

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.4544 of 2019

Masood Alam.

Versus

Haji Mubarak Hussain and 03 others.

Petitioners By : Mr. Ahmad Iqbal Maiken, Advocate.

Respondents By : Sardar Muhammad Ashfaq Abbasi,
Advocate for respondent No.1.

Date of Decision : 29.01.2020.

AAMER FAROOQ, J. - The facts, leading to filing of the instant petition, are that respondent No.1 filed a suit for specific performance with respect to agreement entered between father of the petitioner and Haji Mubarak Hussain, the predecessor in interest of respondent No.1, dated 18.08.1990, in respect of property measuring 60-Kanals, comprising of Khasra Nos.731, 730, 740, 741, 735, 733, 732, 729 and 736 situated in revenue estate of Village Maira Begwal, Islamabad. The said suit was decreed in favour of the plaintiff/respondent No.1, vide judgment and decree dated 12.11.2014. Appeal was filed by the petitioner, which was allowed. Respondent No.1 challenged the appellate order before this Court, which upheld the decision of the learned Trial Court. The matter is still pending before Hon'ble Supreme Court of Pakistan. Respondent No.1 filed execution application with respect to judgment and decree dated 12.11.2014 and in the same sought possession of the property, in question, as well. Respondent No.1 made an application for possession, which

was allowed vide order dated 19.11.2019. The said order was challenged in revision, which was dismissed vide order dated 28.11.2019, hence the petition.

2. Learned counsel for the petitioner, *inter-alia*, contended that since no prayer was made for possession of the property, hence the same cannot be allowed to respondent No.1 in the execution proceedings. Reliance was placed on cases reported as "*Mst. Razia Bibi Vs. Muhammad Shareef and another*" (**PLD 2011 Lahore 450**) and "*Abdul Habib Vs. Fazal Muhammad and 2 others*" (**2012 MLD 1856**).

3. On the other hand, learned counsel for respondent No.1, *inter-alia*, contended that the decree for specific performance of the agreement encompasses the possession as well and there is no need for specific prayer with respect thereto. Reliance was placed on cases reported as "*Mst. Arshan Bi through Mst. Fatima Bi and others Vs. Maula Bakhsh through Mst. Ghulam Safoor and others*" (**2003 SCMR 318**), "*Khadim Hussain and 2 others Vs. Waris Ali and another*" (**2005 CLC 1144**), "*Birgis Jahan Bajiga Malik Vs. Muhammad Hasan and others.*" (**PLD 1964 Dacca 202**), "*Momtazul Karim and others Vs. Abu Hussain and another*" (**1970 SCMR 816**) and "*Muhammad Riaz and others Vs. Qaim Ali and others*" (**PLD 2019 Lahore 97**).

4. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. The controversy, in hand, is that the suit filed by the predecessor in interest of respondent No.1 namely Haji Mubarak Hussain did not contain prayer for possession of the property with respect to which agreement to sell was entered into between the parties. The referred respondent made the following prayer in the plaint:-

"In the circumstances, it is, respectfully prayed that decree for specific performance of sale agreement dated: 18-08-1990 may be passed in favour

of the plaintiff and against the defendant and as a consequential relief decree for permanent injunction restraining the defendant from transferring/alienating the suit land or taking forcibly or illegally the possession of suit land, may kindly be passed in favour of the plaintiff and against the defendant with cost. Any other equitable relief which this Honourable Court deems fit and proper may also be granted.”

Admittedly, no prayer for possession was made, however, the contention of learned counsel for respondent No.1 is that in the suit for specific performance even if there is no prayer regarding the possession it is not fatal as it is inbuilt in the request for specific performance. In this behalf, the case law relied upon by learned counsel for respondent No.1 is instructive. In "*Birgis Jahan Bajiga Malik Vs. Muhammad Hasan and others.*" (**PLD 1964 Dacca 202**), the Hon'ble Division Bench of Dacca High Court observed that even where relief for possession is not prayed for and consequently decree passed in the suit is also silent as to delivery of possession then notwithstanding such omission executing Court is not debarred from granting relief of possession inasmuch as decree of specific performance includes not only execution of necessary documents but putting vendee in possession as well. Similar view was taken by the Hon'ble Supreme Court of Pakistan in case reported as "*Momtazul Karim and others Vs. Abu Hussain and another*" (**1970 SCMR 816**), wherein the Hon'ble Supreme Court of Pakistan spurned the argument that where the suit being only for specific performance of contract of sale, the High Court erred in granting the decree for khas possession in favour of the plaintiff. The Hon'ble Supreme Court of Pakistan in "*Mst. Arshan Bi through Mst. Fatima Bi and others Vs. Maula Bakhsh through Mst. Ghulam Safoor and others*" (**2003 SCMR 318**) observed the technicalities shall not create hurdles in the way of substantial justice; the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. Similarly Hon'ble Lahore High Court in "*Khadim Hussain and 2 others Vs. Waris Ali and another*" (**2005**

CLC 1144) observed that relief for recovery of possession in the suit for specific performance would not at all be necessary as the same would spring out of contract for sale and would be incidental to main relief of specific performance granted in the suit. Reliance is also placed on "*Muhammad Riaz and others Vs. Qaim Ali and others*" (**PLD 2019 Lahore 97**). The above judgments make it clear that the principle is that even if no prayer for possession is made in the suit for specific performance, the plaintiff being the decree holder is not denied the benefits of the decree of specific performance. The judgments relied upon by learned counsel for the petitioner do not take into account the view of the Hon'ble Supreme Court of Pakistan as mentioned hereinabove. The orders impugned in the instant petition are well reasoned and do not suffer from any error of law warranting interference.

6. For the above reasons, the instant petition is without merit and is accordingly **dismissed**.

(AAMER FAROOQ)
JUDGE

**M. Zaheer Janjua*

Approved For Reporting.

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