

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

**PRESENT**

Justice Syed Hasan Azhar Rizvi  
Justice Malik Shahzad Ahmad Khan

**Civil Petition for Leave to Appeal No. 2313 of 2024**

*(Against the Judgment dated 08.04.2024 passed by the High Court of Balochistan at Quetta in Civil Revision No. 103 of 2023)*

Abdul Ghani and others ..... Petitioners

**Versus**

Most. Alam Bibi and another ..... Respondents

For the Petitioners : Mr. Syed Najam-ud-Din Agha, ASC

For the Respondents : Mr. S. Mumtaz H. Baqri, ASC

Date of Hearing : 01.09.2025

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.-** Through this Civil Petition for Leave to Appeal, the Petitioners call in question the Judgment dated 08.04.2024 [**Impugned Judgment**] passed by the High Court of Balochistan at Quetta in its revisional jurisdiction where the Orders dated 08.12.2022 [**Execution Order**] and 07.03.2023 [**Appellate Order**] of the Executing Court and Appellate Court were set aside, respectively.

2. The instant matter pertains to distribution of assets amongst the heirs of Wali Muhammad [**Deceased**] who is the predecessor in interest of late Abdul Samad, late Gul Muhammad [**brothers of the Respondent No. 1**] and Respondent No. 1. The brief facts of the case are that the Respondent No.1 [**Decree-holder**], the paternal aunt of the Petitioners [**Judgment-debtors**], has filed Civil Suit No. 36 of 2011 before the Senior Civil Judge III at Quetta, seeking her share in the legacy of the

Deceased as well as in the estate of Malik Mehmood [**Deceased's brother**] who allegedly died issueless. The Petitioners / Judgment-debtors filed their written statement and issues were framed by the Trial Court. Thereafter, the Petitioners / Judgment-debtors moved an application for framing of additional issues; Respondent No. 1 / Decree-holder filed a rejoinder; the said application was dismissed *vide* Order dated 14.06.2013. All of the Respondent No. 1 / Decree-holder's witnesses were then examined and cross-examined by learned counsel for the Respondent No.1 / Decree-holder and Petitioners / Judgment-debtors, respectively. As the Petitioners / Judgment-debtors repeatedly failed to appear and, despite being granted several opportunities, they avoided to lead their evidence, their defence was closed and the suit was consequently decreed ex-parte *vide* Judgment dated 27.06.2014 [**1<sup>st</sup> Ex-parte Judgment**]. The Petitioners / Judgment-debtors assailed the 1<sup>st</sup> Ex-parte Judgment by filing Civil Appeal No. 20 of 2019 before the District Judge at Kuchlak which was accepted *vide* Judgment dated 28.12.2019 and the suit was remanded to the Senior Civil Judge at Kuchlak.

3. After remand of the suit, the Petitioners / Judgment-debtors again failed to pursue the suit or to produce their witnesses in defence. Ultimately, the suit was again decreed ex-parte *vide* Judgment and Decree dated 22.02.2021 [**2<sup>nd</sup> Ex-parte Judgment**] whereby the Respondent No. 1 / Decree-holder was declared entitled to her share in the Deceased's estate. Whereas, Respondent No. 1's claim to the estate of Deceased's brother (late Gul Muhammad) was declined in view of the Judgment dated

31.05.2011 in Civil Suit No. 149 of 2009 (a suit filed by the legal heirs of the Deceased's brother), holding that Deceased's brother was survived by his own legal heirs. The Petitioners / Judgment-debtors failed to file any appeal against the 2<sup>nd</sup> Ex-parte Judgment and Decree dated 22.02.2021. Hence, the 2<sup>nd</sup> Ex-parte Judgment and Decree attained finality.

4. The Respondent No. 1 / Decree-holder filed an execution application against the Petitioners and during which, the Executing Court erroneously recorded the name of the Respondent No. 1 / Decree-holder alongside the name of Petitioners / Judgment-debtors, which were already present, in Mutation Nos. 169 and 170 dated 10.12.2021, whereas there being no such entitlement under the Judgment and Decree. Subsequently, upon execution initiated by the legal heirs of the Deceased's brother (late Gul Muhammad), Mutation Nos. 169 and 170 were cancelled, and the names of the legal heirs of the Deceased's brother were recorded vide Mutation No. 212 dated 17.10.2022. It is pertinent to mention that the legal heirs of the Deceased's brother were not a party to the proceedings before the Trial Court, Appellate Court and the Executing Court.

5. Further, the interest of the Respondent No. 1 / Decree-holder was recorded as co-sharer in the Deceased's properties vide Mutation No. 412 dated 02.10.2021 by the Executing Court. The claim of the Petitioners / Judgment-debtors in the execution proceedings was that certain properties had been purchased solely by brothers of the Respondent No. 1 but this fact was never brought on record by the Judgment-debtors in their pleadings at

any stage before the Trial as well as the Appellate courts. Upon such objection, the Executing Court called for the original record; the representative of the Saddar *Qanoongo* (Muhammad Akbar) produced the relevant *jamabandi*. The Executing Court held that the subject properties were recorded in the name of brothers of the Respondent No. 1 and not in the name of the Deceased.

6. Relying on the revenue record, the Executing Court held that the Respondent No. 1 / Decree-holder was not entitled to any share therein, as her father held no title, and accordingly ordered cancellation of Mutation No. 412 recorded in her name and, to that extent, of Mutation No. 212, with restoration of the shares of the Deceased's brother.

7. Learned ASC for the Petitioners / Judgment-debtors argues that the Impugned Judgment is untenable in the eyes of law. The Judgment passed in Civil Suit No. 149 of 2009 already adjudicated the estate of the Deceased's brother, foreclosing any share for the Respondent No. 1 / Decree-holder. The original record produced by the Saddar *Qanoongo* shows that the Deceased held no share in the subject properties. He further submits that the procurement of transfers by the Respondent No. 1 / Decree-holder through Mutation Nos. 169, 170 and 412 is beyond the scope of 2<sup>nd</sup> Ex-parte Judgment. He further argues that the learned Executing Court, rightly cancelled the entries of the revenue record. He submits that the Revisional Court exceeded from its supervisory remit. Lastly, he states that the Impugned Judgment be set aside and the Executing Court's order along with the Appellate Court's order are to be restored.

8. On the contrary, learned ASC for Respondent No. 1 / Decree-holder vehemently opposes the argument of the Petitioners by submitting that the present Civil Petition is misconceived; the Judgment and Decree finally recognised the entitlement of the Respondent No. 1 / Decree-holder in the estate of the Deceased. He argues that the Petitioners, in their written statement, neither denied, challenged or rebutted the title of the Deceased to the subject properties nor sought to lead evidence to that effect; their objections surfaced belatedly after the mutation entries at the execution proceeding. He submits that matters not pleaded or tried at trial cannot be introduced at the execution stage, and the Executing Court lacked jurisdiction to call for and appraise revenue record or to recast the effect of the Decree. The High Court, in the Impugned Judgment, rightly exercised revisional jurisdiction to correct that jurisdictional error and restored the lawful effect of the Decree; the present Civil Petition merits dismissal.

9. Arguments heard. Record perused. On appraisal of the record, we find that Respondent No. 1 / Decree holder laid a clear documentary foundation by annexing the relevant revenue record, namely the *jamabandi* of the relevant properties and the *fard* of mutation, depicting the Deceased as owner. The record holding custodial witness produced the pertinent entries from official custody, and that testimony remained unshaken during the evidence before the Trial Court. The documents brought by the Respondent No. 1 / Decree-holder, when exhibited in the evidence adduced by her witnesses did not undermine the official record. On the contrary, the subsequent tampered and forged

document (if any) produced before the Executing Court has no value in the eyes of law. The Executing Court as well as the Appellate Court have failed to consider that the suit was filed by the Respondent No. 1 / Decree-holder in the year, 2011. The 1<sup>st</sup> Ex-parte Judgment and Decree was pronounced on 27.06.2014 where the Petitioners / Judgment-debtors contested the suit by filing written statement and cross-examining the witnesses of the Respondent No. 1 / Decree-holder including two (2) *patwaris* and one (1) representative of the concerned *Tehsildar*, who were maintaining the official record. Whereas, after more than ten years, almost a decade, an Execution Application was filed in the year of 2021 and the Executing Court without examining the evidence already available on record called for the documents in 2022.

10. The Petitioners / Judgment-debtors in the execution proceeding urged that the properties were self-acquisitioned by the brothers of the Respondent No. 1. However, they did not take any such plea in their written statement, did not seek to frame issue on that basis, and despite cross examining all private and official witnesses, did not put their suggestions to a single witness. Neither was any supporting title document annexed with the written statement at the trial, nor was any specific title document confronted by the Petitioners / Judgment-debtors during the evidence of Respondent No. 1 / Decree-holder's witnesses before the Trial Court, or filed with the memo of appeal before the Appellate Court. A plea not pleaded, not confronted in cross examination, and not supported by leading evidence cannot

be set up for the first time in execution proceedings. It seems to be an after-thought.

11. Procedurally, the Petitioners / Judgment-debtors were afforded repeated opportunities both before and after remand, yet they neither filed any documentary evidence or confronted the document in their possession to the Respondent No. 1 / Decree holder's witnesses nor produced any witness in their defence before the Trial Court and Appellate Court. Non-appearance of the Petitioners / Judgment-debtors or their counsel even after remand of the suit by the Appellate Court when the Petitioners / Judgment-debtors appeal was partly allowed, resulted in 2<sup>nd</sup> Ex-parte Judgment and Decree. The 2<sup>nd</sup> Ex-parte Decree therefore stood unchallenged and has attained finality.

12. The law on the point in hand is settled and consistent. An executing court deals with execution, discharge or satisfaction; it is neither treated like an appeal over a decree that has attained finality, nor may it *go* beyond the decree. This Court in the case of Muhammad Ali and others v. Ghulam Sarwar and others<sup>1</sup> has held that Executing Court cannot go behind the decree and has to execute it as it is, unless it is patently a nullity. Furthermore, the High Court has rightly relied upon the case of Mst. Naseem Akhtar and 4 others v. Shalimar General Insurance, Company Limited and 2 others<sup>2</sup> which set out that the plea which could have been raised in the suit or appeal cannot be revived in execution. However, this Court in Tauqeer Ahmad Qureshi v.

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<sup>1</sup> 1989 SCMR 640

<sup>2</sup> 1994 SCMR 22

Additional District Judge, Lahore and 2 others<sup>3</sup>, has at the same time, preserved a narrow carve-out: the forum may decline only that part of a decree which is a nullity or has become inexecutable, if it is severable. The relevant portion of *Tauqueer Ahmed Qureshi (supra)* is hereby reproduced:

*".... 10. There is no cavil to the proposition that the executing Court cannot go behind the decree but at the same time the executing Court can look into the questions whether the decree or part thereof is executable or inexecutable and if for any reason the decree has become inexecutable, the executing Court is empowered to declare so and if a part of the decree is inexecutable and that part is severable from other part(s) of the decree then the executing Court is empowered to refuse the execution of the inexecutable part of the decree and may proceed with the execution of the rest of the decree. "*

13. Applying the settled principles of law in the instant case, the 2<sup>nd</sup> Ex-parte Decree stood unchallenged and thus attained finality. The plea of self-acquired ownership by the brothers of Respondent No. 1 (the sons of Deceased) was neither taken in the written statement nor was any issue framed regarding the same. Manzoor Ahmed [**PW-1**] and Noor Zaman Khan [**PW-2**], both mutual relatives of the parties, stated in their examination-in-chief that the Petitioners / Judgment-debtors deprived Respondent No. 1 / Decree-holder of her due share. The learned counsel for the Petitioners / Judgment-debtors did not put any question to PW-1 or PW-2 suggesting that the properties were self-acquired. PW-1, in Question No. 22, also denied the suggestion that Respondent No. 1 / Judgment-debtor had taken her share in cash. The Petitioners' case is further weakened by their failure to

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<sup>3</sup> PLD 2009 SC 760



cross-examine the key witness, Muhammad Ishaq (*patwari*) ['PW-3'], who produced the record (Exhibits P/1-A to P/9-A) which corroborates the land revenue record of the subject properties relied by Respondent No. 1 / Decree-holder. Even, Abdul Jabbar (representative of the Tehsildar Saddar) ['PW-4'], produced *Intiqal* No. 131 as Exhibit P/10-A, further corroborating Exhibit P/10, and in his cross-examination confirmed the record is duly registered. Lastly, Muhammad Ameen (*patwari*) ['PW-5'] deposed and produced: copies of *Intiqal* Nos. 11, 44 and 16 (Exhibits. P/11, P/12, P/21), *shajra-nasb* (Exhibit P/13), *Meezan Haqiat* of 1941-45 (Exhibit P/14), *Meezan Khata* (Exh. P/15), *Fard Jamabandi* Mahal (Exhibits. P/16, P/18), *Meezan Haqiat* (Exhibit P/17), *Fard Jamabandi* (Exhibit P/20) and related record (Exhibit P/19). The documentary evidence produced by these witnesses in their evidence before the Trial Court, read with the pleadings of Respondent No. 1 / Decree-holder, supports her case.

14. On the contrary, no evidence was led by the Petitioners / Judgment-debtors and hence, they cannot set up a new case at the stage of execution. As settled in *Naseem Akhtar (supra)*. No such situation of nullity or in-executability of any severable part was demonstrated; instead, the Executing Court embarked upon a fresh inquiry into title on collateral revenue papers. Since the decree stands, execution must proceed to the extent it speaks, recognising the Respondent No. 1 / Decree holder's entitlement in the Deceased's estate and nothing more. The High Court's intervention merely restored such legal boundaries rather than reappraising the evidence which is already brought on record before the Trial Court.

15. The Executing Court exceeded from its limit by calling for the revenue record, and effectively sitting in appeal over the Judgment and Decree. In execution proceedings matters which have attained finality cannot be re-opened or re-adjudicated.

16. The Impugned Judgment is well-reasoned, based on proper appreciation of facts and law. Learned Counsel for the Petitioners has failed to point out any illegality, perversity, or misreading and non-reading of evidence in the Impugned Judgment and hence, no interference of this Court is warranted. In view of the above, the learned Single Bench of the High Court of Balochistan has rightly set aside the orders of the Executing Court as well as the Appellate Court. Accordingly, the instant Petition is dismissed and Leave to Appeal is refused. Interim Order dated 30.10.2024 passed in CMA No. 5413 of 2024 by this Court is hereby recalled.

Judge

Judge

Islamabad  
01.09.2025  
APPROVED FOR REPORTING  
*Younus Shaikh, LC*