

ORDER SHEET
**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

R.A. No.242 of 2011.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on M.A. No.1246/2015.
For hearing of M.A. No.927/2011.
For hearing of main case.

11-04-2022

Mr. Pirbhulal U. Goklani advocate for the applicant.
Mr. Aqeel Ahmed Siddiqui advocate for respondents.

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This revision application has been filed against the concurrent findings of the Executing Court and the Appellate Court having very narrow scope. Learned counsel for the applicants states that the Appellate Court through its judgment in Civil Appeal No.91 of 1994 filed by Mst. Zainab and Mst. Sahar (two sisters claiming their right of inheritance in the property of their deceased father namely Haji Muhammad Umar) was pleased to allow the appeal upholding the entitlement of 12 ½ piasas share of each of the two appellants in the property shown in Schedule "A" & at Serial No.2, 3, 4, 5, 7 and 13 of Schedule "B", and at the same time, held that the Gift with regards the properties mentioned in Schedule "A" and the mutation of those lands in favor of defendant No.5 on the basis of such a Gift Deed was illegal and void. Learned counsel states that whilst the plaintiffs/applicants counsel chose not to press issue No.7 as to "partitioning", the decree holder chose to file an execution application seeking execution of the decree in all manners including "partitioning", physical possession, cancellation of gift deed etc. Per learned counsel, the said execution application was allowed by the Executing Court through its order dated 25.09.2010 "as prayed" which discrepancy between the judgment/ decree and the execution application was challenged through the appeal No.268/2010 by the present applicants. I see that

the appellate Court through a detailed and speaking order chose to dismiss the appeal observing that no irregularity or illegality has been committed by the Executing Courts, but the case of the applicants agitated by the learned counsel is that the Executing Court cannot extend execution from the language of actual decree.

Learned counsel for respondents submits that admittedly the respondents ladies are legal heirs of the deceased and in total enjoy 25 paisa share in the property of their father and had claimed partitioning as well as mesne profit, but for one reason or the other, present applicants have chosen to deny fruits of this over 50 years old litigation from reaching to the ladies.

Learned counsel for the applicants when posed with questions admitted that Courts below have held that respondents are legitimate legal heirs to the extent of 25 paisa share in the suit property and the only way such share can be materialized is to have the suit land partitioned, unless the present applicants chose to buy their sister's share (as well as satisfy the claim for mesne profit). At a later stage learned counsel affirmed that infact the ladies have already had the lands partitioned through concerned Mukhtiarkar hence, the exercise contemplated through the instant revision merely becomes an academic one. Learned counsel for respondents on the other hand has submitted that on account of this mere academic exercise, the executing Court is not proceeding with the matter unrestrictedly. On the last date of hearing a report was called from the concerned Executing Court where the Executing Court has provided the following information:-

“Sir it is respectfully submitted that decree holders were put in possession of disputed land to the extent of their shares through Mukhtiarkar of Taluka Chambar on 31.05.2012 and the learned revenue officer also reported it through his letter No.330 dated 04.06.2012 but despite of that decree holders through their counsel again moved another application U/O 21 rule 30 CPC for increase of amount of mesne profits till 2014. Sir claim of JDs is that your honourable court in 2nd appeal allowed mesne profits from 03.02.1984 till intervening period i.e. your worthy judgment passed in Appeal No. 03 of

1997 titled as Ali Nawaz & others Versus Mst. Zainab & other. Conversely claim of decree holder that she is entitled for mesne profits upto 2014 though per report of Mukhtiarkar decree holder received possession of their shares of disputed land on 31.05.2012.

Honourable Sir so far as delay is concern it is respectfully submitted that instant execution application was received to this court on 29.08.2012 for its disposal according to law from the court of learned 2nd Senior Civil Judge Hyderabad and I have taken over charge of court on 24.06.2016 and taken best efforts for satisfaction of decree. Sir I ensure that worthy directions will be complied in letter and spirit within shortest possible period.”

In the given circumstances, the revision application which is filed against concurrent findings of Courts below and that too against execution application has extremely narrow scope in the light of the apex Court’s judgments in the case of Muhammad Lehrasab Khan v. Mst. Aqeel-un-Nisa and 5 others (2001 SCMR 338) as well as in the cases reported as Waqar Zafar Bakhtawari and 6 others v. Haji Mazhar Hussain Shah and others (PLD 2018 SC 81), Mst. Samina Zaheer Abbas v. Hassan S. Akhtar and 3 others (2014 YLR 2331) and Pakistan State Oil Company (Pvt.) Ltd. V. Zulekha Khanum and 6 others (2016 CLC 1850) now rendered to a mere academic exercise is dismissed.

J U D G E