

96/23

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Yahya Afridi  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi  
Mr. Justice Syed Hasan Azhar Rizvi

(A-R)DJ

**Civil Appeal No.1573 of 2017**

(Against the Order dated 14.10.2016 of the Peshawar High Court,  
Peshawar passed in C.R. No.191-P of 20165)

Saif-ur-Rehman ...Appellant(s)

**Versus**

Ijaz and another ...Respondent(s)

For the Appellant(s) : Malik Itaat Hussain Awan, ASC  
Syed Rifaqat Hussain Shah,  
AOR

For Respondent No.1 : Mr. Liaqat Khan Swati, ASC

Date of Hearing : 09.08.2023

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.** This appeal, by leave of the Court, has been filed against the judgment dated 14.10.2016 of the Peshawar High Court, Peshawar whereby civil revision filed by the appellant was dismissed and the orders of the first appellate court as well as of the executing court issuing warrant of possession against the appellant were upheld.

2. Before delving into the intricate details of the case, let us first provide a concise overview of the key facts and events that set the stage for these legal proceedings. The appellant (Saif-ur-Rehman) on 09.04.2002 filed a suit seeking a declaration to the effect that the alleged transfer of his house (the suit house) in the

name of the respondent No.1 and subsequent transfer thereof to respondent No.2 was illegal, unlawful and *void ab initio* and was based on fraud and misrepresentation. The stance of the appellant was that he had cordial relations with the respondent No.1 (Ejaz) and as such he on 23.12.2000 took Rs.100,000/- from him as Qarz-e-Hasna with the promise to repay the same within one year. Later on, when he asked the respondent No.1 to receive his loan amount, respondent No.1 informed him that he already transferred the suit house in his name and even further transferred it to respondent No.2. The suit was dismissed by the learned trial Court vide judgment/decreed dated 21.12.2012 which remained upheld till High Court as the appeal and civil revision filed thereagainst also met the same fate. However, the learned trial Court while deciding an additional issue "*What is the actual market price of the suit house?*" found the price of the suit house as nominal and as such after analyzing the report of the local commission determined and fixed the price of the suit house as Rs. 3,73,421/-. The trial Court directed respondent No.1 & 2 to pay the remaining amount of Rs. 1,23,421/- to the appellant. The relevant portion of the judgment/decreed dated 21.12.2012 of the trial court is reproduced hereunder for ease of reference:

**"Relief**

*As sequel of my issue wise findings, plaintiff has badly failed to prove his case. However, as per observation of the appellate court that the price was nominal, the court hereby determines the actual price of the suit house as Rs. 3,73,421/- in which an amount of Rs.2,50,000/- has already been paid by defendant No.1 to the plaintiff, therefore, defendants No.1 & 2 are hereby directed to pay the remaining amount of Rs. 1,23,421/- to the plaintiff."*

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3. The above judgment/decreed of the learned trial court remained upheld till the High Court as the appeal and civil revision filed thereagainst were dismissed by the learned Additional District Judge and High Court, respectively. However, respondent No.1 (Ejaz, the then defendant No.1) on 16.06.2015 filed an execution petition against the present appellant (the then plaintiff) for execution of the judgment/decreed dated 21.12.2012 of the trial Court and thereby sought possession of the suit house by issuance of the warrant of possession. The executing Court *vide* order dated 31.07.2015 while treating respondent No.1 as a decree-holder issued a warrant of possession with the direction to the bailiff of the court to hand over the vacant possession of the suit house to respondent No.1.

Being dissatisfied, the appellant challenged the said order of the executing Court by filing an appeal but remained failed. The Civil Revision filed by the appellant was also dismissed by the learned High Court through the impugned order, hence this appeal.

4. The learned counsel for the appellant has argued that the findings of both the lower forums are against the prevailing laws and procedure on the point of order and mode of execution of the order of the trial Court. The issuance of warrant of possession by the executing Court is against the law and patently against the evidence/pleadings of the suit because there is no executable order passed in favor of the respondents and against the appellant rather only the suit of the appellant was dismissed. The dismissal of the suit of the appellant does not mean passing of a decree against him and in favor of respondents. The order of executing Court issuing the warrant of possession is also against the spirit of Order XX Rule

2 of the C.P.C. As the respondents have not sought a decree for possession of the suit house by filling a separate suit for possession nor made any such prayer in their written statement, therefore they are now debarred to claim the same while misinterpreting the judgment/decreed dated 21.12.2012 of the trial Court passed in the suit filed by the appellant. The executing court, no doubt, could issue warrant of possession with respect to the suit house if there is an executable order in favour of the respondents and against the appellant but no such order is available in this case. This legal aspect of the matter was not considered by the Courts below. The judgment/decreed dated 21.12.2012 of the trial Court is not executable against the appellant in any manner, hence the impugned order of the executing Court issuing warrant of possession of the suit house is against law and facts of the case and is liable to be set-aside.

5.           Conversely, the learned counsel for the respondents strongly supported the impugned order and contended that it deserves to be upheld calling for no interference therein. They have already paid the total consideration amount as per the direction of the trial Court and have now attained the status of the decree-holders. The appellant did not file any objection petition before the executing court, hence failed to point out any illegality or irregularity in the order of the executing Court while issuing warrant of possession of the suit house. Finally, he prayed for dismissal of the instant appeal.

6.           We have heard the submissions of the learned counsel for the parties and perused the material available on the record with their able assistance.



7. First of all, we would like to address the legal question that emerges from the primary objection of the appellant whether respondent No.1 having been the defendant in the case resulting in its dismissal possesses the legal status to be recognized as a decree-holder to initiate execution proceedings? To answer this question, the meaning and definition of the terms "decree" and "decree-holder" are of utmost importance. The C.P.C. has already provided the definitions of both these terms. The terms "decree" and "decree holder" have been defined in section 2(2) and 2(3) of C.P.C, respectively which read as under:

**"2. Definitions. --**

*(2) "**decree**" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint [the determination of any question within section 144, and an order, or rules 60, 98,99,101 or 103 of Order XXI] but shall not include—*

*a) any adjudication from which an appeal lies as an appeal from an order, or*

*b) any order of dismissal for default.*

**Explanation. --** *A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final:*

*(3) "**Decree-holder**" means any person is whose favour decree has been passed or an order of execution has been made."*

8. Decree has been defined as the formal expression of adjudication that conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit, as regards the Court expressing it. This is the actual definition of decree which has been given in the first part of the section reproduced above. In the second part, certain orders that do not fulfill the definition of the decree have, however, been included in the definition of the decree through a deeming clause therein. The decree actually connotes the conclusive determination of the rights of the parties with regard to all or any of the matters in controversy in the suit. The word "parties" has been used rather than plaintiff or defendant. It clearly means that a decree may determine the rights of the plaintiff(s) or the defendant(s). When the decree determines certain rights to which the defendant(s) is/are held entitled, then in such a case the defendant(s) would also be included in the definition of "decree holder". The words "decree holder" cannot, therefore, be restrained to the persons who have stood on the pane of plaintiffs during proceedings of the case. Such a narrow interpretation would compel repetition of adjudication in Courts of law and parties would be litigating for declaration of such rights which are already settled and declared by the Courts. In this fast-paced modern era, neither the Courts nor the parties can indulge in the luxury of engaging in multiple rounds of litigation to establish or revise rights that have already been declared. When the Courts once declare some right after a due process and find it enforceable and such a decision gets finality then all the people entitled under such a decree would fall in the definition of "decree-holder" to file an application for execution under Order XXI, Rule 10, C.P.C. regardless of the fact



whether they stood on the pane of the plaintiffs or the panel of the defendants. Thus, the "decree-holder" would mean a person who is entitled to enforcement of a right under a decree. A long ago, in Vythilinga Pandarasannadhi v. the Board of Control, (**AIR 1932 Madras 193**), a somewhat similar question came for consideration before the Madras High Court. In that case, a stranger party (Board of Control) sought execution of a decree whereupon the appellant before the Madras High Court raised the objection that it was not a party to the decree, it was a creation of the decree itself; therefore, it cannot be termed as decree-holder and as such cannot execute the decree. The Madras High Court overruled the said objection while observing that a decree-holder need not be a party to the decree. It is enough if the decree confers some right enforceable under the decree upon some persons mentioned in it. Similar views have been expressed by the different Courts in the cases of Bai Karimabibi v. Abderehman Sayad Banu (**AIR 1923 Bombay 26**), Mathura Das-Prabhu Dayal v. Brij Rani (**AIR 1929 Lahore 492**), Ajudhia Prasad v. the U.P. Govt. (**AIR 1947 Allahbad 390**) and Mst. Rehmat Sahiba v. Said Akbar Shah (**PLD 1961 (W.P.) Peshawar 6**). This implies that not only the defendants but also even strangers upon whom certain rights have been conferred through the decree can seek the enforcement/execution of the decree.

9. In the instant case, the trial Court *vide* judgment dated 21.12.2012 has categorically held that the respondent No.1 purchased the suit house from the appellant in the presence of witnesses and his wife, after fulfilling all legal formalities and paying Rs.2,50,000/- to the appellant. Further, respondent No.1

rightly transferred the suit house to respondent No.2. Admittedly, the findings of the trial Court remained upheld till the High Court and have now attained finality. Although the trial Court dismissed the suit of the appellant, yet it declared the title of respondent No.1 as owner of the suit house, however subject to the condition of paying an remaining amount of Rs.1,23,421/-. Respondent No.1 has already deposited this amount in the Court as per the record. Therefore, respondent No.1 falls within the definition of the decree-holder and is entitled to initiate execution proceedings by filing an application under Order XXI rule 10, C.P.C as he has a certain right enforceable under the decree. The objection of the appellant to the extent of the execution petition filed by respondent No.1 is not well placed and is accordingly rejected.

10. Now advertng to the next important question whether respondent No.1 despite being declared as the lawful owner of the suit house can seek possession thereof when the decree sought to be executed does provide for it. The law on the subject is so settled in the terms that an executing Court cannot go behind a decree but must execute it as it stands. For this purpose, there is a plethora of case law on this legal point; however, reference may be made to the cases of Ch. Ahmed Nawaz v. Province of Punjab (2015 SCMR 823), Irshad Masih v. Emmanuel Masih (2014 SCMR 1481), Humayun Hassan v. Arslan Humayun (PLD 2013 Supreme Court 557), Dr. Asma Ali v. Masood Sajjad (PLD 2011 Supreme Court 221), Sheikh Attiq-ur-Rehman Sarwar v. Sajjad Hussain (2009 SCMR 684), Muhammad Tariq Khan v. Khawaja Muhammad Jawad (2007 SCMR 818), Province of Punjab v. Burewala Textile Mills (2001 SCMR 396), Mst. Naseem Akhtar v.



Shalimar General Insurance Company (1994 SCMR 22) and Muhammad Ali and others v. Ghulam Sarwar (1989 SCMR 640).

11. Nonetheless, there are some exceptions to the above settled rule where-under an executing Court cannot look beyond the decree or look into the judgment, which are as follows:

- i) the executing Court can look into the question of 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. (Tauqeer Ahmad Qureshi v. Additional District Judge (PLD 2009 Supreme Court 760);
- ii) the executing Court can look into the judgment in order to find the exact property when the decree is silent regarding what property was the subject matter of execution (Allah Ditta v. Ahmed Ali Shah (2003 SCMR 1202); and
- iii) The executability of a decree can be questioned by the executing court if it is satisfied that (a) the decree is a nullity in the eyes of the law, (b) it has been passed by a Court having no jurisdiction (c) the execution of the decree will not infringe the legal rights of the decree-holder, if refused to be executed or (d) the decree has been passed in violation of any provision of law. (Fakir Abdullah v. Government of Sindh (PLD 2001 Supreme Court 131)

12. We have thoroughly examined the case of respondent No.1 and has found his case not covered under any of the exceptional circumstance mentioned above. No relief to the extent of possession was granted in favour of respondent No.1 in the judgment dated 21.12.2012 and as such the decree prepared in terms of the said judgment could not be interpreted to have provided the relief of possession of the suit house in favour of respondent No.1. The executing Court could not grant a relief to respondent No.1 which was never awarded to him under the decree. Surprisingly, the executing Court while going behind the terms of the decree issued a warrant of possession with the direction to the bailiff to recover and hand over the vacant possession of the suit house to respondent No.1. The above legal aspect of the matter was not properly considered by the High Court in its revisional jurisdiction. The revisional jurisdiction of High Court is meant to rectify; to obviate, forefend and stave off the exercise of jurisdictional errors/defects and the illegalities and/or material irregularity committed by the subordinate Courts. The High Court, in the instant case, has dismissed the civil revision simply on the ground that both the Courts below had committed no illegality or irregularity while issuing warrant of possession in favour of respondent No.1 as he (the respondent No.1) has fulfilled his part of obligation under the decree by making payment of the remaining consideration amount of the suit house as determined by the Court. The High Court did not adequately consider the relevant law as well as the precedents relating to the execution of the decree. The phenomenon of High Courts consistently upholding the orders of lower courts in a casual manner has given rise to a significant issue in the legal landscape. This trend has resulted in the proliferation of



litigation cases inundating the this Court, which, in turn, poses serious challenges to the efficiency and effectiveness of the highest judicial authority in the land. We believe that it is essential for a High Court, being the upper echelon of the Provincial Judiciary, to meticulously examine the case of the parties before passing the impugned order. By doing so, High Courts can help/alleviate the burden on this Court and ensure that it remains focused on its critical role in shaping and interpreting the legal framework of the nation.

13. Foregoing in view, instant appeal is allowed and the judgments/orders passed by the *fora* below are set aside.

Announced in open Court  
on 20.09.2023 at Islamabad  
~~Not~~ approved for reporting.