

ORDER SHEET
THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D – 1375 of 2020

Date of hearing	Order with signature of Judge
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Hearing of case.
1. For orders on office objections
2. For hearing of main case

08.09.2026

Mr. Zakir Hussain Bozdar, Advocate for the petitioner
Mr. Mukesh Kumar G. Karara, Advocate for Respondent No.3
Mr. Shahryar Imdad Awan, Assistant A.G
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Through the instant Constitutional Petition, the petitioner has called in question order dated 03.11.2020, passed in Civil Revision No.17 of 2019, by the Civil Model Appellate/2nd Additional District Judge, Sukkur, as well as the order dated 14.02.2019, passed by the learned Illrd Senior Civil Judge, Sukkur, in Civil Execution Application No.09 of 2017, wherein the Execution Application filed by the petitioner (decree holder) was dismissed on the ground that the decree is un-executable, and the revision was dismissed on account of being not maintainable.

2. We have heard learned counsel for the petitioner, learned counsel for the acquiring agency, as well as learned AAG, and have perused the record.

3. The petitioners' suit, F.C. Suit No.321 of 2017, was decreed by a judgment dated 27.09.2017 and a decree dated 02.10.2017, under which the judgment-debtors were directed to pay the petitioners compensation in accordance with their respective shares in Survey No.378/2 (3-10 acres), Deh Saeedabad, Taluka and District Sukkur. That decree was never assailed by any party and has attained finality.

4. Upon perusal of the record, it appears that the decree was passed in respect of compensation for agricultural land of the petitioner which has been acquired by the Civil Aviation Authority for the extension of the Sukkur Airport. It is trite law that the mode of execution of a decree is the exclusive domain of the Executing Court, in terms of Order XXI Rule 11 read with Rule 10, CPC. The order of the trial Court does not mention or reflect any provision under which the decree is un-executable; however, the question

of repayment or recovery of the amount remains subject to such objections as may lawfully be taken and to the procedure provided under the law.

5. The learned Executing Court, however, did not confine itself to the decree. On a statement made at the execution stage by a Clerk of the office of the Assistant Commissioner, and on letters then produced by the acquiring agency, it held that the suit property had never been acquired and that the decree had become un-executable. That course was not open to it. An Executing Court cannot go behind the decree and has to execute it as it is, unless the decree is patently a nullity; a decree which has attained finality has to be executed even if erroneously passed; and no objection can be entertained which, if accepted, would alter its terms. The judgment-debtors who led no evidence at the trial cannot set up a new case at the stage of execution, and that an Executing Court which embarks upon a fresh inquiry on collateral revenue papers sits in appeal over the judgment and decree. No doubt it may refuse execution of a part patently un-executable, and the authorities relied upon by it, PLD 1961 SC 192 and PLD 1968 Karachi 758, go no further; none of them permits a finding on a disputed question of fact upon material introduced for the first time in execution. The entitlement of the petitioners to compensation, and its non-payment, were the very questions tried and answered in the suit.

6. Learned counsel for the acquiring agency submits that the amount shall be recovered through land acquisition proceedings. We do not agree with learned counsel for the respondents, as the amount was compensation, as per the share, in the land acquisition proceedings for acquiring the land, and this has already been observed in the findings of issues No. 4 and No. 6 of the judgment dated 27.09.2017 passed in the suit. To hold otherwise would re-open, in execution, a controversy the decree has concluded.

7. The order dated 03.11.2020 fares no better. The objection decided by the Executing Court related to the execution, discharge and satisfaction of the decree and thus fell within section 47, C.P.C. Even if the learned Revisional Court held the revision to be incompetent, the settled course

was to convert the proceedings rather than to non-suit the decree-holders on a question of form. An order that records no reason on the question of executability cannot be sustained.

8. Resultantly, both the orders of the learned Trial Court and the Revisional Court are hereby set aside, and the matter is remanded to the Executing Court to decide the Execution application afresh, after affording the parties an opportunity of hearing in terms of the decree, in accordance with law. The Executing Court shall confine itself to the terms of the decree and shall not permit concluded questions to be reopened, preferably concluding the proceedings within three months.

The petition stands **disposed of** on the above terms.

JUDGE

JUDGE

Naveed Ali