

ORDER SHEET
LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

W.P.No.14946 of 2025

Ejaz Ahmed versus Addl. District Judge, etc.

<i>Sr. No. of order/ Proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
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12.03.2025 Mr. Ghulam Akbar Khan Sial, Advocate for petitioner.

Through this constitution petition, petitioner has called in question order dated 20.07.2024 and judgment dated 26.02.2025 passed by both the Trial and Appellate Courts at Tehsil Ferozewala, District Sheikhpura respectively, whereby in a Suit for specific performance of agreement to sell dated 14.12.2013 filed by petitioner, his application for grant of interim relief has concurrently been dismissed.

2. Learned counsel seeks setting aside of the afore-referred impugned order and seeks interim relief by claiming that the petitioner was entitled to interim relief as the entire sale consideration has been paid by him and the original owner had transferred possession of the property to him at the time of execution of agreement to sell; hence, during the pendency of his suit for specific performance of agreement to sell, the respondent be restrained from interfering in his peaceful possession and not to dispossess him or further alienate the suit property.

3. The claim of petitioner is that he entered into an agreement with late Syed Muhammad Javed Iqbal Jafri, respondent No.3, original owner of the property, now represented by his legal heirs, to purchase land measuring 76-kanals 6-marlas in Tehsil Muridke, District Sheikhpura, details of which are mentioned in the plaint, for sale consideration of Rs.85,61,250/- out of which an amount of Rs.80,61,250/- had been paid at the

time of entering into agreement to sell dated 14.12.2013 in the presence of witnesses and remaining outstanding consideration of Rs.500,000/- has been paid by him in court but the courts below have not properly appreciated this aspect of this matter while dismissing the afore-referred application for grant of interim relief. While passing the said order and judgment it has also not been considered that alongwith the said suit another suit for cancellation of documents was also filed by the petitioner in which he claimed that he was in possession of property measuring 43 Acres in Tehsil Muridke District Sheikhpura owned by respondent No.3 through lease agreement dated 10.05.2017 for lease of five years expiring on 10.05.2022 and as he had paid the entire amount of lease i.e. Rs. 8,00,000/- in cash and Rs. 3,00,000/- through bank draft dated 15.12.2020, the six cheques issued by him to respondent No.3 as guarantee for payment of lease amount were liable to be returned but the same had not been returned, hence were liable to be cancelled. Both the said suits were proceeding simultaneously wherein the trial court had passed the impugned consolidated order dated 20.07.2024 and the same has been upheld by the appellate court.

4. Perusal of record shows that legal heirs of respondent No.3 denied the fact that their predecessor in interest had executed or entered into sale agreement with the petitioner or received any sale consideration; besides it was claimed by respondents that property was jointly owned by respondent No.3 (now represented by his legal heirs) and his brother namely Syed Ahsan Mukhtar who is presently residing in U.K. The agreement to sell allegedly executed by respondent No. 3 is a forged and fictitious document and does not bear his signatures and thumb impression, which agreement, even otherwise,

cannot bind the afore-mentioned brother of respondent No. 3, who was the joint owner of the property and had not authorized respondent No. 3 to transfer property owned by him. Moreover, it is also claimed by them that petitioner was tenant in the suit property and the cheques issued by him for payment of rent have been dishonoured and the afore-referred suits have been filed just to prolong the possession of the suit property.

5. The application for interim relief seeking order of maintaining status quo, protection against interference in peaceful possession, dispossession and further alienation has been filed in the suit for specific performance of agreement to sell. As the agreement to sell and receiving payment of sale consideration have been denied by the respondents, who are legal heirs of Respondent No. 3, hence authenticity of the agreement and payment of consideration is required to be established by the petitioner by leading cogent evidence; moreover, why and how such a huge amount of partial sale consideration of Rs.80,61,250/- out of total sale consideration Rs.85,61,250/- was paid in cash and not through bank transaction on 14.12.2013 has not been explained; it was also to be explained that why remaining sale consideration of Rs. 5,00,000/- was not earlier paid to get sale deed executed, which also shifts the onus upon the plaintiff/petitioner to establish valid execution of such agreement and payment of partial consideration requiring recording of evidence. Needless to mention that it has not been explained as to why the suit for specific performance of agreement to sell dated 14.12.2013 has been filed on 27.05.2021 and not earlier, when the petitioner could have made payment of remaining sale consideration of Rs. 5,00,000/- at any time as no time frame for making such payment had been fixed in the

agreement. The payment of Rs. 5,00,000/- in the treasury on 28.06.2021 by the orders of the Court does not strengthen the claim of the petitioner as the said payment is an independent payment and does not confirm that the initial payment of Rs. Rs.80,61,250/- out of total sale consideration Rs.85,61,250/- had been made, rather it only shows that the petitioner has deposited the remaining sale consideration as was due according to his stance in the suit, which stance is yet to be established by recording evidence. The claim of the petitioner of being in possession of the suit property is also of no help to the petitioner as the defence taken by the respondents is that he is holding possession in capacity of tenant who as mentioned above has already defaulted in payment of due rent and said possession is stated to be not as a consequence of agreement to sell, which is claimed by respondents to be a fake and fabricated document. Needless to mention, that through suit for cancellation of documents, the petitioner admitted that he has been a tenant of the respondents for a period of five years with effect from 10.05.2017 to 10.05.2022 and it is a settled principle of law of estoppel that 'once a tenant, always a tenant' also recognized by Article 115 of the Qanun-e-Shahadat Order, 1984 whereby a tenant cannot deny the title of his landlord or claim to have a better title than the owner of the property. Reliance is placed on principles laid down in cases titled Hakim Khushi Muhammad versus Mst. Talaat Rana and 7 others (2010 CLC 819 Lahore), Naveed Akhtar versus Special Judge (Rent), Sialkot and 2 others (2021 CLC 952 Lahore) and Mrs. Azra Riaz versus Additional District Judge and others (2021 CLC 623 Lahore).

6. In the case of Sarfraz versus Mukhtar Ahmed and others (2016 CLC Note 48), this Court has also held that:

"If an alleged tenant is allowed to deny the relationship of landlord and tenant without having any proof of title of the disputed property in his favour, then it will be very easy for any person, who takes over a property as a tenant and fails to pay the rent to the landlord/owner, to deny the relationship of landlord and tenant".

7. As the aspect of change of nature of possession over the suit property from tenancy to ownership is also in issue in this petition, consequently, in order to establish his claim of having purchased the property or having agreed to purchase the property, heavy onus lay under the law on petitioner to establish his claim through cogent evidence, which is still to be recorded and in view of principles laid down by this Court in judgments titled Faiz ur Rehman Alvi versus Additional District Judge, Burewala and others (2020 YLR 2143) and Mst. Rasheed Bibi versus Muhammad Arshad and others (2020 MLD 1875) where to establish a claim, evidence is required to be recorded, *prima facie* case cannot be assumed in favour of the petitioner especially when he is yet to establish his right to hold possession of the suit property or be transferred its ownership, which already vests in the respondents, who are owners of the property, instead of the petitioner, who is stated to be a tenant of the respondents and his claim is based on mere agreement to sell which has been denied by the other side and in view of the principles laid down in judgments reported Rao Abdul Rehman (deceased) through legal heirs versus Muhammad Afzal (deceased) through legal heirs and others (2023 SCMR 815), Nasim Bashir and 8 others versus Nazir Ahmad and others (2017 CLC 1348) and Raja Riaz Ahmad Khan versus United Bank Limited

and 5 others (2003 CLD 552), the agreement to sell presently does not create any title but gives only a right to the petitioner to claim specific performance of contract, if he can prove the said agreement as valid by refuting the claim of the respondents that it was a forged and fabricated document; besides, in view of above discussion, balance of convenience tilts in favour of the respondents, owners of the property and not the petitioner, holder of disputed agreement to sell, as by grant of interim relief the respondents are likely to suffer more than what the petitioner would suffer if interim relief is refused.

8. Even otherwise, mere being in possession of suit property does not entitle petitioner to interim relief unless he establishes his right to hold property through some title document or on the basis of a legal right which in the present case is also yet to be established and determined after recording evidence for the reason that contrary stance has been taken by the parties regarding nature of petitioner's possession over the suit property; besides petitioner in the present situation has failed to establish how he shall suffer an irreparable loss if interim relief is not granted in his favour, hence due to missing of ingredients required to exist for the grant of interim relief, he cannot be granted interim injunction to hold possession of suit property for an indefinite period of time adverse to the rights of the respondents who are the owners of the property. Reliance in this regard is placed upon Muhammad Ali v. Mahnga Khan (2004 SCMR 1111), Muhammad Ahmad Farooq and another v. Province of Punjab through Member Judicial-VII, BOR, Punjab Lahore through DCO/Collector District Sahiwal and 12 others (2018 MLD 959) and Muhammad Ajmal Khan v. Mst. Iqbal Mai (PLJ 2018 Lahore 907).

9. The petitioner apprehends that respondents would transfer the suit property to some outsider during the pendency of civil suit for specific performance of agreement to sell filed by petitioner against respondents but the rights of petitioner would stand protected under the principle of *lis pendens*, and in case he succeeds in the suit, law shall take its own course, hence as the ingredients for grant of interim injunction i.e. *prima facie* case, balance of convenience and petitioner's suffering of irreparable loss are missing in the present case, this Court is not inclined to interfere in the impugned order and judgment passed by both the learned courts whereby application for the grant of temporary injunction has been declined.

10. For what has been discussed above, in view of absence of any illegality of jurisdictional defect no ground to interfere in the impugned order and judgment passed by the both courts is made out whereby the same could be held to have been passed without jurisdiction or lawful authority and nullity in the eye of law and of no legal effect. Resultantly, this petition being devoid of merit is **dismissed**.

11. However, it is made clear that the afore-referred observations recorded by this Court are tentative in nature and the learned trial court shall decide the afore-referred *lis pending* between the parties on its own merits without being influenced by any observation recorded by this Court.

(MUZAMIL AKHTAR SHABIR)
JUDGE

KMSubhani

Approved for reporting.