

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-1174 of 2025

'Muhammad Moosa, through his legal heirs vs. Ishaq S/o Yaqoob, through his legal heirs and others'

Petitioner	:	Through Mr. Naeem Suleman, Advocate
Respondents	:	Through Mr. Ahmed Madni, Advocate
Date of Hearing	:	25.05.2026
Date of Announcement	:	18.07.2026

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- Through this petition, the Order dated 05-09-2019 passed by the learned III-Additional District Judge, Karachi (South) in Civil Revision No. 02 of 2018, which upheld the Order dated 08-12-2017 passed by the learned V-Civil Judge, Karachi (South) in Civil Execution No. 01 of 2013 [**impugned Order**] arising out of Civil Suit No.661 of 2004, have been called in question

2. Heard learned counsel and perused the record which, for brevity's sake, will be discussed at the relevant portions in this Order.

3. Briefly, the predecessor of the petitioners and Respondents, late Muhammad Moosa son of Ilyas Abdullah during his lifetime filed a Civil Suit No. 661 of 2004 before the learned V-Civil Judge, Karachi (South) for Declaration, Partition, Administration, Possession, Injunction and Accounts in respect of the suit property. The suit was decreed vide Judgment dated 05-11-2009 and Decree dated 06-11-2009, which was also upheld by the appellate Judgment dated 06-12-2012 and Decree dated 12-12-2012 in Civil Appeal No. 242 of 2009, which is under challenge in Second Appeal No. 07 of 2013 before this Court.

4. For implementation of the above decree in Suit No. 661 of 2004, Muhammad Moosa (since deceased) had filed Civil Execution No. 01 of 2013 before the learned V-Civil Judge, Karachi (South), which was also allowed on 01-02-2017. During pendency of the second appeal, Muhammad Moosa expired, and his legal heirs were impleaded as Respondents in this appeal. Likewise, the legal heirs of the deceased Muhammad Moosa were also impleaded by the executing Court as decree holders vide Order dated 16-08-2017. Instead of filing a Revision, the Respondents moved an application under Section 151 CPC. before the same executing Court for recall of the Order dated 16-08-2017,

which was disposed vide order dated 08-12-2017, wherein, on one hand, the application was rejected on merits, a fresh condition was put upon the petitioners, directing them to obtain a Succession Certificate or Letter of Administration from a competent court under Section 214(1)(b) of the Succession Act, 1925 [Act 1925] within two months and the matter was adjourned *sine die*. The petitioners challenged such direction in Civil Revision No. 02 of 2018, which was rejected vide order dated 05-09-2019, and which is challenged in this petition.

5. Though under Order XXII CPC., legal heirs of a deceased can be brought on record even in Execution proceedings, as held in '*Manindra Nath Parial vs. Saber Ahmad and others*' (PLD 1967 Dhaka 621), nevertheless, the short legal question involved in this petition, touching the interpretation of section 214 of the Succession Act 1925, will define the executability of the decree by legal heirs of Muhammad Moosa before the learned Executing Court, without production of a Succession Certificate.

6. Section 214 of the Act, 1925 provides as follows:

“214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons. — (1) No Court shall —

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming, of —

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 31 or section 32 of the Administrator Generals Act, 1913, and having the debt mentioned therein, or

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(v) a certificate granted under Sind Regulation No. VIII of 1827 and, if granted after the first day of May, 1889, having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.”

[emphasis added]

7. Firstly, from a bare reading of the above provision and its highlighted parts, it is clear that the provision revolves around the issue of liability of a debtor of a deceased person, whereas in the present case, the suit and the decree were primarily based upon hereditary rights, seeking Declaration, Partition, Administration, Possession, Injunction and Accounts in respect of immovable property. The decree was not for a debt, but it was for inheritance rights *inter se* heirs in respect of immovable property. The decree was for partition of the property and delivery of its possession. Hence, the said provision was not attracted to the facts of the present case, which was not considered by both the learned Courts below.

8. Secondly, even in a case concerning debt recovery, a Division Bench of the Bombay High Court in the case of '*Abdul Majid v Shamsherali Fakruddin*' (case No.475 of 1937), discussed an identical issue concerning a decree passed without conforming to the requirement of Section 214. While interpreting the object and spirit of the provision, Chief Justice Beaumont in its Judgment dated 08.02.1940 recorded that:

“I am not prepared to agree with the Learned District Judge's view that the omission to obtain a certificate renders the decree a nullity. In effect S. 214, Succession Act, requires the judge to insist upon certain evidence in support of the plaintiff's claim before passing a decree, but the omission to obtain such evidence cannot in my opinion, affect the jurisdiction of the Court to try the suit. The are no more peremptory than the provisions of Section 35, Stamp Act, or Section 49, Registration Act, which forbid the Court to receive certain documents in evidence. If the Court does, in breach of those provisions, improperly receive documents in evidence, that is an error which can be corrected in appeal, but it does not render the decree a nullity. In the same way the omission to obtain a succession certificate is good ground of appeal, but if the decree is not appealed from, in my opinion it remains a valid decree and cannot be regarded as a nullity.”

9. It was concluded that a decree obtained by legal heirs of a deceased, without fulfilling the requirements of section 214 of the Act, was not a nullity in law. The Karnataka High Court followed the same principles in the case of **‘Luxmangowda v Maddamma’** (Case No.3000 of 1994) in its Judgment dated 08.11.1984. Since the decree in the instant case was not for debt recovery but for a hereditary right, it stands on a much higher footing than the issues involved in the Abdul Majid and Luxmangowda cases, *ibid*.

10. Thirdly, while interpreting the applicability of section 214 in a decree for Specific Performance of an immovable property, this Court held in **‘Ahmad-ul-Haq Siddiqui vs. Bashir Ahmed’ (1987 CLC 2536)** that the provision does not apply to a decree involving an immovable property, in the following words:

“8..... The idea behind this provision of Section 214 appears to be that if one of the legal heirs gets money in the execution decree of a deceased Decree-holder, the possibility that such legal heirs may appropriate the money to the exclusion of the other legal heirs, cannot be ruled out. To prevent such abuse of the process of Court, the Legislature requires the legal Heirs to obtain one of the Certificates mentioned in the above Section which can be granted to him by competent Court or authority, only after notice to and hearing of other legal heirs. There is no such possibility in execution of a decree of specific performance of sale-agreement because the sale would have to be registered in the name of all the legal heirs of the deceased Decree-holder and the right of none of them would be adversely affected by execution of such decree without production of aforesaid Certificate.”

11. The fourth point to consider is that the said provision, revolving around debt recovery, is also silent about any claim with respect to an immovable property, whereas the claim in the instant case was with respect to hereditary rights in the subject immovable property.

12. Fifthly, it appears from the record that both the learned Courts were also not properly assisted and informed about a highly significant and decisive development, which was informed to the Court by the petitioners through a Statement dated 20.05.2026 filed in this Court along with a certified copy of the Second Appeal No.07 of 2013. The certified copy reveals that after the passing of concurrent decrees in the main

suit for partition, etc., the Respondents filed the said Second Appeal No.07 of 2013 before this Court, and during the pendency whereof, Muhammad Moosa passed away. The Respondents themselves filed an application for impleading the petitioners/ as legal heirs of Muhammad Moosa, as party to the Second Appeal. The application was allowed by this Court and the petitioners were brought on record as legal heirs of Muhammad Moosa in the Second Appeal. Accordingly, the amended title was also filed by the Respondents, and ultimately, after hearing, the Second Appeal was dismissed, i.e., decided against the Respondents, in favour of the petitioners/heirs of Muhammad Moosa. The learned Courts therefore failed to consider that once the Second Appeal 07 of 2013 filed by Respondents was dismissed on merits (in favour of legal heirs of the deceased), by the principle of merger, such decree has attained finality and has become the final decree, which already impleaded and included the petitioners as heirs of the deceased decree holder. They also failed to consider that such decree now remains in the field and is fully executable, which was passed in favour of the petitioners as heirs of Muhammad Moosa, who were themselves parties to the proceedings before this Court.

13. Sixthly, the learned Courts also failed to consider that neither the respondents objected to the heirship of the petitioners at any stage of the second appeal proceedings, nor the petitioners' identity as the legal heirs of Muhammad Moosa was challenged or disputed. The Respondents, in the Second Appeal before this Court, never challenged or objected to the substitution of the legal heirs of Muhammad Moosa. The Mukhtiarkar Lyari Town had already mutated the property in the Records of Rights in the names of the legal heirs through its own revenue process, without requiring any Letter of Administration, which is consistent with the position that the identity and heirship of the petitioners were well-identified and undisputed. The certified copy of the list of legal heirs filed by the deceased Muhammad Moosa at the time of filing his suit was also placed on record. Hence, no further proof of representative title of the petitioners was required before the learned Executing Court. From the above, it is clear that, in addition to the fact that the case or the decree was not for debt recovery, and the decree in Second Appeal is in field and has attained finality, there was also no dispute between the parties with respect to the petitioners being heirs of the deceased decree holder. Such important facts were perhaps not placed before both the learned Courts below, which resulted in erroneous conclusions by the learned Courts.

14. Once the petitioners have already been dealt with as the legal heirs of Muhammad Moosa by this Court itself, in the very proceedings from which the decree in question emerges. They were parties to the appellate decree which they now seek to execute. The requirement of Section 214 of the Succession Act, even if it were (which, though is not), could not apply in this situation because the legal heirs of Muhammad Moosa were not strangers claiming for the first time in the execution proceedings. To require a Succession Certificate from persons who are already recognised as decree holders under a decree of this very Court in Second Appeal, would be to place a wholly unjustified burden upon them.

15. Seventhly, the proceedings in the main suit were initiated for seeking reliefs of partition, administration, declaration etc. Hence, the logic applied in the impugned Orders is also in contrast to the scheme of law and mechanisms specially provided in separate chapters for such disputes between heirs regarding the estate of the deceased in the Succession Act, 1925 itself and the Partition Act, 1893.

16. Lastly, whether the learned Executing Court had the power to review its own Order is also an arguable contention from the petitioner's side. Order XXII rule 12 CPC specifically provides that Rules 3, 4 and 8 of Order 22 shall not apply to proceedings in execution of a decree or order. Section 146 CPC fills this gap and provides the mechanism by which the legal heirs of a deceased party may continue execution proceedings. The executing court had rightly exercised this power by passing the original Order dated 16-08-2017, which was correct and lawful.

17. Based upon the above reasoning and following the ratio settled in the cases of Manindra Nath Parial, Abdul Majid and Luxmangowda *supra*, I am convinced that the provision of section 214 of the Act, 1925 was wrongly applied and was not considered in its correct spirit, making it a fit case for exercise of writ jurisdiction under Article 199 of the Constitution. The petition is therefore allowed and the impugned Order dated 05-09-2019 passed by the learned III-Additional District Judge, Karachi (South), and the Order dated 08-12-2017 passed by the learned V-Civil Judge, Karachi (South) in Civil Execution No. 01 of 2013, only to the extent of directing the legal heirs of the decree holder to obtain a Succession Certificate or Letter of Administration and adjourning the matter *sine die*, are set aside. The learned V-Civil Judge, Karachi (South) is directed to restore the Civil Execution No.01 of 2013 to its original file, and to proceed with the same expeditiously, in accordance with law.

The petition stands allowed in the above terms.

J U D G E