

Writ Petition No.13435 of 2010

MUHAMMAD KASHIF CHAUDHRY      VERSUS      ADDITIONAL DISTRICT  
JUDGE, MULTAN etc.

08.02.2011      Malik Muzaffar Qadir Thahim Advocate  
for Petitioners

The respondent No.3 instituted a suit for possession through exercise of right of pre-emption of subject property described in the title of the plaint before the learned Senior Civil Judge, Multan on 22-6-2009, which suit was entrusted for hearing to a learned Civil Judge, Multan.

2. The petitioners, who are the defendants Nos. 1 and 2 in the suit contested the same and submitted a written-statement dated 15-1-2007. In paragraph No.3 of the preliminary objections, the petitioners/defendants took up a plea that they have spent Rs.3,13,857 upon improvements and decoration of the subject property, therefore, they are entitled to recover the said amount in addition to the sale price and other expenses rendered on the execution of the sale-deed in their favour in case the suit is decreed against them. In paragraph No.7 on facts as well, the petitioners reiterated the same facts and concluded that if the plaintiff of the suit by adding the amount of Rs.3,13,857 into the sale price as well as the miscellaneous expenses rendered by the petitioners upon the sale-deed, in question, makes a payment of total Rs.12,76,857 to the petitioners then they

have no objection upon the grant of the decree to the respondent No.3.

3. The learned trial court framed nine issues in this matter on 18-5-2007. Issues Nos.7 and 8 particularly deal with the improvements and the incidental charges claimed by the petitioners/ defendants.

4. The respondent No.3 produced her evidence and the petitioners thereafter moved an application dated 7-5-2010 seeking permission to amend the written-statement. Through the amendment, the petitioners wanted to enhance the additional charges rendered by them on the improvements and decoration of the suit property from Rs.3,13,857 to Rs.9,26,857 by adding Rs.6,50,000. The petitioners also claimed in the same application that the value of the suit property has also been enhanced during the pendency of the suit, therefore, the total amount the petitioners want to add through the amendment application as the consideration for the grant of decree to the respondent No.3 was calculated by the petitioners to be Rs.25,00,000 in total.

5. This application was contested by the respondent No.3/plaintiff and the learned Civil Judge vide order dated 29-10-2010 dismissed this application of the petitioners holding that the application moved by the petitioners/defendants seeking permission for the

amendment of the written-statement amounts to introduction an afterthought and that the prayer for incorporation of such amendment at belated stage is also unwarranted and is not entertainable.

6. The petitioners preferred a revision petition against the order dated 29-10-2010, passed by the learned Civil Judge, rejecting the application of the petitioners for amendment of the written-statement, which civil revision came up for hearing before a learned Additional District Judge, Multan on 10-11-2010 and was dismissed. Hence this writ petition against the two orders passed by the two courts below.

7. It is contended by the learned counsel for the petitioners that by adding these additional expenses in the improvements, the complexion of the plea raised in the written-statement would not be affected or changed in any manner. It is next contended that since the matter requires to be decided on the basis of the evidence, therefore, without recording the evidence on these points, the learned Civil Judge held the prayer made for the amendment of the written-statement to be an afterthought and that the learned Additional District Judge did not apply this judicial mind to the facts and circumstances of the case and rejected the revision petition. The learned counsel for the petitioners contends that there was no injunctive order for making further improvements in the subject property, therefore, the

petitioners have the right to claim further improvements made in the suit property and the expenses incurred by them thereupon. A prayer has been made for setting aside the two orders passed by the two courts below.

8. I have considered the arguments of the learned counsel for the petitioners and have perused the record.

9. The petitioners submitted a written-statement before the trial Court on 15-1-2007. In paragraph No.3 of the preliminary objections and in Paragraph No.7 on facts, the petitioners raised specific plea with respect to the improvement and the expenses rendered by them upon the suit property and calculated the value as Rs.3,13,875. After elapse of three years of submission of earlier written-statement, the petitioners moved an application for the amendment of the written-statement on 7-5-2010 and contended that Rs.6,50,000 be allowed to be added into the claim earlier raised with respect to the improvements as asserted in the already submitted written-statement. The learned Civil Judge came to the conclusion in the order dated 29-10-2010 that this claim of additional charges for improvements is an afterthought. The petitioners wanted to add huge amount in the alleged improvements made by them in the subject property. Through the amendment in question, this claim of the petitioners for adding this amount of Rs.6,50,000 in the originally claimed amount of Rs.3,13,875 prima facie does not reflect the bona fide of

the petitioners. Moreover, the contention of the learned counsel for the petitioners that there was no injunctive order against the improvements made is not entertainable because in view of the provisions of section 52 of the Transfer of Property Act, (IV of 1882), the subject-matter of a suit cannot be dealt with in any manner during the pendency of the suit and admittedly the petitioners did not seek any permission for making alleged improvement during the pendency of the suit and merely the fact that there was no injunctive order does not make any difference.

10. The learned Additional District Judge while attending to the facts and circumstances of the case also passed a very solid and a 'speaking order and paragraph No.6 of the order dated 10-11-2010 is reproduced below:--

*"6. Perusal of documents annexed with the petition reveals that petitioners had given all the details, of amounts spent by him including commission of Property Dealer, payment of registry and the money spent by him on renovation. Under Order VI, Rule 17 of the C.P.C., the court can allow at any stage of the proceedings to either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. In this case, as I have already observed that all the expenditures incurred by the defendant were entered in his written statement. Now he has spent more amount on this building at his own risks. Moreover with the passage of time the value of the property increases everywhere but the defendant cannot be permitted to amend his written statement on the ground that now the value of the property has been increased. The learned trial court has rightly dismissed the application of the petitioner and this is a revision petition. The petitioners have failed to point out any illegality or irregularity in the order of the learned trial Court or erroneous exercise of jurisdiction which requires interference of this Court. Resultantly, this revision petition is dismissed in limine. File be consigned to the record room after its completion. "*

11. The two courts below have refused to allow the amendment in the written statement in accordance with law and the belated application of the petitioners was rightly held to be not entertainable particularly keeping in view the alleged claim built up by the petitioners in the amended application as against the original claim raised in the written statement dated 15-1-2007

12. In exercise of my writ jurisdiction I am not persuaded to hold that the orders passed by the two courts below are either illegal or are without lawful authority. No interference is called for in the impugned orders passed by the two courts below. The instant written petition is **DISMISSED** in limine.

**(NASIR SAEED SHEIK)**  
**Judge**