

Stereo.HCJDA 38.

Judgment Sheet

**IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN.
JUDICIAL DEPARTMENT**

....

Writ Petition No.13531 of 2018.

Razia Begum & 05 others.

Versus

Member (Judicial-III) B.O.R., & 12 others.

JUDGMENT.

Date of hearing: **27.06.2024.**

Petitioners by: M/s Sheikh Muhammad Hanif Shahid & Rizwan Ahmad Khan, Advocates.

Respondents #.1 to 4 by: Kanwar Sajid Ali, Assistant Advocate General of Punjab.

Respondents #.5 to 12 by: Mr. Saghir Ahmad Bhatti, Advocate.

AHMAD NADEEM ARSHAD, J. Through the instant Constitution Petition, filed under *Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973*, the petitioners have assailed the vires of order dated 27.02.2018 passed by respondent No.1 (Member Judicial-III, Board of Revenue, Punjab Lahore) whereby, while accepting the revision of revision (ROR No.702 of 2017) filed by respondents No.5 to 12, set-aside the order dated 15.03.2017 passed by respondent No.2 (Additional Commissioner (Revenue), Multan) and restored the orders dated 28.01.2016 & 25.09.2014 of respondents No.3 & 4.

2. Shorn of unnecessary details, the petitioners' predecessor namely Abdul Majeed got incorporated mutation No.1710 dated 27.01.2014 on the basis of decree dated 02.06.1998 passed in a suit for specific performance of an agreement to sell dated 15.01.1986; that said mutation was reviewed and set aside by respondent No.4 vide order dated 25.09.2014 and appeal preferred by the predecessor of the petitioners was dismissed *in-limine* by respondent No.3 on 28.01.2016; that predecessor of the petitioners assailed said orders through filing a revision petition which was allowed by respondent No.2 vide order dated 15.03.2017; that respondents No.5 to 12 challenged said order through revision of revision (ROR No.702 of 2017) which was accepted by respondent No.1 vide impugned order dated 27.02.2018. Being dissatisfied, the petitioners have assailed said order dated 27.02.2018 of respondent No.1 through instant petition.

3. I have heard learned counsel for the parties at full length and perused the record with their able assistance.

4. It is evident from the record that predecessor of the petitioners namely Abdul Majeed instituted a suit for specific performance on 24.01.1987 and sought performance of an agreement to sell dated 15.01.1986, whereby, Muhammad Rafique (respondent No.13) agreed to sell half portion of his shop measuring 3 *Sirsahi* bearing *Khasra* No.100/2/2, out of total shop measuring 06 *Sirsahi* for a consideration of Rs.25,000/- while an amount of Rs.15,000/- was paid as earnest money. He also challenged the entries of mutation No.533 dated 04.02.1986, whereby, respondent No.13 sold

the suit shop to predecessor of respondents No.5 to 12 namely Gulzar Ahmad for a consideration of Rs.70,000/-. Said suit, after full-fledged trial was decreed by the learned trial Court vide judgment and decree dated 02.06.1998 subject to deposit of the remaining consideration amount of Rs.10,000/- within a period of one month, failing which the suit shall be deemed to have been dismissed and that the mutation No.533 dated 04.02.1986 become effective. Respondents No.5 to 12 assailed said judgment and decree of learned trial Court by preferring an appeal which was dismissed vide judgment and decree dated 12.03.2002. The predecessor of the petitioners remained silent for about 10 years and thereafter he moved an application to the District Collector for implementation of the decree which was dismissed vide order dated 17.01.2012 with an observation that the petitioners should have approached the learned executing Court for execution of the decree. In the light of said observation, predecessor of the petitioners filed an execution petition on 27.03.2012 which was subsequently withdrawn and said execution petition was dismissed as withdrawn vide order dated 26.01.2013. During the pendency of said execution petition, the petitioners somehow succeeded to get incorporate mutation No.1652 on 14.11.2012 on the basis of decree. Said mutation was subsequently reviewed and set aside vide order dated 20.11.2012 and appeal against it was dismissed vide order dated 26.12.2013. Thereafter, predecessor of the petitioners instituted a suit for declaration and sought declaration of his title upon the suit property on the basis of decree dated 02.06.1998. Said suit was also dismissed

as withdrawn vide order dated 25.03.2015. Subsequently, predecessor of the petitioners again succeeded to get incorporate mutation No.1710 on 27.01.2014. Said mutation was also dismissed by respondent No.3 while exercising the power of review vide order dated 25.09.2014. Predecessor of the petitioners assailed said order through preferring an appeal which was dismissed *in-limine* by respondent No.3 vide order dated 28.01.2016. However, revision of the petitioners against said orders was allowed by respondent No.2 vide order dated 15.03.2017 and restored the mutation No.1710 dated 27.01.2014. Respondents No.5 to 12 assailed said order through filing revision of revision (ROR No.702 of 2017) before respondent No.1 which was allowed vide impugned order dated 27.02.2018.

5. No doubt a decree of specific performance exists in favour of predecessor of the petitioners. It is settled principle of law that decree never dies but the restriction of limitation always became a barrier for the enforcement of the decree through execution after prescribed period of limitation, however, it does not extinguish the right or title based on the decree.

6. Admittedly, decree passed in favour of the predecessor of the petitioners was conditional subject to payment of remaining consideration amount of Rs.10,000/- within a period of one month and on failure of the deposit of the remaining consideration amount, the suit would be deemed to have been dismissed. There is no proof/material on record which may suggest that predecessor of the

petitioners fulfilled the said condition as it is not established on the record at all if such deposit was ever made. Learned trial Court cannot enlarge the period for deposit of remaining consideration amount under Section 148 of the Code of Civil Procedure, 1908 after the lapse of stipulated period of one month. Jurisdiction with the trial Court was available only within the stipulated period of one month. The moment such period of one month was over, it ceased to have jurisdiction and became *functus officio*, in view of the condition incorporated in the decree. In such eventuality the decree passed by the learned trial Court could only have been challenged by the plaintiff in appeal and the appellate Court was competent to allow an application seeking extension of time for deposit of balance sale consideration, if justifiable grounds were found. For reference, the reliance is placed upon the case law titled as "Muhammad Wahid and another versus Nasrullah and another" (**2016 SCMR 179**)

7. Now the question arises whether decrees of specific performance can be implemented in the revenue record directly through mutation or it can be enforced only through filing execution petition? Learned counsel for the petitioners emphasized that a decree of Civil Court still exists in favour of the predecessor of the petitioners and the Revenue Officer is duty bound to incorporate said decree in the revenue record, through sanctioning of mutation irrespective of any delay.

8. No doubt, the decree granted by the Civil Court is binding on the Revenue Authorities and they are bound by the law to

give effect the decree and change entries in the revenue record in accordance with the rights of the parties as determined by the Civil Court and a decree does not lose its utility for not having been effected within the period of limitation. For reference reliance is placed upon the case law titled as "ALI AHMAD and another versus MUHAMMAD FAZAL and another" (**1972 SCMR 322**)

9. Section 42(I) of the West Pakistan Land Revenue Act, 1967 provides that process of mutation would start from a time when a transaction of transfer of right in the property has been effected. Such acquisition of right in the estate should be as land owner either through inheritance, purchase, mortgage, gift or otherwise such as decree of Civil Court or as a tenant for a fixed term exceeding one year. But such acquisition of right must be with regard to either ownership right or tenancy right.

10. The decree for specific performance by itself does not transfer the title. A decree for specific performance of an agreement with regard to sale of the property only declares the right of decree-holder to have the property transferred in his favour covered by the decree and so long as the sale deed is not executed in his favour by the judgment-debtor or by the Court, the title of the property remains vested in the judgment-debtor. Unless the title in the immovable property is transferred by means of a registered sale deed, it cannot be deemed to have been transferred irrespective of the fact that an agreement to sell has been executed and a decree for its specific performance has also been passed. The purpose of the decree of

specific performance is to get the sale deed executed and procure possession in accordance with the conditions mentioned therein, in so long as the sale deed is not executed in favour of the decree-holder either by the judgment-debtor or by the Court, the title in the property vested in the judgment-debtor. For reference the reliance is placed upon the case law titled as "Hakim Enayat Ullah v. Khalil Ullah Khan and another" (**AIR 1938 All 438**). Reference may also be made with advantage to four other decided cases of this Court titled "Majid v. Nizam Din and others" (**PLD 1959 Lahore 273**), "Haji Abdul Rehman and others v. Noor Ahmad and others" (**PLD 1974 BJ 25**), "Muhammad Ishaq v. Muhamamd Siddique" (**PLD 1979 Lahore 909**) and "Syed Manzoor Hussain Shah v. Khurshid Ahmad and 4 others" (**1989 CLC 1372**).

11. In order to get title of the property on the basis of a decree for specific performance, the decree holder has to file an execution petition through invoking provision of Order XXI Rule 32 of the Code of Civil Procedure, 1908, which deals with decrees for specific performance, restitution of conjugal rights and injunction. It provides various modes and steps for execution of said types of decree. By executing the decree for specific performance not only a sale deed is executed in favour of decree-holder but the possession is delivered as well subject to conditions as mentioned in the agreement/decree. The decree for specific performance enjoins the parties to perform their part of agreement and on their failure to do so, Court itself performs those obligations by carrying out the act

required to be done. Said power is conferred under sub-rule 5 of Rule 32 of Order XXI, C.P.C. which runs as follows: -

“Where a decree for specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the process aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.”

12. In view of the above discussion, this Court has reached to a conclusion that a decree for specific performance cannot be directly implemented in the revenue record without indulgence of the executing Court, who in execution of the decree shall get execute sale deed in favour of the decree-holder and deliver the possession in accordance with the agreement/decree. Of course, after execution of sale deed, the revenue authorities would be bound to give its effect in the revenue record.

13. For the foregoing reasons, respondent No.1 has rightly accepted the revision filed by respondents No.5 to 12 and restored the orders dated 28.01.2016 & 25.09.2014. Impugned order is well-reasoned, justified and passed in accordance with law which does not call for any interference by this Court while exercising constitutional jurisdiction.

14. Learned counsel for the petitioners failed to point out any illegality, material irregularity and jurisdictional defect in the findings of order passed by respondent No.1. In absence of a jurisdictional defect or illegality and irregularity or unless a case of

grave miscarriage of justice was made out, this Court in exercise of its constitutional jurisdiction, normally did not interfere in the findings. I have seen no illegality, infirmity and jurisdictional defect in the impugned order.

15. Epitome of above discussion is that the instant petition is misconceived and not maintainable, hence, the same is hereby, dismissed. No order as to costs.

**(AHMAD NADEEM ARSHAD)
JUDGE.**

Approved for reporting:

JUDGE.

A.Razzaq.