

Mehmood (<i>deceased</i>) through LRs etc.	Versus	Siraj Ahmad (<i>deceased</i>) through LRs.
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S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary
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01. 10.10.2023 Syed Tajammal Hussain Bukhari, Advocate for petitioners.

This Civil Revision is directed against the judgments/orders of Courts below whereby the objections raised by the petitioners upon the maintainability of the execution petition were dismissed concurrently.

2. *Tersely*, facts forming background of proceedings in hand are that respondent No.1 namely Siraj Ahmad (*plaintiff*) instituted a suit for possession through pre-emption against the petitioners No.1 & 2 namely Mehmood and Seedu (*defendants No.1 & 2*). After full-fledged trial, said suit was decreed by the learned Trial Court vide judgment & decree dated 29.03.1978. Feeling aggrieved, petitioners No.1 & 2 preferred an appeal which was allowed by the learned Appellate Court vide judgment & decree dated 18.09.1978 and as a consequence thereof plaint was rejected under Order VII Rule 11 (*Clauses B & C*) of the Code of Civil Procedure, 1908. Being dissatisfied, respondent No.1 filed Regular Second Appeal (*R.S.A. No.806 of 1978*) before this Court. During the pendency of said appeal, parties arrived at a compromise as a result thereof said appeal was disposed of in terms of compromise which was made part of the decree as Mark-A. For the satisfaction of said decree, legal heirs of respondent No.1

filed an execution petition on 20.05.2023. Petitioners raised the objections with regard to the maintainability of the execution petition by stating that it was settled between the parties that respondent No.1 would withdraw his appeal, therefore, the Hon'ble High Court did not pass any decree and also maintained that the respondent No.1 filed execution petition in the year 2023 for the execution of decree passed in the year 2003 which is barred by time. The learned Executing Court rejected the objections and directed the Revenue Authorities to implement the compromise Mark-A in the revenue record and transferred the suit property in the name of legal heirs of Siraj Ahmad (respondent No.1) and petitioners were also directed to hand over the amount Rs.16,000/- to the respondents after withdrawal from the Court. Feeling aggrieved, petitioners preferred an appeal which was *dismissed-in-limine* vide judgment & memo of cost dated 03.10.2023. Hence, this petition.

3. Learned counsel appearing on behalf of the petitioners maintains that impugned judgments/orders of Courts below are against the facts & law, illegal, void and having no effect; that the execution petition filed by the respondents was badly barred by time which was filed after lapse of 20 years but the Courts below failed to consider this aspect while passing the impugned order and prayed for acceptance of the Writ Petition.

4. Preliminary arguments are heard. Record perused.

5. It is matter of record that during the pendency of the Regular Second Appeal before this Court predecessor of the respondents namely Siraj Ahmad moved an application (C.M. No.1098 of 2001) with the prayer that the above appeal may kindly be permitted to be withdrawn in terms of compromise by stating as under:

“2. That out side of the court the parties has patch up the dispute and the matter has been compromised in between the parties through Punchayat.

3. That Agricultural land situated in Square No.15/2-14-23/2-22-20 comprising 31 Kanals 10 Marlas actually belong to Mehmood Ali and Muhammad Siddique s/o Muhammad Suleman (respondents) shall hand over the possession of the said Agricultural Land to appellant.

4. That in view of the Panchayat's decision/affidavit the respondents shall hand over the possession of the Agricultural land to the appellant situated in Square No.162. Further the respondents are responsible to appear before Registrar to get transfer the said land in the name of the appellant. Therefore the petitioner wants to withdraw the above appeal in terms of compromise.

5. That the respondents shall withdraw the amount Rs.16,000/- deposited by the appellant lying in the Bank and thereafter withdrawal the said amount shall hand over to the appellant.

It is, therefore, humbly prayed that the above appeal may kindly be withdrawn in terms of compromise. Prayer may kindly be allowed in the interest of justice."

6. In the light of said application, this Court vide order dated 10.03.2003 disposed of the appeal in the following terms:

"Learned counsel for the parties submit that matter has been compromised in terms of C.M.No.1098/01 mark 'A' and that this appeal be disposed of in terms of the compromise mark 'A'. Order accordingly. Appeal is disposed of in the light of compromise application mark 'A'. Terms and condition of the compromise application mark 'A' be made part of the decree-sheet."

Decree was drawn accordingly on 29.03.2003.

7. It is matter of record that earlier respondent No.1 moved an application on 29.07.2003 before the concerned Tehsildar for implementation of the decree. Tehsildar called report from the concerned Patwari who on 08.08.2003 reported as under:

"آج حسب الحکم جناب تحصیلدار صاحب شجاع آباد مورخہ 29/7/2003 وگردد اور حلقہ مورخہ 1/8/2003 ریکارڈ ملاحظہ ہوا۔ مطابق رجسٹر حقداران زمین سال 2001-2002 کھاتہ نمبر 729 محمود علی، سید و پسران سلیمان قوم راجپوت برقبہ تعدادی 10-49 کے مالکان تھے۔ جس میں سے برقبہ تعدادی 10-31 بحق سراج احمد ولد عبدالحکیم قوم بلوچ بہ تفصیل نمبر ان خسرہ 162، 14/8-0، 15/1/4-0، 22/8-0، 23/1/4-0، 20/1/7-10 کل قطعہ 5 عدد اراضی 10-31 بحق سراج احمد مذکور بصیغہ راضی نامہ مارک A ڈگری ہو چکا ہے۔ جس کے عملدرآمد میں کوئی امر مانع نہ ہے۔ البتہ انتقال نمبر 1631 مکفول برقبہ 10-25 منجانب محمود علی مکفول کنندہ بحق زرعی ترقیاتی بینک شجاع آباد مبلغ -/272000 رقبہ ہذا سناد انگلی رقم رقبہ مکفول کیا گیا۔ اس کے علاوہ کوئی حکم امتناعی کسی عدالت کا موصول نہ ہوا ہے۔ عملدرآمد ڈگری کی اجازت دی جانی مناسب ہے۔ رپورٹ عرض ہے۔ 8/8/2003۔"

8. Subsequently, respondent No.1 again moved an application on 14.02.2015 to the Assistant Commissioner, Shujaabad for implementation of the said decree, whereby vide order dated 09.06.2015 matter was referred to District Collector, who entrusted the same to Additional District Collector. The Additional District Collector, *via* order dated 26.04.2017 rejected the application for implementation of the decree being barred by time. Feeling aggrieved, respondents preferred an appeal which was allowed by the Additional Commissioner (*Consolidation*), through order dated 27.01.2018 whereby he directed to implement the compromise decree in the revenue record. Being dissatisfied, petitioners filed a revision of revision (*ROR No.324 of 2018*) before the Member Board of Revenue, Punjab, which was allowed vide judgment dated 30.06.2022 with a direction to the parties to go for implementation of the decree as per procedure laid down in Order XXI of the Code of Civil Procedure, 1908, while approaching proper forum. In the light of said direction, decree holders/respondents filed the execution petition on 20.05.2023.

9. A decree in a pre-emption suit is of a peculiar nature which is passed in accordance with the provisions contained in Order XX, Rule 14(1), C.P.C., which lays down that where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase money has not been paid in the Court the decree shall (*a*) specify a date on or before which the purchase money shall be so paid; and (*b*) direct that on payment into Court of such purchase money together with the costs (*if any*), decree against the plaintiff, on or before the day referred to in clause (*a*), the defendant shall deliver the possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, the said rule reads as under: -

“Decree for pre-emption suit: (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall----

(a) Specify a day on or before which the purchase-money shall be so paid, and

(b) Direct that on payment into Court of such purchase-money, together with the costs if any decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,-

(a) If and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule(1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and

(b) If and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.”

The learned Division Bench of this Court in the case titled “ALI AHMAD AND ANOTHER V. MUHAMMAD FAZAL AND ANOTHER (PLD 1973 LAHORE 207), observed that where the trial Court passed a decree for possession on the basis of pre-emption in favour of the respondent/pre-emptor as a result of compromise which was arrived at between the parties and the respondent paid the entire amount in the Court, the decree conclusively determines the rights of the parties with regard to the matters in controversy in the suit. The suit for pre-emption has special incidents and the property vests in the vendee by virtue of the sale made in his favour by the vendor, therefore, when a person files a suit to pre-empt the sale, he does not do so in the exercise of any right in the property but on the basis of his statutory right to pre-empt the sale, he, therefore, does not have any existing right in the property when he institutes the suit but it is only when the

decree is passed and the payment is made then the decree becomes final in his favour and he becomes vested with the property and held as under: -

"4. The appellants, therefore, can succeed only if they are able to make out that section 28 of the Limitation Act is attracted. It reads as: "At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished." This section applies to suits, and suit as provided under section 2, clause (10) of the Limitation Act "does not include an appeal or an application". Article 182 does not prescribe the period of limitation for the institution of a suit by the decree-holder. It merely prescribed the period of limitation for an application for delivery of possession to him. Section 28 does not apply to applications for execution under Article 182. Therefore, if the respondent did not apply for the execution within the period of limitation, his right and title in the property which he acquired by virtue of the decree for pre-emption is not extinguished. He continues to be the owner of the land notwithstanding that he did not file an application for execution."

The losing party of said case was went to the august Supreme Court of Pakistan wherein it was held that when a valid decree in a pre-emption suit was passed in favour of a party he became owner of the property on payment of purchase price, and thus, became vested with the right, interest and title in the land from that date. He was, therefore, entitled to get mutation effected on the basis of the decree. Mere fact that the decree was barred by time, therefore, it has lost its utility was not correct as the revenue authorities were under obligation to enter mutation on the basis of such decree. For reference reliance is placed on the case titled “ALI AHMAD AND ANOTHER V. MUHAMMAD FAZAL AND ANOTHER (1972 SCMR 322).

The execution of the decree and the withdrawal of the money or its payment to the vendee is not relevant or of consequence for the vesting of the title in the pre-emptor as held by august supreme Court of Pakistan in its judgment titled “DR. NIAZ MUHAMMAD MANN AND OTHERS V.

SH. MUHAMMAD AHMAD AND ANOTHER (1988 SCMR 1016)”.

With reference to the provisions of Order XX, Rule 14 C.P.C., the scope of decree framed in a pre-emption suit was discussed and it was held that such decree being of a particular nature, title of property would accrue to decree-holder on payment in Court of purchase money together with costs, if any. The august Supreme Court of Pakistan in a case reported as “**MAULVI ABDUL QAYYUM V. SYED ALI ASGHAR SHAH AND 5 OTHERS (1992 SCMR 241)**”, guided as under:

“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.”

The august Supreme Court of Pakistan in the case titled “**SHAHRA V. MEMBER, BOARD OF REVENUE (2004 SCMR 117)**” with regard to sanction of mutation on the basis of decree for pre-emption passed by the Civil Court, it was held that on deposit of pre-emption money as ordered in pre-emption decree, the pre-emptor/decreeholder was vested with full ownership rights of land the subject matter of the suit of pre-emption about which decree was passed. In such circumstances, sanction of mutation could be made on the basis of decree under revenue law, without resorting to Executing Court. The Executing Court in such matters would be involved in case the judgment-debtor failed to deliver possession of the land which was required to be delivered by Executing Court by issuance of warrant of possession. Law did not require that before sanction of mutation on the basis of pre-emption decree, the

Revenue Authorities should have required the pre-emptors to obtain order from Executing Court.

In the case of “MST. HAKAM BIBI V. KHUSHI MUHAMMAD (2007 SCMR 983)” the provisions of section 48, Order XX Rule 14 and Order XXI Rule 36 of the Code of Civil Procedure, 1908, were discussed with reference to execution of a pre-emption decree, and it was held that the judgment in favour of the pre-emptor was conditional, subject to payment of balance amount and after deposit of said amount he was entitled to get relief in terms of Order XX, Rule 14, C.P.C., wherein after satisfying the decree regarding payment, decree-holder was not required to file execution petition.

The august Supreme Court of Pakistan in a case reported as “MST. NIAZ BIBI THROUGH L.RS. V. GHULAM MUSTAFA AND OTHERS (PLD 2011 SUPREME COURT 520)”, observed as under:

“A plain reading of rule 14 of Order XX, C.P.C. reveals that for preparation and implementation of decree passed in a pre-emption suit, a particular procedure has been laid down, which provides that manner for payment of purchase money, in case it has not been paid in the court earlier, with delivery of possession of the property to the pre-emptor and the mode and manner through which the title of the pre-empted property shall be automatically acquired by the pre-emptor from the date of payment of pre-emption money.

The scope and import of Order XX, Rule 14, C.P.C. is that irrespective of the fact that actual physical possession was received by the pre-emptor in terms of the compromise decree or not, upon payment/deposit of pre-emption money in court in terms of the decree, pre-emptors acquired absolute title of suit-land in his/her favour.”

10. The right of pre-emption means one of substitution and the decree holder steps into the shoes of judgment debtor with regard to the sale. In this context the respondent No.1/(decree holder) firstly moved an application before Tehsildar on 29.07.2003 which remained undecided, then he again moved an application to the Assistant Commissioner for implementation of the decree passed in his favour but the Additional District Collector vide order

dated 26.04.2017 rejected his application for implementation of the decree being barred by time. Thereafter, respondent No.1 approached Additional Commissioner (Consolidation) by preferring an appeal which was allowed vide order dated 27.01.2018 while directing the Revenue Officer to implement the compromise decree in the revenue record. The petitioners challenged said order before the Member Board of Revenue, Punjab, who by setting-aside the order under challenge made a direction to the parties to go for implementation of the decree as per procedure laid down in order XXI of the Code of Civil Procedure, 1908.

11. The Revenue Authorities are under obligation to sanction mutation on the basis of the decree of a Civil Court and cannot refuse attestation of mutation on the ground that the decree was not put into execution within the prescribed period of limitation and had become ineffective. The view taken by the Member Board of Revenue is in conflict with the dictum led down by the august Supreme Court. He was on legal misconception in assuming that the implementation of the decree of a Civil Court could be declined by a revenue officer on the plea of having not been put into execution for a period of three years or that its execution had become barred by time. The said Member did not consider that the decree which was being implemented was a decree in a pre-emption matter which has its own significant features. The decree holder in a suit for pre-emption on deposit of decretal amount, in term of order XX Rule 14, C.P.C., became absolute owner of the suit property, and such ownership would remain operative and intact even if such decree was not put to execution. Revenue Officer was under statutory duty to implement such decree in revenue record even if execution petition had become time barred. The pre-emptor/decreed holder becomes absolute owner of the suit property and sanction of mutation could be made on the basis of said decree without resorting

to execution proceedings. The executing Court in such matters would only be involved in case where the judgment debtor fails to deliver the possession of the land in pursuance of such decree and in such case the executing court will be required to deliver the same by issuance of warrant of possession.

12. Rights in suit property accrued to the respondent-decree holder after payment of consideration amount, therefore, it is not fair to deprive him from the benefit of the decree as laid down by the august Supreme Court of Pakistan in case “SYED PHUL SHAH V. MUHAMMAD HUSSAIN AND 10 OTHERS (PLD 1991 SC 1051)” the relevant observations are as follow:-

“It is also a well-known principle in Islamic justice, that one who succeeds in a litigation unjustly must not retain the benefit. It has been equated with burning charcoal in one’s pocket; which, burns and eats away the winner’s belongings including the retaining pocket also. Thus, while trying our best to do justice in accordance with law, the principles in our own jurisprudence governing just dispensation shall have to be kept in view. In other words, while adhering to the principle; justice in accordance with law, we will have to keep in mind that it is the birth right of every citizen in an Islamic State to seek and obtain justice. In this exercise of keeping balance between the undiluted justice and justice only in accordance with law, the general directional principles in Islamic come to the aid when, one exerts.”

It is also well settled that justice should not be sacrificed on account of technicalities which did not go to the root of the cause; in so far as the fairness thereof is concerned. It was further held in the said case as under: -

“Even if there would have been some force in the technical objection of the learned counsel, justice could not have been sacrificed, at least in this court, on the altar of the technicality which does not go to the root of the cause, in so far as the fairness thereof is concerned. The courts in Pakistan combine law and justice under the umbrella of Islamic jurisprudence; which provides harmonious solutions for situations like the present one. One amongst other principles which operates is that an obviously unjust and wrong decision which is also against the substantive law of the country shall be avoided by the Court.”

13. In view of the above discussion, the respondent No.1/deed holder of the pre-emption deed acquired absolute title over the suit property when he deposited the pre-emption money. The Revenue Authorities were duty bound to implement the pre-emption deed in the revenue record but they failed to discharge their function in accordance with law and denied to fulfil their legal and statutory duty despite respondent No.1 approached them, which constrained him to resort to the executing Court for redressal of his grievance. The learned Executing Court keeping in view the spirit of the pre-emption deed directed the Revenue Authorities to implement “Mark-A” in the revenue record. Therefore, the question of limitation does not arise with regard to the said execution petition. The learned Courts below have rightly rejected objection of the petitioners with regard to limitation. Learned counsel appearing on behalf of the petitioners remained unable to highlight any illegality, irregularity, mis-reading/non-reading or jurisdictional defect in the impugned judgments/orders of lower *fora* which do not call for any interference by this Court while exercising revisional jurisdiction.

14. As an inevitable corollary of above discussion, this revision petition, having no force/substance is **dismissed-in-limine** with no order as to costs.

(AHMAD NADEEM ARSHAD)
JUDGE

APPROVED FOR REPORTING.

JUDGE.