

Form No: HCJD/C-121

**ORDER SHEET**

**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**C.R.No.137 of 2014**

**Noor Muhammad etc**

**Versus**

**Mst. Rabia Bibi etc**

Sr. No. Of Order/ Proceeding	Date of Order	Order with signatures of Judge, and that of parties of counsel, where necessary.
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28.03.2019 **Sheikh Naveed Shahryar, Mr. Bashir Ahmad Mirza, Ms. Humaira Bashir, Ch. Ghulam Rasool Tarar and Ch.Tariq Bashir Tarar, Advocates for the petitioners.**  
**Rai Sajid Ali Kharral, Advocate for respondents.**

Through this single order, I intend to decide titled civil revision as well as connected Civil Revision No.14811/2017 as both have arisen out of consolidated judgments & decrees and subject matter is also the same.

2. The respondents/Allah Bukhsh etc. filed a suit for specific performance titled “Allah Bukhsh etc. VS Imam etc”, claiming that their predecessor-in-interest namely Ahmed Khan orally purchased the disputed property through oral sale agreement dated 15-12-1962 in consideration of Rs.67/- per marla by paying the whole consideration amount to Imam/predecessor in interest of petitioners in presence of the witnesses and possession was also delivered to their predecessor-in-interest namely Ahmed Khan. The present respondents raised construction over the purchased land and

also installed electricity meter therein. The predecessor-in-interest of respondents namely Ahmed Khan & predecessor-in-interest of petitioners namely Imam enjoyed good relations but after the death of Imam, his successor in interest/present petitioners refused to execute the sale deed and the respondents are constrained to file instant suit.

The petitioners also filed a suit for possession titled "Noor Muhammad etc VS Ahmad Khan etc." with the averments that predecessor in interest of petitioners namely Imam allowed the predecessor in interest of respondents namely Ahmed Khan to live in the disputed property but his successor in interest/present respondents refused to vacate the disputed property, hence the suit.

3. The contesting parties filed their respective written statement(s) and raised certain legal as well as factual objections. Out of divergent pleadings of the parties, consolidated issues were framed by the learned Trial Court and the parties led their respective oral and documentary evidence. After hearing the arguments advanced by both the contesting parties, the learned Trial Court vide consolidated judgment and decrees dated 29.11.2011 dismissed both the suits. Feeling aggrieved, contesting parties preferred two appeals and the learned Additional District Judge, **dismissed** both the appeals vide consolidated judgment and decrees

dated 24.09.2013. Being dissatisfied, the petitioners as well as respondents have filed two civil revisions and challenged the validity of the impugned judgments and decrees passed by the learned courts below.

4. I have heard the arguments of learned counsel for the parties and perused the available record as well as have minutely gone through the impugned judgments and decrees.

5. While discussing the suit for specific performance, filed by respondents/Allah Bukhsh etc. titled “Allah Bukhsh etc. VS Imam etc.”, it is important to mention here that there is no cavil with the proposition of law, which is settled that in civil litigation, a party thereto has to set out his/her case in the pleadings especially which relates to the facts. The rule of “secundum allegata et probata” not only excludes the elements of surprise but also precludes the party from proving what has not been alleged or pleaded. In judgments reported as *Government of West Pakistan (Now Punjab) through Collector, Bahawalpur v. Hail Muhammad* (PLD 1976 SC 469). *Binyameen and 3 others v. Choudhary Hakim and another* (1996 SCMR 336) and *Major(Retd.) Barkat Ali and others v. Qaim Din and others* (2006 SCMR 562) it is held that no party can be allowed to lead evidence on a fact which has not been specifically pleaded nor can any evidence be looked into which is outside the scope of

pleadings. Averments made in the pleadings do not constitute evidence but the evidence led in their support must be consistent therewith. Anything outside the scope of such averments cannot be looked into.

The respondents filed the suit on the basis of oral sale agreement without mentioning the time, place where transaction took place, names of the witnesses and period for completion of the oral agreement. While appearing as DW-1, respondent/Allah Baksh even failed to depose about time, day, month, year, names of witnesses and place where the alleged sale transaction was allegedly negotiated/finalized in examination in chief. In cross-examination, he simply conceded that he was not born at the time when oral agreement was allegedly negotiated/finalized or sale consideration was paid and possession was delivered. The respondents neither pleaded nor deposed the facts, necessary for proving the oral sale agreement and payment of sale consideration because such requirement was sine qua non for proving oral sale agreement. Reliance is placed on a case reported as “Nazir Ahmad and another Vs Yousaf” (**PLD 2011 SC 161**) which holds as under:

“.....There is no documentary evidence about the sale, which obviously could not be legally concluded except in accordance with section 54 of the Transfer of Property Act, 1882 and 17 of the Registration Act, 1908. Moreover, even no oral independent evidence has been led by the respondent to establish the exact

day, date, month, year, the venue as to when the sale transaction was allegedly negotiated and finalized between the parties and in whose presence”.

It is cardinal principle of law that the unwritten agreement can only be proved through the evidence of unimpeachable character and the initial burden of proof is on the plaintiff(s) to substantiate their claim(s) by adducing cogent, legal, relevant and unimpeachable evidence of definitiveness but the statements of the PWs are also not only contradictory to each-other but have also failed to support the claim(s) of respondents. Reference is made to a case reported as “Muhammad Nawaz through L.R.s v. Haji Muhammad Baran Khan through L.R.s and others” (2013 SCMR 1300) which holds as under:

“... however, in a case where party comes forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the party to prove that there was consensus ad idem between both the parties for a concluded oral agreement”.

Hence, the learned courts below have properly examined the pleadings, entire evidence of the parties and thereafter reached at the conclusion regarding the controversy by dismissing the respondents’ suit for specific performance of oral agreement. Accordingly, the findings of the learned courts below are upheld/maintained by dismissing the respondents’ Civil Revision 14811/2017.

6. In the petitioners' Suit for Possession titled "Noor Muhammad etc. VS Ahmad Khan etc.", the respondents filed written statement with the pleas that their predecessor in interest namely Ahmed Khan purchased the suit property from the predecessor in interest of the petitioners namely Imam through oral sale agreement and possession of the suit property was also delivered by Imam. The respondents took the same pleas in their written statement, which were taken by them in their suit for specific performance. After detailed discussion in para 05 of this revision petition, the respondents' Civil Revision No.14811/2017 was dismissed by this court by upholding the judgments & decrees of the courts below and resultantly their suit for specific performance was dismissed but the facts, pleaded by respondents in their written statement clearly establish rather amounts to admission in favour of petitioners that the possession of the suit property was taken by their predecessor in interest namely Ahmed Khan from the predecessor in interest of the petitioners namely Imam who was admittedly the owner of suit property in the revenue record. Facts having been expressly and unequivocally admitted in the pleadings would not require any further proof. Being legal heirs of Imam, the petitioners/plaintiffs are thus entitled to get the possession of suit property from the possessors. During the proceedings, the

learned counsel for the respondents argues by raising a legal objection regarding the maintainability of petitioners' suit on the non-impleadment of others co-sharers of the joint khewat/khasras where the suit property is situated and without seeking relief of the partition. Suffice it to say that this legal point has already been discussed by the honourable Supreme Court of Pakistan in a judgment reported as "Taj Wali Shah Vs Bakhti Zaman" (2019 SCMR 84) and held as under;

viii. In an undivided immovable property one of the co-sharers can maintain a suit for ejectment of a possessor in respect of the entire property and in such a case the following may ensue:

**firstly**, the said suit of the co-sharer cannot be considered as evidence of his-denial of the title of the other co-sharers;

**secondly**, that the suit brought by said co-sharer would be deemed to be for the benefit of the other co-sharers; and

**thirdly**, when the said co-sharer acquired possession in consequence of the said proceedings, he would be in possession of the entire property, on behalf of all co-sharers and his said possession cannot be deemed as adverse to the other co-sharers.

Therefore, the findings of the learned courts below on the issue No.1 whereby petitioners' suit for possession was dismissed on the sole ground that the petitioners cannot claim possession of suit property against the possessors without

seeking partition and without impleading the other co-sharers of joint khewat/khasra, is not sustainable in the eyes of law.

7. In view of above detailed discussion, the present civil revision is **accepted** by setting aside the judgments & decrees of learned courts below and the petitioners' suit for possession titled "Noor Muhammad etc. VS Ahmad Khan etc" is hereby **decreed** while the judgments and decrees of the learned courts below are upheld/maintained by dismissing the respondents' civil revision No. 14811/2017 arising out of respondents' suit for specific performance titled "Allah Bukhsh etc. VS Imam etc."

**(MASUD ABID NAQVI)**  
**JUDGE**

Approved for reporting.

**(MASUD ABID NAQVI)**  
**JUDGE**