

Judgment Sheet

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

Mr Justice Faisal Kamal Alam

Mr Justice Jawad Akbar Sarwana

**Constitution Petition No. D – 931 of 2025**

**Iqbal Hussain s/o Shahid Hussain**

**v.**

**Tasawar Hussain s/o Atta Hussain and Six (6) Others**

- Petitioner : Iqbal Hussain through M/s Nisar Ahmed Metlo and Arshad, Advocate
- Respondent No.1 : Tasawar Hussain s/o Atta Hussain. Nemo.
- Respondent No.2 : Riaz Muhammad s/o Haji Taj Muhammad. Nemo.
- Respondent No.3 : The Deputy Registrar Cooperative Societies. Nemo.
- Respondent No.4 : Saadabad Cooperative Housing Society Ltd. Nemo.
- Respondent No.5 : Najam Uddin Qazi s/o Qazi Shamsuddin. Nemo.
- Respondent No.6 : VIIth Additional District & Sessions Judge East. Nemo
- Respondent No.7 : IIIrd Senior Civil Judge East. Nemo
- Date of Hearing : 06.03.2025
- Date of Judgment : 25.03.2025

J U D G M E N T

**Jawad Akbar Sarwana, J.** The petitioner, Iqbal Hussain (“IH”), has invoked the Constitutional jurisdiction of the High Court under Article 199(1)(a)(ii) on the ground that the impugned Orders dated 26.02.2025 passed by the VIIth Additional District & Sessions Judge East, Karachi and Order dated 17.02.2024 passed by the Executing Court are in Execution No.52/2010 are “without

lawful” authority and “is of no legal effect”. It is petitioner/IH’s claim that he is the real owner of Plot No.255-A, Block 4, Saadabad Cooperative Housing Society, Gulistan-e-Johar, Karachi, measuring 180 sq.yds and allegedly constructed a double-storied house on the said plot (“the Suit Property”).

2. By way of background, on 20.11.2010,<sup>1</sup> Tasawar Hussain and Riaz Muhammad, co-plaintiffs/respondent nos.1 and 2, obtained a Judgment and Decree in Suit No.326/2003 for declaration, permanent injunction and recovery of damages and compensation in relation to and/or arising out of the Suit Property against the Deputy Registrar, Cooperative Societies (respondent no.3)(“Co-Ops”), Saadabad Cooperative Housing Society (respondent no.4)(“SCH-Society”), and Najam Uddin s/o Qazi Shamsuddin (respondent no.5)(“Najam Uddin”).<sup>2</sup> The petitioner/IH was not impleaded as a defendant in Suit No.326/2003.

3. The Judgment and Decree in Suit 326/2003 required the Respondent Society to finalise the case of the plaintiffs, which involved the SCH-Society deciding/resolving the co-plaintiffs/respondent nos.1 and 2 and Najam Uddin dispute internally by giving the Suit Property in question to the plaintiff no.1/Tasawar Hussain or to compensate him in terms of money,<sup>3</sup> or allot a plot of equal size and similar location against the Suit Property. Thereafter, the co-plaintiffs/Respondent nos.1 and 2 initiated execution proceedings vide Execution No.52/2010. According to the record submitted by the Counsel for petitioner/IH during the course of hearing,<sup>4</sup> none appeared to contest the Judgment and Decree dated 20.11.2010 except that SCH-Society filed an application under Section 12(2) of the CPC, wherein, on 13.02.2013, preliminary issues were framed. It was mentioned in the said application that petitioner/IH was occupying the Suit Property. Thereafter, the application under Section 12(2) of the CPC was dismissed, and the order attained finality.

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<sup>1</sup> There are some inconsistencies in the date of the Judgment, which is discussed in the Order dated 17.02.2024, available on page 21 of the petition.

<sup>2</sup> Pages 41-55 of the petition

<sup>3</sup> A controversy arose in the execution proceedings if the compensation in terms of money should be of a fixed sum or market value.

<sup>4</sup> Ref. page 3 of 5 of the Executing Court Order dated 04.05.2017 dismissing the petitioner/IH application u/s 12(2) CPC read with Order 1 Rule 10 CPC and application under Order 21 Rule 58 CPC r/w Section 47 CPC.

4. The execution application was allowed on 15.12.2014 and the Executing Court passed an order for attachment of Suit Property on 25.11.2015. It appears that SCH-Society also sent a letter dated 25.11.2016 to the petitioner/IH on the same date. The petitioner/IH filed an application under Section 12(2) CPC read with Order 1 Rule 10 and another application under Order 21 Rule 58 CPC read with Section 47 CPC. The Executing Court dismissed both applications vide Order dated 04.05.2017. The Executing Court recorded several doubts in its Order regarding the petitioner/IH's ownership claims in the Suit Property, a selection of which doubts are reproduced herein below in bullet points:

- SCH-Society has not issued a site plan for the allotment to the petitioner/IH.
- The petitioner/IH failed to submit the site plan.
- Certificate of allotment issued on 23.02.1987 signed by Hon. Sec. and two others, namely the Secretary and the Chairman signed the same in favour of co-plaintiff/respondent no.1, while the certificate of allotment filed by petitioner/IH only signature of Sabir is available.
- SCH-Society, in its application under Section 12(2) of the CPC filed in 2013, mentioned that Iqbal Hussain was residing in the Suit Property, and even after the said application was dismissed, the petitioner/IH took no action to safeguard his position until after SCH-Society issued him a letter dated 25.11.2016.
- After the Executing Court issued a notice against the Secretary of SCH-Society in 2016 for compliance with the decree, and in case of failure, why a warrant of arrest should not be issued, SCH-Society pushed forward to the petitioner/IH for intervention in the suit/execution proceedings.

5. The petitioner/IH challenged the aforesaid Order dated 04.05.2017, vide Civil Appeal No. 140/2017 and Revision No. 58/2017. The District Judge dismissed the civil appeal and revision vide Order dated 22.11.2023.<sup>5</sup> The challenge to the Judgment and Decree dated 20.11.2010 raised by the

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<sup>5</sup> Pages 57-69 of the petition.

petitioner/IH attained finality as of 22.11.2023 when no further contest was raised by him. However, it appears that the petitioner/IH did not give up.

6. When on 17.02.2024,<sup>6</sup> the Executing Court, after hearing the parties, concluded that in terms of the judgment and decree dated 20.11.2010, the SCH-Society neither had offered an alternate plot nor compensated the respondent no.1/Decree-Holder (as per the current market value), in such circumstances the respondent no.1/Decree-Holder may get the Suit Property vacated and obtain possession thereof from petitioner/IH, the latter, raised a challenge against the Order dated 17.02.2024 and preferred Civil Revision No.75/2024 before the District Court. Now that the District Court has dismissed the said Civil Revision vide Order dated 26.02.2025,<sup>7</sup> the petitioner/IH has invoked the writ jurisdiction of this Constitutional Court.

2. Heard Counsel. The petitioner/IH contested the Judgment dated 20.11.2010 vide his application under Section 12(2) of the CPC and ultimately lost the challenge vide the District Court's Judgment dated 22.11.2023. Petitioner/IH Counsel has submitted that the Petitioner/IH has filed no suit for declaration or cancellation of the Suit Property. Petitioner/IH cannot be allowed to abuse the process of law. Further, he cannot be given repeated opportunities to have a second picking of the cherry and raise the same grounds he agitated earlier and were rejected. Once his application under Section 12(2) read with Order 1 Rule 10 of the CPC, etc., was dismissed, he had no locus standi in the execution proceedings, too. Petitioner/IH has challenged the interlocutory orders passed by the Executing Court but he is still a stranger to the proceedings after his application to be impleaded as a party in the Suit/Execution proceedings along with his application under Section 12(2) of the CPC was dismissed. A stranger to the execution proceedings has no legs to stand in a revision arising from an interlocutory order passed by the Executing Court wherein the stranger was never a party. He may be in possession of the Suit Property, but that does not mean he has acquired any legal title to the Suit Property over time. Apart from continuing

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<sup>6</sup> Impugned Order dated 17.02.2024 is available on pages 19-27 of the petition.

<sup>7</sup> Impugned Order dated 26.02.2025 is available on pages 29-39 of the petition.

legal challenges raised by the petitioner/IH to stall the enforcement of the Decree passed on 20.11.2010, he has managed to also enjoy possession of the Suit Property due to the conduct of the main contesting parties in the case. It is now time to bring finality to the dispute which has been pending between the main contesting parties, i.e. the co-plaintiffs/Respondent nos.1 and 2, Respondent No.5/Najam Uddin and SCH-Society for more than 22+ years. Neither any irregularity nor illegality has been made out against the impugned Orders by the Petitioner/IH. Even otherwise, we find no ground to interfere with the impugned Orders.

3. Based on the above understanding, the discussion set out herein, and the record available in the petition, we hold that this petition is not maintainable and dismiss the same in limine.

Judge

Judge