

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

W.P.No.664-B/2023.

Adnan Ahmad Vs... Muhammad Saleem.

JUDGMENT

For petitioners: M/s Waris Faheem and Muhammad Tariq Qureshi, Advocates.

For respondents: Mr. Farhan Ullah Gran, Advocate (via video link).

Date of hearing: **20.11.2025.**

ABDUL FAYAZ, J.- Through instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has prayed for the following relief:

“ It is humbly prayed that this Hon’ble Court may graciously be pleased to:

(1) Set aside, the impugned orders/judgments dated 12.11.2022 of learned trial Court/ Civil Judge-VI, Lakki Marwat and dated 23.05.2023 of learned revisional Court/ADJ-I, Lakki Marwat and resultantly the application of petitioner for correction/amendment may please be accepted.

(2) Any other relief deemed appropriate in the circumstances not specifically

prayed for may also be given to the petitioner."

2. Brief facts forming the background of the instant petition are that the petitioner/plaintiff instituted a suit for possession through exercise of the right of pre-emption against the respondent, who had purchased the suit property vide Mutation No.3352 dated 23.11.2020. The respondent contested the suit by submitting written statement. Subsequently, during pendency of the suit, the petitioner filed an application seeking amendment of the plaint by inserting Khata No.69, Khasra No.380, as well as Khata No.73 along with Khasra No.379, asserting that these were omitted due to clerical error and that the mutation in question comprised three Khatas. The respondent opposed the application. The learned trial Court after hearing arguments of both the learned counsel for the parties, dismissed the petitioner's application vide order dated 12.11.2022; the revision petition filed by the petitioner against the order of the learned trial Court dated 12.11.2022 was also dismissed by the learned Additional District Judge-I, Lakki Marwat vide

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its judgment dated 23.05.2023. Hence, this petition.

3. Arguments heard and record examined.

4. Perusal of the plaint shows that the petitioner sought pre-emption only in respect of Khata No.72, Khasra No.443, measuring 1½ kanal, part of Mutation No.3352. However, Mutation No.3352 reflects transfer of land from three distinct Khatas, i.e. Khata No.69, Khasra No.380 measuring 1 kanal 3 marlas, Khata No.72, Khasra No.443 measuring 1½ kanal and Khata No.73, Khasra No.379 measuring 1 kanal 4½ marlas. Neither Khata No.69 Khasra No.380, nor Khata No.73/Khasra No.379, was mentioned in the plaint, nor were they mentioned in the notice Talb-e-Ishhad, which is a mandatory prerequisite under the law of pre-emption. The omission from notice Talb-e-Ishhad is fatal as a claim not asserted in notice Talb-e-Ishhad cannot be introduced later on through amendment in the plaint.

5. Moreover, during trial management and scheduling conference, as well as in Proforma-E (proposed exhibits under Order XIII CPC) and Proforma-F-I (list of witnesses/documents under

Order XVI CPC), the petitioner consistently relied only upon Khata No.72, Khasra No.443. Furthermore, the petitioner verified the plaint at the time of filing; hence he was fully aware of its contents. The attempt to introduce Khata No.69 and Khata No.73/Khasra No.379 fundamentally alters the basis of the suit and amounts to introducing a new claim. Wisdom in this respect is derived from a judgment of the august Supreme Court reported in **2013 SCMR 23**
(Ghulam Yasin and others Vs. Ajab Gul)

whereby their Lordships have held as under:--

"Quite apart from this since a pre-emption case under the latest dispensation is more like a criminal case and a plaint in the former is almost like an F.I.R. in the latter, no omission however, fatal it may be, can be allowed to be supplied by means of amendment. In case it is done by means of amendment, it would open room for additions, afterthoughts and improvements which would go ad infinitum. Neither the pre-emption nor the criminal case with this modus operandi would admit of an end in the mundane existence of the parties. We, therefore, have committed no error much less patent on the face of the record by declining the prayer for amendment of plaint and

dismissing the appeal of the petitioner".

The learned trial Court as well as the appellate Court has acted within all four corners while declining the prayer of amendment in the plaint. The learned counsel for petitioner could not convince this Court to interfere in the well-reasoned orders/ judgments of both the courts below.

6. Resultantly, in view of the above discourse this writ petition is devoid of any merits and is hereby dismissed

Announced.

20.11.2025.

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(S.B)

Hon'ble Mr. Justice Abdul Fayaz

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