

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 206 of 2023

(Soomar Khan v. Syed Hyder Bux Shah & others)

Civil Revision No. S – 207 of 2023

(Soomar Khan v. Panjo Ram & others)

Date of hearing : **08.04.2025**

Date of decision : **08.04.2025**

Mr. Mushtaque Ahmed Shahani, Advocate for applicant.
Mr. Ateeq-ur-Rehman Soomro, Advocate for respondents No.2 to 4.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

ORDER

Zulfiqar Ahmad Khan, J. – The applicant, Soomar Khan, through these connected Civil Revisions under Section 115, CPC, has assailed the consolidated judgment dated 29.08.2023, passed by learned Additional District Judge-IV / Hudood, Sukkur, whereby Civil Appeals No.07 and 08 of 2023, filed by Syed Hyder Bux Shah and Pajo Ram (both respondent No.1 in each Civil Revision), were allowed. Resultantly, the appellate Court set aside the order dated 16.06.2023, passed by learned Senior Civil Judge-II, Sukkur in Execution Application No.01 of 2012.

2. The matter originates from a compromise decree dated 26.09.2011 passed in F.C. Suit No.128 of 2011, instituted by the applicant for specific performance of contract and permanent injunction. The decree was passed on the basis of a compromise arrived at between the parties and expressly made subject to the condition that the property, which is the subject matter of the agreement, must be found in the ownership of defendants No.1 to 3 (respondents No.2 to 4 herein) as per revenue record. The decree did not adjudicate title but rather reserved enforceability contingent upon the verification of ownership.

3. Following this, Execution Application No.01 of 2012 was filed seeking implementation of the said decree. However, third-party claims were raised by intervenors / present respondents Syed Hyder Bux Shah and Pajo Ram, who asserted an independent title over the property on the basis of registered sale deeds. They submitted objections through an application under Section 12(2), CPC, and simultaneously challenged the decree's enforceability on the ground that the original judgment debtors were not the owners, and that the applicant had no right to enforce the decree in execution without resolving the underlying ownership dispute.

4. A perusal of the record reveals that the executing Court, while dealing with the application, did not undertake any inquiry into the status or ownership of the land as required by the conditional language of the decree itself. No evidence was recorded; nor was there any adjudication of the claim that the decree could not be acted upon without ascertaining the existence of title in the names of the original defendants as mentioned in the compromise decree. Instead, the executing Court proceeded to allow the execution application summarily.

5. This approach is clearly inconsistent with well-settled jurisprudence. A decree passed on compromise terms does not enjoy an unconditional right of enforcement if it explicitly makes such enforcement subject to preconditions. A decree is executable to the extent it defines a present legal entitlement; where such entitlement is conditional upon subsequent verification, such as existence of title, it is incumbent upon the executing Court to first resolve those conditions, either by conducting a proper inquiry or by requiring the parties to seek resolution through a substantive proceeding.

6. A compromise decree may amount to a contract between the parties, enforceable only to the extent it is definite and unconditional. If breached or if it cannot be implemented due to intervening legal or factual

complexities, it may give rise to a fresh cause of action, but does not become executable automatically. The execution of a compromise decree, premised on unsettled terms or future acts, is not maintainable per se and requires recourse to independent legal proceedings. Reliance in this regard is placed upon the case of Peer Dil and others v. Dad Muhammad (2009 SCMR 1268).

7. In the present case, the language of the compromise decree is clear in requiring that the property must exist in the name of the judgment debtors in revenue record, a precondition which, from the record, does not appear to have been fulfilled or even examined by the executing Court. Where such a requirement is unresolved or contested, enforcement through execution proceedings is impermissible, as the decree lacks executable certainty.

8. Therefore, the appellate Court, in reversing the executing Court's order and holding that the execution application was not maintainable in law, proceeded correctly in both law and fact. The proper course for the applicant in such a scenario, where the title is disputed and third-party rights are asserted, is to approach a competent forum through a properly constituted civil suit seeking enforcement of the compromise agreement as a contractual obligation, if so advised.

9. Accordingly, both Civil Revision Applications No. S-206 and S-207 of 2023 are found to be devoid of any merit and are hereby **dismissed**. These are the reasons for the short order announced on 08.04.2025.

Office is directed to place a signed copy of this order in the captioned connected matter.

J U D G E