

***Stereo.HCJDA 38.***  
**JUDGMENT SHEET.**

***LAHORE HIGH COURT, LAHORE.***  
***JUDICIAL DEPARTMENT***

**W.P.No.52429 of 2020**

***MUHAMMAD SIDDIQUE.***

***Versus.***

***AMNA BIBI, ETC.***

**JUDGMENT.**

***Date of hearing: 10.05.2023***

***Petitioner by: Ch. Zaheer Ahmad Farooq, Advocate.***

***Respondents Mr. M. Adnan Yousaf Mughal,***  
***No.1 & 2 by: Advocate.***

**Mirza Viqas Rauf, J.** *The petitioner is grandfather of respondent No.2, who instituted a suit for recovery of maintenance and dowry articles alongwith her mother (respondent No.1) against respondent No.5, who is son of the petitioner. Suit was decreed ex-parte vide judgment dated 26<sup>th</sup> June, 2018 against which respondents No.1 and 2 (hereinafter referred to as “respondents”) preferred an appeal, which was partly accepted by way of judgment and decree dated 29<sup>th</sup> September, 2018. In order to get the fruits of the decree, the “respondents” filed an execution petition before the learned Judge Family Court, Ranala Khurd, who by way of its order dated 19<sup>th</sup> June, 2019 proceeded to attach the property measuring 26-Kanal 7-Marla owned by the petitioner for the purpose of auction to get the decree satisfied. The petitioner objected the order, however, his objections were turned down. Feeling aggrieved, the petitioner challenged the said order through an appeal before the learned Additional District Judge, Ranala Khurd but of no avail and the appeal was dismissed through judgment and decree dated 30<sup>th</sup> September, 2020, hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.*

2. Learned counsel for the petitioner contended that no doubt petitioner is grandfather of respondent No.2 in whose favour a decree for maintenance was passed but the petitioner was not a party to the suit and as such decree cannot be executed against him. Learned counsel emphasized that even otherwise, grandfather cannot be burdened to pay the maintenance to the grand child in ordinary course. Learned counsel, while making reference to para 370 of *Muhammadan Law by D.F. Mulla's*, submits that the executing Court has erred in law while passing an order of attachment of the property of the petitioner for the satisfaction of decree. Argued that the appellate Court has also erred in law by dismissing the appeal and the impugned judgment is not tenable. In order to supplement his contentions, learned counsel placed reliance on MUHAMMAD RAMZAN v. ALI HAMZA and others (PLD 2016 Lahore 622).

3. Conversely, learned counsel for the “respondents” vehemently resisted the instant petition and submitted that the petitioner being grandfather is bound to maintain the respondent No.2 and the executing Court was justified to attach his property for the satisfaction of the decree. Learned counsel contended that scope of writ jurisdiction is limited and as the findings of the Courts below are concurrent, so this petition is not maintainable. In order to supplement his contentions, learned counsel placed reliance on SULTAN AHMAD v. JUDGE FAMILY COURT and 5 others (PLD 2012 Lahore 148).

4. Heard. Record perused.

5. Suit for recovery of maintenance and dowry articles was instituted by the “respondents” against respondent No.5, who is son of the petitioner. Suit was ultimately decreed ex-parte vide judgment dated 26<sup>th</sup> June, 2018, which was modified by the learned Additional District Judge in appeal filed by the “respondents” by way of judgment dated 29<sup>th</sup> September, 2018. In order to get the decree satisfied, the “respondents” filed the execution petition before the learned Judge Family Court. During the proceedings warrant of arrest of respondent No.5 (judgment debtor) was issued but on

account of non-satisfaction of the decree, the executing Court proceeded to attach the property of the petitioner by way of order dated 19<sup>th</sup> June, 2019 while observing as under: -

**“2. In such like situation, decree particularly of maintenance allowance of wife as well as children cannot be left unattended and court has to see the alternate way to execute the decree if possible. In instant case as contended by decree holder No.1, grandfather of minor has property measuring 26-Kanals 07-Marlas, which shows that he having immovable property is in easy circumstances. It was imperative upon grandfather of minor/real father of judgment debtor to provide maintenance allowance to his grandchildren but he failed to do so. Decree holder No.2 specially minor, cannot be left unattended in a case of recovery of maintenance allowance. Moreover Family Court has extensive powers to adopt any procedure to execute the decree. It is also held by superior courts in numerous judgments that in case of infirmity/disability or having meager sources of income to provide maintenance allowance to the children by real father/judgment debtor, grandfather is liable to provide maintenance allowance to his grandchildren. So in this view of the matter, grandfather is liable to satisfy the decree. As grandfather has denied to satisfy the decree by filing written reply, therefore, this court has no way except to proceed against his property as mentioned in Fard Taliqa which is hereby attached....”**

Feeling aggrieved, the petitioner challenged the said order through an appeal before the learned Additional District Judge, Renala Khurd but his appeal was dismissed through impugned judgment.

**6.** The status of the petitioner being grandfather of respondent No.2 is not in dispute. There is also no denial to the fact that the petitioner was never party to the suit. There is no cavil that in terms of para 370 of Muhammadan Law by D.F Mulla's, a grandfather in certain circumstances is bound to maintain his grandchildren but obligation of the grandfather to maintain his grandchildren is hedged with certain conditions. In order to understand the matter in issue in better terms, para 370 of Muhammadan Law by D.F. Mulla's is reproduced below: -

**“370.Maintenance of children and grandchildren (1) A father is bound to maintain his sons until they have attained the age of puberty. He is also bound to maintain his daughters until they are married. But he is not bound to maintain his adult sons unless they are disabled by infirmity or disease. The fact that the children are in the custody of their mother during their infancy (section 352) does not relieve the father from the obligation of maintaining them. But the father is not bound to maintain a child who is capable of being maintained out of his or her own property.**

(2) If the father is poor, and incapable of earning by his own labour, the mother, if she is in easy circumstances, is bound to maintain her children as the father would be.

(3). If the father is poor and infirm, and the mother also is poor, the obligation to maintain the children lies on the grandfather, provided he is in easy circumstances.”

(Underlining supplied for emphasis.)

From the bare perusal of the above referred para, it is manifestly clear that primarily it is the father who is bound to maintain his children, in case of son(s) until he (they) attain(s) the age of puberty and if there are daughters, till their marriage. In case, the father is poor and incapable of maintaining by his own, the mother would come into picture and if she is in easy circumstances, she would be bound to maintain her children in place of father. The liability of grandfather though starts when the father is poor and infirm and the mother is also not in a position to provide maintenance to her children but such liability of grandfather is dependent upon the fact that he should be in easy circumstances. In order to saddle the grandfather with the liability to pay maintenance to the grandchildren, it is thus imperative to first determine that father of the children is poor and infirm and mother is also having no source of income coupled with the fact that grandfather is in easy circumstances. The determination of such question cannot be made unless grandfather is a party to the suit having a fair opportunity to explain his status and position. Reliance in this respect can be placed on Haji NIZAM KHAN v. ADDITIONAL DISTRICT JUDGE, LYALLPUR AND OTHERS (PLD 1976 Lahore 930).

7. So far judgment in the case of SULTAN AHMAD v. JUDGE FAMILY COURT and 5 others supra is concerned, it is observed that from the facts and circumstances of the case, it is evident that judgment of the Supreme Court of Pakistan in the case of GHULAM NABI versus MUHAMMAD ASGHAR and 3 others (PLD 1991 Supreme Court 543) was not brought in the notice of the Court and as such it would not have any binding effect. For the purpose of clarity, the relevant extract from the judgment in GHULAM NABI (supra) is reproduced below: -

*“Although leave was not granted to examine this point we permitted the learned counsel to advance the same so as to clarify the legal position. No doubt grandparents, if affluent, will be obliged to maintain grand children if they are destitute. But the command would issue in this behalf when there is no other nearer relation and/or more responsible in this behalf. Accordingly, when a specific proposition was put to the learned counsel in this behalf he could not advance his argument any further. The question posed was: whether, in presence of the father the grandparents, whether on the paternal or on the maternal side, will be more responsible for maintaining their grandchildren as compared to the father's duty to maintain his own children learned counsel without hesitation admitted that the priority-wise it would be the duty of the father.”*

8. *In somewhat similar facts and circumstances, in the case of MUHAMMAD RAMZAN supra, this Court held as under: -*

*“5. ....From the bare perusal of principles embodied in Para 370 ibid it is crystal clear that primarily father is bound to maintain his children. In the case of son until he or they attain the age of puberty and if there are daughter or daughters till their marriage. In case the father is poor and incapable of earning by his own labour it is the mother, if she is in easy circumstances, to maintain her children. The liability of grandfather starts when the father is poor and infirm and the mother is also not in a position to provide maintenance to her children but the liability of grandfather to maintain his grandchildren, is also dependent upon the fact that he is in easy circumstances. Thus in my humble view if the father and mother are alive, the grandfather cannot be held responsible for maintenance of his grandchildren unless it is first determined that he is in easy circumstances. In order to determine that grandfather is in a position to maintain his grandchildren it is incumbent upon the Family Court to first adjudicate and determine this fact which cannot be done unless he is a party to the suit, having a fair opportunity to explain his status and position.”*

*From the bare reading of the above, there remains no cavil to the proposition that prime duty to maintain the children lies with the father and grandfather cannot be asked to pay maintenance to grandchildren in an omnibus fashion.*

9. *As already observed that the petitioner was even not party to the suit, so law to this effect is well-settled that a decree cannot be executed against a person, who is alien to the proceedings with only one exception as ordained in section 145 of the Code of Civil Procedure (V of 1908) where a decree can be enforced in certain conditions against a surety/guarantor. It is an oft repeated principle of law that executing Court cannot go beyond the decree. It is, thus, apparent from the record that executing Court proceeded to attach the*



property of the petitioner in oblivious of the well-settled principles of law, which order was even affirmed by the appellate Court without due application of judicious mind to the facts of the case. Guidance in this respect can be sought from MUHAMMAD YAQOOB v. ADDITIONAL DISTRICT JUDGE, KHARIYAN DISTRICT GUJRAT and 3 others (2017 YLR Note 360). The relevant extract from the same is reproduced below: -

**“5. It is established from the record that the petitioner was not party in the suit. It is also established from bare perusal of the execution petition that the same was filed against Muhammad Nasir, judgment-debtor. It is also established from the record that no decree has been passed against the petitioner. The petitioner never stood surety or guarantor on behalf of the judgment-debtor. The petitioner did not give any undertaking that in case his son (judgment-debtor) does not pay the decretal amount he will pay the same, therefore, decree could not be executed against the petitioner. The executing court has exceeded his jurisdiction by executing the decree against the petitioner who is the paternal grandfather of respondents No.3 and 4. Reference may be made to the case law titled as "Muhammad Jameel v. Mst. Tahira Bibi and 4 others" (2013 CLC 1529 (DB), "Muhammad Aslam v. Ayaz Ghazanfar and 2 others" (PLD 2012 Lahore 392) and "Mst. Nasreen v. Government of Sind and 2 others" (PLD 1989 Karachi 28).”**

Reliance to this effect can also be made to SHAFQAT ULLAH and 2 others v. LAND ACQUISITION COLLECTOR (D.C.), HARIPUR and 2 others (2006 CLC 1555).

**10.** It evinces from the bare reading of the order resulting into attachment of the property of the petitioner that the executing Court, while feeling helpless from the situation, opted to choose the petitioner for the satisfaction of the decree as the respondent No.5 (judgment debtor) was fugitive from law. Needless to observe that section 13 of the Family Courts Act, 1964 prescribes the modes for the enforcement of decree, which reads as under: -

**13. Enforcement of decrees.—(1) The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particulars in the prescribed register.**

**(2) If any money is paid or any property is delivered in the presence of the Family Court, in satisfaction of the decree, it shall enter the fact of payment [or] the delivery of property, as the case may be, in the aforesaid register.**

**(3) Where a decree relates to the payment of money and the decretal amount is not paid within time specified by the Court [not exceeding thirty days, the same shall, if the Court so directs**

*be recovered as arrears of land revenue, and on recovery shall be paid to the decree-holder.*

*(4) The decree shall be executed by the Court, passing it or by such other Civil Court as the District Judge may, by special or general order, direct.*

*(5) A Family Court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such installments as it deems fit.*

*It is quite obvious from the above that the Family Court is vested with the power to execute its own decree for payment of money by adopting modes provided for recovery of arrears of land revenue including selling the property of judgment debtor. In the recent past in the case of Mst. AMMAN GUL V. LEARNED JUDGE FAMILY COURT, RAWALPINDI and 2 others (Transfer Application No.31 of 2022), a larger Bench of this Court held as under: -*

*“15. Part II of “C.P.C.” deals with the execution and it provides a detailed mechanism for the execution of decree passed by a court. Section 38 of the “C.P.C.” lays down that a decree may be executed either by the court which passed it, or by the court to which it is sent for execution. We are mindful of the fact that Section 13 of the “Act, 1964” neither provides detailed mechanism for the execution of decree nor caters all the eventualities arising from the execution proceedings. Sub-section (4) of Section 13 of “Act, 1964” places the Family Court and the Civil Court at the same pedestal for the purpose of execution of decree, so in that capacity a court “Family” or “Civil” enjoys all powers of the executing court vested in Part II as well as Order XXI of the “C.P.C.”. Section 39 of the “C.P.C.” deals with the transfer of decree which empowers the court who passed a decree to send it for execution to another court, on the application of the decree holder. We deem it appropriate to reiterate that once a decree is passed by the Family Court that becomes executable in terms of Section 13 and in case of any hindrance to the same, the learned executing court can adopt any of the mode provided for the execution of the decree in the “C.P.C.”.”*

*11. After having a glimpse of the survey of law on the subject, I am of the firm view that Family Court can never be helpless to get its decree executed. The process of execution cannot shift towards the grandfather merely on the ground that decree could not be satisfied against the father (judgment debtor). The Family Court cannot assume the role of spectator rather it can adopt the procedure contained in “CPC” for the execution of the decree.*

*12. The nutshell of above discussion is that in the circumstances, both the Courts have erred in law while proceeding*

*against the petitioner for the satisfaction of the decree passed against respondent No.5 (judgment debtor). Resultantly, this petition is allowed. As a sequel thereof, impugned judgment dated 30<sup>th</sup> September, 2020 and orders dated 19<sup>th</sup> June, 2019 and 24<sup>th</sup> September, 2019 are set aside being illegal and unlawful leaving the executing Court to proceed against respondent No.5 (judgment debtor) for the satisfaction of the decree through any mode permissible under the law. No order as to costs.*

**(MIRZA VIQAS RAUF)**  
**JUDGE**

Approved for reporting.

**JUDGE**

*Zeeshan*