

SHERIN KHAN ETC. VS GUL AJAB KHAN ETC.  
Civil Appeal No. 3/13 of 2025

**IN THE COURT OF HAQ NAWAZ,**  
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 3/13 OF 2025  
DATE OF ORIGINAL INSTITUTION : 24.04.2025  
DATE OF TRANSFER-IN : 29.05.2025  
DATE OF DECISION : 26.07.2025

SHERIN KHAN S/O MAIBAL HUSSAIN AND ANOTHER, CASTE  
SHEIKHAN, TAPA UMARZAI, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

GUL AJAB KHAN S/O NOOR MUHAMMAD AND OTHERS,  
CASTE SHEIKHAN, TAPA UMARZAI, DISTRICT ORAKZAI

.....(RESPONDENTS)

**Present** : Muhammad Mohtashim Advocate for appellants.  
: Aziz Ur Rehman Advocate for respondents.

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**JUDGEMENT**  
26.07.2025


This civil appeal was preferred by the appellants against the order dated 19.04.2025 passed by the Executing Court/Civil Judge-II, Tehsil Kalaya, whereby objection petition by the appellants/judgment-debtors in Execution Petition No. 3/10 of 2022 was dismissed.

2. Earlier, the suit was brought by the respondents/decreed-holders for declaration of their ownership and grant of decree for perpetual and mandatory injunction against the appellants/judgment-debtors with the recovery of possession in respect of two fields namely Tagha Patey measuring 02 Kanals and Soor Patey measuring 05 Kanals, situated at Sheikhan, Umarzai, Village Lak Kanre, District Orakzai. The appellants/judgment-debtors, in their statement, alleged the purchase of suit property from the respondents No. 1 and 2

through appellant No. 2 Said Rehman for a consideration of Rs. 85,000/- and Rs. 72,000/- on 10.07.2003 and 29.06.2003 respectively.

3. The suit was initially dismissed by the trial Court on 17.11.2022. The respondents preferred Civil Appeal No. 16/13 of 2022 against the said judgment which was accepted on 23.12.2022 and the suit was decreed by the Appellate Court as prayed for with the observations that, the respondents/defendants (appellants/judgment-debtors) have failed to prove the alleged sale transaction of 29.06.2003 and 10.07.2003.

4. The said judgment was challenged before the Hon'ble Peshawar High Court, Peshawar in Cr. No. 32-P of 2023 which was dismissed on 13.12.2023 with the following observations;

  
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*"During the course of evidence before the learned trial Court, the petitioners produced three independent witnesses namely Badshah Khan, Khan Muhammad and Gulab Khan in order to prove the genuineness of both the sale transactions. Their statements were recorded as DW.3 to DW.5 respectively while petitioners No. 1 and 2 recorded their own statements as DW.1 and 2. From the statements of above said witnesses, it appears that the petitioners had entered into sale transactions of the above said properties with respondents No. 1.*

*and 2, and also paid sale considerations at two different occasions in presence of witnesses mentioned in their statements; but, the concerned and actual owner of the suit properties namely Noor Muhammad, who was alive by that time, had not been associated with both the sale transactions of the suit properties, and without his consent and will, the transactions took place, which was legally not possible and liable to be reversed because, it is an essential element of sale that a person who is not owner of property cannot enter into sale bargain with buyer. ”*

*Adil Nawaz*  
District & Sessions Judge  
District of Bahawalpur

The appellants/judgment-debtors preferred CPLA No. 42-P of 2024 before the Hon'ble Supreme Court of Pakistan which was dismissed on 24.02.2025.

6. During pendency of the Execution Petition No. 3/10 of 2022, the judgment-debtors submitted an objection petition on the following grounds;

- I. Appeal filed by the judgment-debtor is pending before the august Supreme Court of Pakistan.*
- II. The decree-holders have admitted that the property in question is in their possession, hence in circumstances execution proceedings are not possible.*

III. *Learned District Judge had not passed any decree regarding possession of the decretal property in favour of the decree-holders.*

7. The objection petition was dismissed by the Executing Court on 29.07.2024. The said order was challenged before the Appellate Court in Civil Misc. Appeal No. 2/14 of 2024 which also met the same fate. The judgment-debtors preferred Cr. No. 214-P of 2025 before the Hon'ble Peshawar High Court, Peshawar, where learned counsel for the petitioners argued that "besides the respondent/decreet-holders, Noor Muhammad, the original owner, was survived by other legal heirs, but they have not been arrayed in the suit or execution petition; hence, under Section 47 Sub-Section 3 of the Code, the question of determination as to whether the respondents or the representative of other legal heirs of Noor Muhammad was to be considered by the executing court, but the court even did not call for reply of the respondents". After hearing both the parties, the Hon'ble High Court, while dismissing the civil revision petition in limini, held that the said question was not raised by the petitioners in the objection petition and left the question of representation of the parties open to the executing court under Section 47 Sub-Section 3 of the Civil Procedure Code.


8. In the above backdrop, the appellants/judgment-debtors brought their fresh objection petition by submitting that;

  
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- I. The suit was not filed by all the legal heirs of Noor Muhammad for the reason that they are admitting the claim of the objectors.
  - II. Adjacent to the suit property, the objectors have their ancestral property measuring 20 Kanals; therefore, they cannot be dispossessed without proper partition.
  - III. The objectors have spent an amount of Rs. 3 lacs for levelling of the suit property and have made it cultivable.
9. The respondents/decreed-holders contested the objection petition by submitting their written reply. The learned executing court, after hearing both the parties, dismissed the objection petition on 19.04.2025. Hence, this appeal was preferred.
10. So far not bringing the suit by all the legal heirs of deceased Noor Muhammad is concerned, the said question cannot be agitated at this stage when the suit has already been decreed in favour of the respondents/decreed-holders and appeals by the appellants/judgment-debtors have been dismissed up to the august Supreme Court of Pakistan. However, the suit was decided in favour of the respondents for the sole reason that the disputed sale transactions were struck down during the lifetime of their father. Hence, the question of representation of all the legal heirs of Noor Muhammad is very much relevant and the

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District & Sessions Judge  
Ghazal & Habar Mata

executing court was empowered u/s 47 (3) of the Civil Procedure Code to determine whether the respondents are or not the representatives of all the legal heirs of Noor Muhammad. Needless to mention that the record shows one another son and two daughters of the deceased Noor Muhammad. According to the appellants/objectors, the other legal heirs of Noor Muhammad were admitting their claim. On the other hand, the learned counsel for the respondents submitted that one of the daughters of the deceased Noor Muhammad withdrew her rights in favour of the respondents during pendency of the suit and the other daughter and son were died issueless. Both the contentions of the parties have legal and factual bearings on the execution proceedings which are required to be resolved by the executing court before further proceedings in the execution petition.

  
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11. Secondly, both the decretal properties were properly described with four boundaries in headnote of the plaint; therefore, the question that the appellants/judgment-debtors have their ancestral property, adjacent to the decretal properties and execution of the decree cannot be taken place without partition, does not arise.
12. Since, possession of the appellants/judgment-debtors upon the decretal properties was based on unauthorised sale transactions and their possession was not that of a trespasser; therefore, their claim about improvement to the tune of Rs. 3 lacs for

levelling of the decretal properties and making it cultivable, is also required to be inquired into by the executing court.

13. Finally, though the appellate court had observed in the judgment dated 23.12.2022 that the sale transactions were not proved, but the Hon'ble Peshawar High Court, Peshawar held in its judgment dated 13.12.2023 that it appears from the statements of DWs that the petitioners had entered into sale transactions of the suit properties with respondents No. 1 and 2 and also paid sale considerations at two different occasions in presence of witnesses. It was further held in the said judgment that the actual owner of the suit properties namely Noor Muhammad, who was alive by that time, had not been associated with both the sale transactions of the suit properties, and without his consent and will, the transactions took place, which was legally not possible and liable to be reversed.

14. Keeping in view the doctrine of merger, according to which the judgment of the lower court merges into the judgment of higher court and order of the lower court ceases to exist in the eyes of the law once the higher court has made a decision on the matter; therefore, the executing court has to determine all the questions relating to reversal of both the sale transactions in the shape of delivery of possession of the decretal properties to the respondents/decreed-holders/all the legal heirs of the deceased Noor Muhammad who are legally entitled for the

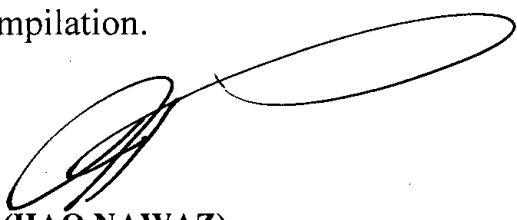
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same, and repayment of sale considerations by the respondents No. 1 and 2 to the appellants.

15. Duty of the Executing Court would be to ensure safe administration of justice while keeping in view substantial rights of the parties. Pleas raised in objection petition could be decided only after framing of issues and recording of evidence. Reliance is placed on **2013 YLR 1890**.

16. In view of the above facts and circumstances, the Civil Misc. Appeal is accepted. The impugned order is set aside. The objection petition is remanded back to the executing Court for determination of the above questions u/s 47 of the Civil Procedure Code. The parties shall appear before the executing Court on the date fixed in the execution petition. Copy of this judgement be sent to the executing Court for information and compliance. File of this Court be consigned to record room after its necessary completion and compilation.

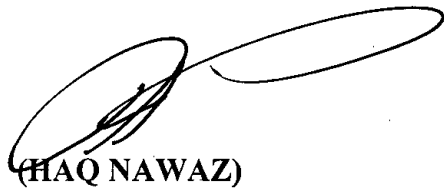
**Announced:**  
26.07.2025

  
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at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of eight (08) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 26.07.2025

  
(HAQ NAWAZ)  
District Judge, Orakzai  
at Baber Mela