learned executing Court has rightly dismissed his execution petition and has lawfully been affirmed by the learned appellate Court.

8. The record would reveal that the suit was filed by Wasim Khan (respondent No. 1/ plaintiff) for a declaration to the effect that he is owner-in-possession of 1/5<sup>th</sup> share on the basis of a will deed dated 12.06.2015, which was made by his grandfather, which suit was contested by the present petitioner, then defendant, and ultimately a decree to the extent of 1/5<sup>th</sup> share was passed by the learned trial Court in favour of the respondent No. 1/plaintiff and against the petitioner, then defendant, and as such later on, the learned executing Court on the application of respondent No. 1/plaintiff has executed the decree as was passed in his favour, whereas the execution petition of petitioner was rightly dismissed as though learned counsel for the petitioner vehemently

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argued that in the original judgment, the right of petitioner, then defendant, has also been acknowledged, declared and ascertained, however, a minute perusal of the judgment would show that 1/5<sup>th</sup> share of the respondent No. 1/plaintiff has been decreed, whereas no finding has been recorded with respect to the remaining 4/5<sup>th</sup> share of which the petitioner seeks its execution, therefore neither the judgment nor the decree do provides for any of the executable rights of the petitioner. It may be reiterated that the present petitioner may approach to the civil Court for seeking an identical decree, if so advised, however, since the executing Court is bound to execute the decree only and it can neither amend nor alter nor add to the decree, therefore the two Courts below have rightly declined the desired relief to the present petitioner. It is settled law that the executing Court cannot go beyond the decree and it has to execute the decree in terms in which it has been passed. In the case of **Irshad Masih and others vs. Emmanuel Masih and others** reported as **2014 SCMR 1481**, the Hon'ble Apex Court has held that thus, whatever was the entitlement of Mst. Margret, the predecessor-in-interest of the petitioners, it is for all intents and purposes now a

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past and closed transaction. It is for this reason that in the order under review dated 22.10.2009 this Court has endorsed the view of the High Court contained in the judgment dated 11.11.2002 by merely making reference to the observations that "the moment Mst. Margret died, the property would revert back to the legal heirs of Arora under section 30-A of the Colonization of Government Lands (Punjab) Act 1912. Respondents being sons of Mst. Margret were thus left with no locus standi to file execution petition on 19.6.1998, after the death of Mst. Margret". This being the undisputed factual position in the present case, as rightly held by the High Court in its judgment dated 11.11.2002, the order of remand passed by the learned Additional District Judge Sahiwal dated 25.1.2001 was not sustainable in law, as the executing Court cannot go beyond the mandate of the said judgment and thus the present petitioners had no locus standi to seek execution of either the judgments dated 20.1.1969, whereby their predecessor's suit was disposed of without grant of relief prayed for, or the other judgment of the Supreme Court dated 18.6.1995, dismissing their petition and confirming the judgment of the Lahore High Court dated 8.12.1993. Rather, after the death of Mst. Margret

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in the year 1996, there was nothing in the said judgments which was executable at the request of the present petitioners. Similarly, in the case of **Tauqeer Ahmad Qureshi vs. Additional District Judge, Lahore and 2 others** reported as **PLD 2009 Supreme Court 760**, the Hon'ble Apex Court has held that there is no cavil to the proposition that the executing Court cannot go beyond the decree but at the same time the executing Court can look into the questions whether the decree or part thereof is executable or in-executable and if for any reason the decree has become in-executable, the executing Court is empowered to declare so and if a part of the decree is in-executable and that part is severable from other part(s) of the decree then the executing Court is empowered to refuse the execution of the in-executable part of the decree and may proceed with the execution of the rest of the decree. In the case of **Mst. Naseem Akhtar and 4 others vs. Shalimar General Insurance, Company Limited and 2 others** reported as **1994 SCMR 22**, it was also held by the Hon'ble Apex Court that it is a well-known rule that the Court executing the decree cannot go beyond it and allow its validity to be impugned.

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Further reliance in this respect may also be placed on the following judgments:-

- i. **Province of Punjab through Secretary Industries, Government of the Punjab, Civil Secretariat, Lahore vs. Burewala Textile Mills Limited (2001 SCMR 396); and**
- ii. **Muhammad Ali and others versus Ghulam Sarwar and others (1989 SCMR 640)**

9. For what has been discussed above, the order and judgment of the learned appellate Court dated 29.06.2021 and that of the learned executing Court dated 19.12.2020 are perfectly in accordance with the spirit of law and they have not committed any illegality or irregularity to warrant interference of this Court in exercise of its revisional jurisdiction, which are maintained and upheld and consequently, the instant revision petition being bereft of any merit is hereby dismissed.

Announced  
Dt: 04.08.2022

  
**JUDGE**

*Office*  
*12/08/2022*