

IN THE COURT OF  
ADDITIONAL DISTRICT JUDGE, HARIPUR AT GHAZI

Civil Miscellaneous Appeal No. 8/14  
Date of Institution 01.08.2023  
Date of Decision 07.09.2023

Aurangzeb s/o Ghulam Sarwar and 12 others, residents of Khalo  
Tehsil Ghazi District Haripur.

(Appellants)

Versus

Athar Hussain s/o Fida Hussain and 05 others, residents of Khalo  
Tehsil Ghazi District Haripur.

(Respondents)

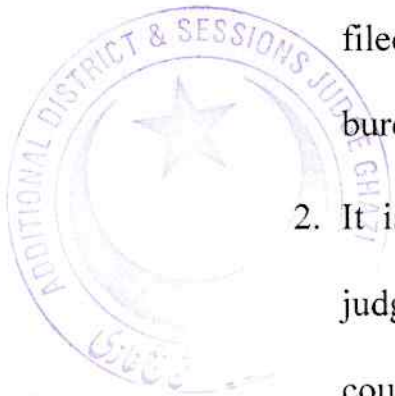
JUDGMENT

06.09.2023

This civil miscellaneous appeal is directed against the judgment and order dated 26.07.2023 of learned Civil Judge-II, Ghazi, in Execution Petition No. 25/10 of 30.03.2013 titled as "*Athar Hussain etc. vs. Fida Hussain*", whereby the objection-petition filed by the appellants was dismissed and they were also burdened with a cost of Rs. 20,000/-.

2. It is prayed that on acceptance of the appeal the impugned judgment and order may be set-aside and the learned executing court be directed to decide the objections on merits and the order of cost of Rs. 20,000/- may also be set-aside.

3. Brief but relevant facts for disposal of this Civil Miscellaneous Appeal are that an Execution Petition No. 25/10 is pending before the learned executing court for execution of decree passed on 29.11.2012 in consolidated civil suits titled "*Namdar Khan vs. Fida Hussain*" which was filed for specific performance of agreement dated 15.02.2001 in respect of



*Wajid Ali*  
Addl. District & Sessions Judge,  
Ghazi, Haripur  
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property Survey No. 648/334/2/2 along with perpetual injunctions and recovery of a sum of Rs. 800,000/- as compensation, another suit titled "*Fida Hussain vs. Namdar Khan*" which was also instituted on 10.11.2008 regarding Property Survey No. 648, 334/2/2, for restoration of possession along with perpetual injunctions and recovery of a sum of Rs. 4,90,600/- and suit titled "*Athar Hussain vs. Fida Hussain*" instituted on 19.01.2020 wherein prayer for declaration of title in respect of property Survey No. 703/648/334/2/3 was made along with mandatory injunctions, recovery of rent as well as possession of the suit land was sought.

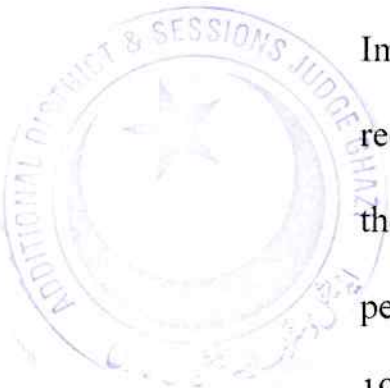
4. The learned Civil Judge had consolidated all the three suits. During proceedings of the case, the parties affected a compromise and the said compromise deed Ex.PA was submitted before the court. The compromise deed was endorsed by all the parties and the learned trial court vide Order No. 68 dated 29.11.2012 passed the following order:

*"In the light of above mentioned compromise instant suit stands partially decreed as per terms and conditions of written compromise Ex.PA while other connected Cases No. 204/1 titled as Athar Hussain vs. Fida Hussain and Suit No. 61/1 titled as Namdar vs. Fida Hussain are disposed off accordingly. Parties are bound down as per the conditions laid down in compromise deed Ex.PA."*



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5. The joint statement of the parties was recorded. The plaintiff of Civil Suit No. 46/1 instituted the underlying Execution Petition No. 25/10 dated 30.03.2013 titled “*Fida Hussain vs. Namdar Khan*” (both deceased and represented through their legal heirs); they requested for execution of the judgment and decree as per compromise deed. The proceedings were carried out however instead of completing the proceedings – the execution petition was dismissed for default on 26.01.2015. It was restored vide Order dated 28.12.2015. Once again the case was not properly proceeded with and on the basis of various applications the proceedings were delayed however due to a Petition No. 1/12 of 25.03.2020 u/s 12(2) of the CPC by one Imtiaz Khan s/o Namdar Khan, the proceedings once again received a setback and vide Order No. 82 dated 15.12.2020, the then learned Civil Judge-II adjourned *sine die* the execution petition on account of petition u/s 12(2) of the C.P.C. On 19.07.2022, the underlying petition was again restored and warrant of possession was issued when the petitioner submitted application for suspending the proceedings of warrant of possession. This application was contested by the decree-holders and vide order impugned dated 07.11.2022 the said application was dismissed and warrant of possession was issued with directions to execute the decree as per compromise deed between the parties. The present petitioners/appellants moved objection petition on the ground that the Suit No. 204/1 was

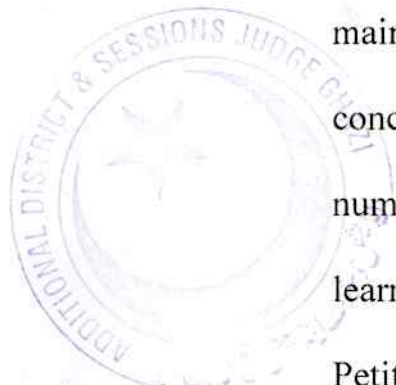


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also decided on the basis of compromise however was disposed off and the rights of the parties were not determined which is against the law and facts and ineffective upon the rights of present petitioners/appellants who are tenants in the shops and have spent huge amounts on decoration of their shops; that they are being ordered to vacate the same due to which their valuable rights will be affected. The learned executing court turned down this objection petition and also burdened the appellants with cost of Rs. 20,0000/-, hence the instant appeal.

It was contested by the respondents/deedee-holders.

6. Arguments heard and record perused with the assistance of learned counsel for the parties. As far as the question of maintainability and executability of the underlying decree is concerned, I may observe that this objection was raised on a number of occasions and was turned down not only by the learned executing court but also by this court in Civil Revision Petition. 16/CR of 10.11.2022 decided on 04.04.2023. Therefore, this objection of the present appellants is utterly untenable. Moreover, they have got no *locus standi* to challenge the decree on this score. Moreover, the headnote of the objection petition shows that the petitioners/appellants have invoked the jurisdiction of the court u/s 47 along with Order XXI Rule 100 of the CPC which I am afraid is untenable and non-maintainable under both the provisions of law. This is evident from record that the present petitioners/appellants were





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never party to the suit, therefore, cannot challenge the correctness of decree u/s 47 of the CPC. Similarly, the provision of Order XXI Rule 100 of the CPC also cannot be invoked at this stage when the decree is yet to be executed and the petitioners are not dispossessed of the suit property. There is another question mark on the right of petitioners/appellants to challenge the decree as they are just *tenants* in the decretal property and have no other rights however it seems that they are determined to prolong and delay the execution proceedings and deprive the decree-holders of the fruits of decree. This fact was properly appreciated by the learned executing court and has rightly burdened them with costs.

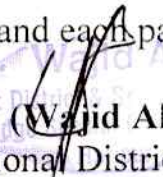
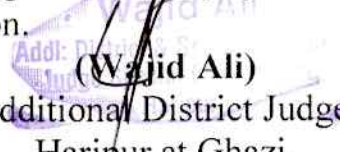
7. Keeping in view these observations, the judgment and order of learned executing court is well-reasoned, based on proper appreciation of law and facts which does not warrant any interference. Thus, the impugned judgment and order are upheld and the appeal being devoid of merits stands dismissed with costs. File be consigned to the record room after necessary completion, compilation and scanning.

Announced  
07.09.2023

  
  
(Wajid Ali)  
Additional District Judge,  
Haripur at Ghazi.

Certificate

Certified that this judgment consists of 5 pages and each page has been signed by me after necessary correction.

  
  
(Wajid Ali)  
Additional District Judge,  
Haripur at Ghazi.