

JUDGMENT SHEET

In the Peshawar High Court, Peshawar

(Judicial Department)

C.R No.629-P of 2019**Muhammad Baz****Versus****Patwari Halqa Mouza Mathra Peshawar and another****Date of hearing: 24/11/2020**

Mr. Saif Ullah Khalil, Advocate for petitioners.

Mr. Muhammad Suhail Khan AAG, for respondents

J U D G M E N T

MUHAMMAD NAEEM ANWAR, J. - Through this Civil Revision under Section 115 of Civil Procedure Code, 1908, the petitioners have questioned the validity and correctness of the judgment & decree, dated 23.04.2019, of learned Additional District Judge-X, Peshawar, whereby their appeal was dismissed.

2. Relevant facts of this petition are that a suit filed by the predecessor in interest of petitioners for recovery of possession through Pre-emption regarding property bearing survey No. 981, measuring 3-Kanal 4-marlas of the revenue estate of Mathra, Peshawar, was decreed on 15-07-1969 against Khanzada and others, however, the decree was not incorporated in the revenue papers, for which he filed an application before civil court for incorporation of his name in the revenue record but the same was turned down by the learned Senior Civil Judge, Peshawar, on 15-10-2018. Being dissatisfied he

filed an appeal which too met the same fate, hence, this petition. It is pertinent to mention that during pendency of this petition, the petitioner passed away, thus, his legal heirs were impleaded as petitioners.

3. Learned counsel for petitioners contended that both the learned courts below have considered the petitioners' application for implementation/incorporation of the decree as if the same was for execution of the decree and by considering the same as such dismissed it on the ground of being time barred. Next, he argued that the pre-emption suit was decreed on the basis of compromise for which statements of the then vendees-defendants were recorded and, as such, neither the statutory right recognized by law by the court of competent jurisdiction could have been denied/refused by the officials/officers of revenue hierarchy nor the application could be dismissed by the learned courts below.

4. As against that learned Additional Advocate General contended that, no doubt, the petitioners are decree holders but by not applying for execution of decree within time as provided by law they have lost every right for execution/implementation of it, as such, the courts below have rightly dismissed their application.

5. I have considered the submissions of learned counsel for the parties and record perused.

6. There are three stages of litigation and that is, institution of the litigation, its adjudication by the court of competent jurisdiction and its implementation of litigation. The last stage of litigation is known as an execution. Once a decree or judgment is passed by the court, it is the duty of the person against whom the judgment is passed (judgment-debtor) to give effect to the decree so as to enable the decree-holder to enjoy the benefits of the judgment. No doubt, for execution of a decree a specific mechanism has been provided by the law for which not only an application is required to be filed within time but name of the person against whom an application for execution is filed is also required to be arrayed and such mode and manner has also been provided in the Code of Civil Procedure, 1908. The application for execution is filed when the judgment debtor is either not ready to act upon the terms and conditions of the decree or avoiding its implementation but in all circumstances the execution of decree for all intent and purposes is sought against the judgment debtor and none else. Here in the instant case, there was neither an execution petition against the judgment debtor nor there a decree against the respondents which was to be executed through an application for execution. It was

simpliciter an application for implementation of the decree for incorporation of petitioners' names in the revenue record instead of the vendee/judgment debtor, therefore, such application could neither be dismissed being time barred nor could the respondents contest or controvert it.

7. Similar controversy has been laid to rest by the Hon'ble Supreme Court of Pakistan in a case titled reported as **Ali Ahmad and another versus Muhammad Fazal and 3another (1972 SCMR 322)**,

the operative part of which is reproduced as under: -

“A valid decree was passed in favour of respondent No.1 who became the owner of the property on payment of the purchase price on the 26th October, 1960, and became vested with right, interest and title in the land from that date. He was entitled to get the mutation effected on the basis of title decree. Simply because it has barred by time, it has not lost its utility. In our opinion, the view of the High Court is correct that the revenue authorities were under obligation to sanction mutation on the basis of the decree. It was next contended that the respondent has taken possession under a collusive decree from the tenants of the petitioners and that the order of the High Court is likely to affect the decision of the suit filed by the petitioner's under section 9 of the Specific Relief Act. The apprehension of the petitioners is not well founded. The civil court will decide the suit on its own merit. There is no force in the petition. The petition is dismissed.”

8. Likewise, in **Abdul Hameeds' case (2005 SCMR 1617)** it was observed by the apex court that: -

“The careful examination of the above subsections would show that it is essential for the Revenue Officer to inquire into the correctness of all entries in the register of mutation except in case of decree of Court. The Revenue staff cannot go beyond the decree and is bound to give effect to it unless it is set aside or varied by competent Court and in case of failure, the concerned officials can be held guilty of contempt of Court, which is gross misconduct.”

This view was further augmented by the Honourable Apex Court in a case reported as **Allah Ditta v. Ghulam Muhammad and 3 others (2008 SCMR 102)** in the following terms,

“The arguments of the learned counsel for the petitioner have no force and this petition has no merit. The Mutation in dispute No.283 dated 11.08.1976 was attested by the Assistant Collector 2ndGrade. In consequence of the Civil Court decree dated 20.07.1976, which was passed with the consent of the petitioner. The Revenue Authorities are bound to act under the decree.They cannot ignore the same on any ground whatever. Similarly, the Land Reforms Authorities also cannot sit over the judgment and decree passed by a Civil Court. Respondent No.2, therefore, had no lawful authority to issue directions for ignoring the Civil Court decree and quashing the above said mutation in dispute, which was sanctioned only in pursuance of the said decree.”

Again, in a case **titled Maulvi Abdul Qayum vs. Syed Ali Asghar Shah and five others (1992 SCMR 241)** the august Supreme Court held that:-

10. It will be material to bear in mind that a decree in a pre-emption suit is of a peculiar nature. Under

Order 20, Rule 14, C.P.C., the title of the property accrues to the decree-holder on payment in the Court of purchase money together with costs, if any. It has not been controverted before us that the requirements of Rule 14 have already been complied with by the appellant. Thus, irrespective of the fact whether the possession is delivered to him or not, title in the property has vested in the appellant and he is owner of the land in dispute. Viewed in this context, the respondents' opposition to the execution of the decree becomes all the more ethereal.

Reference can also be made to the case law reported as **Munshi Muhammad and others v. District Officer (Revenue) and 2 others (2015 YLR 2136), Nazir Ahmad and 6 others v. Ghulam Mustafa and 20 others (2010 MLD 89) and Munshi Muhammad through L.Rs. and others v. District Officer (Revenue), Gujranwala and 2 others (2009 CLC1285).**

9. The official of revenue hierarchy was duty bound to incorporate the decree passed in Civil Suit No. 297/1 dated 15-07-1969 in the revenue record especially when the dispute was amicably settled between the parties and consent decree was passed in favour of predecessor in interest of petitioners by the then Senior Civil Judge Peshawar. The decree in a pre-emption suit is based upon the doctrine of substitution which is simply a right of substitution, entitling the pre-emptor, by means of a legal incident to which sale itself was subject, to stand in

the shoes of the vendee in respect of all the rights and obligations arising from the sale, under which he derived his title. It is, in fact, as if in a sale deed the vendee's name were rubbed out and pre-emptor's name inserted in its place. Reference in this connection may be made to the decision of **Mahmood, J. in Gobind Dayal v. Inayatullah, (1885) ILR 7 All 775 (FB)**, wherein the learned Judge observed as follows:--

“The right of pre-emption is not a right of re-purchase either from the vendor or from the vendee involving any new contract of sale; but it is simply a right of substitution, entitling the pre-emptor, by reason of a legal incident to which the sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale under which he has derived his title.”

10. Thus, for the reasons discussed above, this petition is accepted consequently, the impugned order is set aside. Respondents are directed to incorporate the decree in the revenue record.

Announced.

24-11-2020.

M Zafral PS

J U D G E

Approved for reporting

J U D G E