

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

C.P.No.S-341 of 2025

(Amanullah and others v/s. P.O. Sindh and others)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Petitioners

Amanullah and others Through Mr. Abdul Rehman A. Bhutto,
Advocate

Respondents:

Province of Sindh and others: Through Mr. Munwar Ali Abbasi,
Assistant Advocate General, Sindh.

Date of Hearing: 06.10.2025

Date of Order: 06.10.2025

ORDER

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Nisar Ahmed Bhanbhro, J. Instant Constitution Petition is directed against the Order dated 14.12.2024, passed by the Court of Learned Senior Civil Judge-II, Shikarpur (**Executing Court**) in Execution Application No.07/2024 (*Re- Amanullah and others v/s. The P.O. Sindh and others*) and order dated 22.03.2025 passed by the Court of learned IIIrd Additional District Judge/Model Civil Appellate Court, Shikarpur (**Revisional Court**) in Civil Revision Application No.09/2025, (*Re- Amanullah and others v/s. P.O Sindh and others*), whereby execution application filed by the petitioners for execution of Decree dated 12.05.1999 passed in F. C. Suit No.27/1984 was dismissed being hopelessly time barred.

2. It is the case of the petitioners that they are owners of the suit property viz. survey number 480 of deh Phulpota Taluka Shikarpur, which was purchased by them through registered sale deed dated 09.02.1944 from its hindu owner Parsaram. After partition the land was declared as evacuee property and placed under evacuee pool, thereafter, allotted to the private

respondents. Petitioners filed Suit No.27/1984 (*Re- Amanullah and others v/s. P.O Sindh and others*) before the Court of Learned Senior Civil Judge, Shikarpur, which was dismissed on merits vide judgment and decree dated 22.10.1998 and 29.10.1998. Petitioners preferred Appeal No.36/1998, which was allowed by the Court of Learned Additional District II Shikarpur vide Judgment and Decree dated 08.05.1999 and 12.05.1999 respectively.

3. Petitioners filed execution application No 07 of 2024 on 14.12.2024 before Learned Executing Court for execution of the judgment and decree. Learned Executing Court dismissed the application vide orders dated 14.12.2024 on the ground of limitation as the execution of decree was sought after 25 years' time. Petitioners assailed the order of Executing Court through Revision Application No 09 of 2025, which was assigned to the Revisional Court for disposal in accordance with law. Revisional Court maintained the order of Executing Court and dismissed the Revision Application. hence this petition.

4. Learned Counsel for the Petitioner contended that the execution application was filed to seek revision of the record of rights. He contended that the limitation would not apply for the purpose of mutation of revenue entries. He prayed for allowing the petition.

5. Mr Munwar Ali Abassi Learned Additional Advocate General has opposed the Petition on the ground that the execution of decree was sought after 25 years' time, beyond the period of 3 years as articulated under article 181 of the first schedule to the Limitation Act 1908. He argued that orders passed by both the Courts below did not suffer from any illegality or irregularity. He argued that petition was not maintainable and liable to be dismissed with costs.

6. **Heard arguments, perused material available on record.** Scanning of the record revealed that the suit filed by the petitioners was decreed by the appellate Court vide judgment and decree dated 08.05.1999 and 12.05.1999 respectively, against which no challenge was made thus the same attained finality. Petitioners preferred execution application seeking assistance of the Executing Court to implement the decree. Petitioners made a specific prayer

in the execution application seeking directions to the Revenue Authorities to revise the revenue entries in the record of rights in terms of the decree dated 12.05.1999. Learned Courts below non-suited the petitioners for filing execution application with delay. No time frame has been given under the Limitation Act to get a decree executed, in absence of any specific provision for implementation of decree, the limitation shall be governed by residue Article 181 of the First Schedule of Limitation Act 1908, which provides a period of limitation of three years for making first application.

7. Perusal of the Execution Application filed by the Petitioners transpired that no explanation for delay in filing the execution application was furnished. As such the execution application apparently was time barred, thus rightly declined by the Courts below. No case for indulgence of this Court against the orders of Courts below was made out.

8. Moot point involved in the present petition is whether non filing of an execution application would tantamount to nullify the effects of the decree, particularly when the Decree pertained to the declaration of a right and cancellation of the Document. The Petitioner seeks correction in the record of rights of landed property on the basis of the decree. Since matter pertains to revenue entries, therefore, it would be appropriate to review the relevant provisions of Sindh Land Revenue Act, 1967, that regulate the preparation of record of rights.

9. Chapter VI of the Sindh Land Revenue Act, 1967 provides the procedure of maintaining the record of rights. Section 42 of the Sindh Land Revenue Act, 1967 is the relevant provision which empowers revenue authorities to effect change in the revenue record of rights, it would be conducive to reproduce the Section 42 for the ease of reference, which reads as under:

42. Procedure for making records. (1) The Board of Revenue may, for exclusively doing the work connected with the maintenance of the record of rights and register of mutation of such rights, create, a cell in the office of Mukhtiarkar, consisting of such officials as may be determined by it.

(2) *The record of rights and the registration of mutations shall be in three sets, one each with the cell, the office of the union council or the council concerned, constituted under the Sindh Local Government Ordinance, 1979 and the Tapedar.*

(3) *Where a person has acquired any right or interest in a holding otherwise than by easement or charge not amounting to mortgage within the meaning of section 100 of the Transfer of Property Act, 1882, he shall, orally or in writing; inform the Mukhtiarkar or such other officer as may be appointed by the Board of Revenue, hereinafter called as authorized officer of such acquisition within three months thereof;*

Provided that where the person acquiring the right is a minor or is otherwise disabled to give such information, his guardian or other person having charge of his property shall give the information:

Provided further that it shall not be necessary to give the information if the right or interest has been acquired by a registered document in which case it shall be the duty of the Sub-Registrar concerned to inform the Mukhtiarkar or the authorized officer, within three months of the registration of the document.

Explanation.- A person in whose favour a mortgage is discharged or extinguished, or lease determined, acquires a right within the meaning of this sub-section.

(4) *Where the information under sub-section (3) has been made orally, the Mukhtiarkar or the authorized officer shall reduce it to writing and obtain the signature or thumb impression of the person making the information. -*

(5) *The Mukhtiarkar or the authorized officer shall certify that the information required by sub-section (3) has been made and shall furnish such certificate to the person making it.*

(6) *The Mukhtiarkar or the authorized officer shall forward the information received by him under sub-section (3) to the incharge of the cell, if any, in case the Mukhtiarkar or the authorized officer is not himself the incharge, and the incharge shall, on receipt of such*

information or when he is otherwise satisfied that any acquisition of any right or interest in any holding has taken place, enter such acquisition in the register of mutation.

(7) The incharge of the cell or the Mukhtiarkar where there is no cell after making entry under sub-section (6) shall.-

(a) affix a copy of the entry on the Notice Board of the Taluka Office.

(b) forward a copy of the entry to the Tapedar concerned for affixing it at a conspicuous place in Tapedar's Dero;

(c) intimate, by notice in writing, to all such persons who appear or are believed to be interested in the mutation.

(8) Any person aggrieved by the entry made under subsection (6) may file objections against such entry with the incharge of the cell or with the Mukhtiarkar where there is no cell within fifteen days of the service of the notice under sub-section (7).

(9) The objections, if any, received under sub-section (8) shall be entered in a separate register, hereinafter to be called the register of disputed cases.

(10) The objections entered in the register of disputed cases shall be disposed by the Mukhtiarkar or such other officer authorized by the Board of Revenue in this behalf in open katcheri to be held in the concerned tapa and all parties interested in the objections shall be given a notice of not less than a week regarding the date and place of the katcheri and shall be given reasonable opportunity of being heard in the said katcheri and the orders made with regard to disposal of the objections shall be entered in the register of mutation.

(11) The entries made in the register of mutation shall, after they have been certified by the Mukhtiarkar, be transferred to the record of rights in such manner as may be laid down by the Board of Revenue.

(12) The incharge of the cell or the Mukhtiarkar where there is no cell shall, after the expiry of the period for filing objections, if no objections are filed, or within ten days of the order under sub-section (10) make the necessary corrections in the copy of the record of rights in his custody and direct in writing the supervising Tapedar to have the similar corrections made in the copies of the record of rights in the custody of the council concerned and the Tapedar within fifteen days of the receipt of the directions.

(13) *The corrections under sub-rule (12) shall be attested.-*

(i) *by the Mukhtiarkar if the correction is made by the incharge of the cell;*

(ii) *by a Revenue Officer not below the rank of Assistant Mukhtiarkar in other cases.*

(14) *The corrections in the computerized record of rights, shall be attested by the Assistant Collector of the first grade appointed for that specific purpose at the service center.*

10. This provision of law obligated the government to establish cell in the office of the Mukhtiarkar for the purpose of preparation of record of rights. Person who acquires a right or interest in the property is required to furnish such information to the Mukhtiarkar concerned orally or in writing within a period of three months of acquiring of such right for making an entry in the record of rights. In case of a right acquired through registered sale deed the person acquiring the right or interest in the property was not required to inform the Mukhtiarkar about the registered sale deed but concerned Registrar was under an obligation to send such information to the Mukhtiarkar within a period of three months. Since the Petitioners had acquired the right or interest in the suit property by way of registered sale deed, therefore, they were not required to tender information of the sale transaction.

11. For the determination of disputes as to the correctness of any entry in the record of rights the revenue officer is empowered under section 44 of the Sindh Land Revenue Act 1967, to initiate inquiry of his own motion, or on the application of any party interested, to determine the entry to be made as to that matter and record his reasons therefor. If in any such dispute, the Revenue Officer is unable to satisfy himself as to which of the parties there to is in possession of any property to which the dispute relates, he shall ascertain through an inquiry for best entitlement to the property, after giving an opportunity of hearing to all the parties to dispute and adducing evidence in support of their claims, and shall by written order direct that the person be put in possession thereof, and that entry in accordance with that order be made in the record or register which shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction.

All such variations in the record of rights were subject to the provisions contained in section 45 of the Sindh Land Revenue Act 1967, which reads as under:

45. Restriction on variations of entries in records. *Entries in a record-of-rights shall not be varied in subsequent records otherwise than by*

(a) making entries in accordance with facts proved or admitted to have occurred;

(b) making such entries as are agreed to by all the parties interested therein or are supported: by a decree or order binding on those parties.

12. The entries in record of rights were not a proof of title though a presumption of correctness was attached to the entry in record of rights. Section 52 of the Sindh Land Revenue Act, 1967 lays down that the entry in the record of rights was presumed to be correct until the contrary is proved or new entry is lawfully substituted therefore, such 52 reads as under:

52. Presumption as to correctness of the record. *An entry in a record of rights shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.*

13. Any person aggrieved of the entry in the record of rights may seek its cancellation by instituting a suit for declaration as envisaged under section 53 of the Sindh Land Revenue Act 1967, which reads as under:

53. Suit for declaratory decrees by persons aggrieved by an entry in a record. *If any person considers himself aggrieved by an entry in a record of rights as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877).*

14. Perusal of the Sections 52 and 53 of the Sindh Land Revenue Act, 1967 made it vivid and clear that a mutation in the record of rights can be effected at any time by the Revenue Officer competent to revise the periodical record. The law of limitation will not apply to the correction of revenue entries,

mutation and periodical revision, etc. Language contained in section 52 makes the intent and wisdom of legislature quite clear that an entry in record of rights is presumed to be correct until the contrary is proved or a lawful entry is substituted. The contrary is proved or lawfully substituted are self-explanatory words, suggesting that an entry in the record of rights can be altered at any time. Revenue Hierarchy in exercise of its revisional powers conferred under section 164 of the Sindh Land Revenue Act 1967 can pass appropriate orders regarding the entries in record of rights at any time on receiving information.

15. This view is fortified by the judgment of Honorable Supreme Court in the case of Ali Ahmad and another Versus Muhammad Afzal and another reported as 1972 S C M R 322 wherein it was held that:

In support of the petition, Raja Said Akbar Khan, learned counsel for the petitioners, has contended that as the decree was not executed for six years, the Revenue authorities had no jurisdiction to sanction mutation and the Member, Board of Revenue and the other authorities were perfectly justified in refusing to do so. The contention of the learned counsel has not impressed us. A valid decree was passed in favour of respondent No. 1. He became the owner of the property on payment of the purchase price on the 26th October 1960, and became vested with right, interest and title in the land from that date. He was entitled to get the mutation effected on the basis of tile decree. Simply because it has barred by time, it has not lost its utility. In our opinion, the view of the High Court is correct that the Revenue authorities were under obligation to sanction mutation on the basis of the decree. It was next contended that the respondent has taken possession under a collusive decree from the tenants of the petitioners and that the order of the High Court is likely to affect the decision of the suit filed by the petitioners under section 9 of the Specific Relief Act. The apprehension of the petitioners is not well founded. The civil Court will decide the suit on its own merit. There is no force in the petition. The petition is dismissed.

16. Non filing of an execution application cannot in any manner nullify the decree. The decree passed by a Civil Court remains intact and has the binding

effect on the parties to the litigation. Admittedly in the suit filed by Petitioners, the Secretary Settlement Department, Deputy Commissioner Shikarpur, Assistant Commissioner Revenue Shikarpur and Mukhtiarkar Revenue Shikarpur were defendants No 1 to 4. The judgment and decree dated 08.05.1999 and 12.05.1999 thus was binding upon them. The Petitioners cannot be non-suited for the reason that they delayed in seeking execution of decree. Admittedly the Petitioners were in possession of valid sale deed and decree passed by the Civil Court confirmed their right of ownership, thus revenue authority was under an obligation to revise the record of rights to make it in consonance with the admitted facts as envisaged under section 42 of the Sindh Land Revenue Act.

17. In the case of Petitioners, the decree was passed in their favour way back in the year 1999. The Petitioners sought incorporation of the entry in the record of rights pursuant to decree and registered sale deed in their favor dated back to year 1944 which could be done by the Revenue authority in terms of the provisions contained under chapter VI (Section 39 - 55) of Sindh Land Revenue Act, 1967. For this purpose, the assistance of Executing Court was not required, the Revenue Authority retained exclusive powers in that regard.

18. When confronted, learned counsel for the petitioners contended that the Petitioners approached the revenue authorities for change in the record of rights, but they refused to entertain his request, he submits that Petitioners will approach the concerned revenue officer for maintaining record of rights in terms of the Judgment and Decree passed in the year 1999 and registered sale deed of year 1944, if directions are issued to the Revenue Authorities to do the needful.

19. It is settled phenomena that rights conferred through a decree of the Court, not brought for execution, remain intact. The Petitioners have acquired an interest in the suit property and their claim of ownership has been authenticated by a Competent Court of law, therefore Revenue Officers are under obligation to incorporate such entry in the record of rights.

20. In nutshell, to sum up the discussion, it is obligatory upon the Revenue Authority to mutate the entry in record of rights which is based upon a fact proved. The Petitioners proved the existence of a fact before a competent court of law, thus entitled to get its fruits. The petitioners may approach the revenue authorities competent under the law for incorporation and correction of the concerned entries in the record of rights in terms of the Judgment and Decree dated 08.05.1999 and 12.05.1999 passed by the Court of learned IInd Additional District Judge, Shikarpur in Civil Appeal No.36/1998 and registered sale deed of year 1944 pertaining to suit property. If approached the Revenue Officer concerned, shall proceed in the matter in accordance with law by strictly adhering to the provisions contained in Chapter VI (Section 39 to 55), read with section 164 and 172 of the Sindh Land Revenue Act, 1967. Revenue Officer shall proceed in the matter after due verification of record, judgment and decree from the concerned court and shall follow the law and rules and more particularly by providing an opportunity of hearing to all concerned.

The Constitution Petition is disposed of in above terms, along with the listed applications.

Judge

Manzoor

Approved for reporting

Larkana

06.10.2025