

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

**Case No. C.R. No.2325 of 2011**

Muhammad Riaz

Vs.

Fida Hussain Shah

Sr. No. of order/proceeding	Date of order/proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
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22.01.2019 Malik Amjad Pervaiz, Advocate for the petitioner.  
Mr. Hafeez ur Rehman Mirza, Advocate for the respondent.

Through this civil revision filed under Section 115 of the Civil Procedure Code, 1908 the petitioner questions the judgment and decree dated 27.05.2011 passed by learned Additional District Judge, Jhang.

2. Brief facts giving rise to the institution of this revision petition are that the petitioner purchased suit property measuring 10 Kanal bearing Khata No.24 situated at village Basti Shah Shakoor, District Jhang fully mentioned in para No.1 of the plaint from Zulfiqar Ali Shah through mutation No.1891 dated 28.01.2000. Respondent filed a suit for recovery of possession through preemption against the petitioner, which was decreed in his favour by learned trial court vide judgment and decree dated 10.06.2005 and he submitted Zar-e-Soaim in the government treasury and took over the possession and petitioner withdrew the amount. Respondent gave copy of decree to Patwari and subsequently he found that his name was not entered in the

revenue record and he asked the petitioner to get entered his name in revenue record but he refused. Later on, the respondent instituted a suit for declaration along with consequential relief before the learned trial court, Jhang which was contested by the petitioner by filing written statement. Out of the divergent pleadings of the parties the learned trial court framed relevant issues. The parties produced their oral as well as documentary evidence to prove their respective contentions. The learned trial court after recording the evidence of both the parties vide judgment and decree dated 30.09.2010 dismissed the suit. Aggrieved thereof, the respondent preferred an appeal before learned Additional District Judge, Jhang who vide judgment and decree dated 27.05.2011 accepted the same. Hence, this civil revision.

3. It is contended by learned counsel for the petitioner that judgment and decree passed on 10.06.2005 in preemption suit can only be executed by filing execution petition and not by filing suit for declaration as prayed in the plaint.

4. On the other hand, learned counsel for respondent submits that revenue authorities have to implement the judgment and decree as it is without there being any filing of execution petition before the civil court.

5. Arguments heard. Record perused.

6. It is an admitted fact between the parties that respondent instituted a suit for possession through preemption against the petitioner which was decreed on 10.06.2005 on the statements of the parties. The relevant extracts of the statements

of the parties and orders are reproduced herein below:-

"کونسل فریقین حاضر فریقین اصالتاً حاضر۔  
مدعی اپنا بیان قلمبند کرانا چاہتا ہے۔ بیان قلمبند ہووے۔  
بیان مکرر مدعا علیہ اپنا بیان قلمبند کرانا چاہتا ہے۔ بیان قلمبند ہووے۔  
بیان ازاں محمد ریاض ولد احمد بخش مدعا علیہ بر حلف۔  
بیان کیا کہ مایین فریقین راضی نامہ ہو گیا ہے۔ دعویٰ مدعی باوا کی مبلغ -/219100 روپے ڈگری فرمایا جاوے۔ مبلغ  
-/66667 روپے زرسوئم مدخلہ عدالت میں نکلوا لوں گا، بقید رقم مبلغ -/152433 روپے رو برو عدالت میں نے مدعی سے  
وصول پالی ہے۔ مدعی کا دعویٰ ڈگری کیا جاوے۔  
سکر در دست تسلیم کیا۔

"مدعی بھی اپنا بیان قلمبند کرانا چاہتا ہے۔ بیان قلمبند ہووے۔  
بیان ازاں نذرا حسین شاہ ولد کرم شاہ مدعی بر حلف۔  
بیان کیا کہ مدعا علیہ کا بیان سن لیا ہے۔ جو درست تسلیم ہے۔ مدعا علیہ زرسوئم کی رقم نکلوانے کا حقدار ہوگا۔ میرا دعویٰ  
ڈگری فرمایا جاوے۔  
سکر در دست تسلیم کیا۔

"حکم۔ بروئے بیانات فریقین دعویٰ مدعی بلعوض مبلغ -/219100 روپے ڈگری کیا جاتا ہے۔ مدعا علیہ رقم زرسوئم مبلغ  
-/66667 روپے نکلوانے کا حقدار ہوگا۔ خرچہ مقدمہ بذمہ فریقین رہے گا۔ مسل بعد اس ترتیب و تکمیل داخل دفتر ہووے۔  
سنایا گیا۔

The above noted statement and judgment and decree has been produced as Exh.P/1, Exh.P/1/2 and Exh.P/2.

7. It is well settled principle of law that after making payment the property in dispute which is subject matter of preemption absolutely vests with the respondent/decree holder which is based on compromise between the parties as a result of which petitioner has received the amount before the court by admitting the same in his statement. In taking the above view reliance is placed on case laws reported as "Shahra and others v. Member, Board of Revenue, Punjab and others"

(2004 SCMR 117), “Ali Ahmad and another v. Muhammad Fazal and another” (PLD 1973 Lahore 207) and “Jumma and 8 others v. Mst. Zainab Khatoon” (PLJ 1996 Lahore 329).

8. From the evidence of parties more particularly DW-3 namely Amir Riaz who is son of the petitioner it is evident that the possession of the disputed property is with the respondent. DW-3 deposed in his cross examination that it is correct that respondent is in possession of the disputed property from the date of decree. As the respondent is in possession of the suit property, therefore, there is no occasion for him to file an execution petition as Executing Court generally in preemption suits are involved where the judgment debtor fails to deliver the possession which is required to be got delivered by the Executing Court in accordance with law. In taking the above view, reliance is placed on case law reported as “Shahra and others v. Member, Board of Revenue, Punjab and others” (2004 SCMR 117). Relevant portion of the judgment is reproduced herein below:-

“6. The Executing Court in such matters would be involved in case the judgment-debtor fails to deliver possession of the land which is required to be delivered by the Executing Court by issuance of warrant of possession, therefore, there was no requirement of law that before sanction of mutation on the basis of pre-emption decree, the Revenue Court should have required the petitioners to obtain order from the Executing Court.”

9. Further reliance is placed on case law reported as “Ali Ahmad and another v. Muhammad Fazal and another” (1972 SCMR 322) and “Shahra and others v. Member, Board of Revenue, Punjab and others” (2004 SCMR

117), wherein it has been held that revenue authorities are under obligation to sanction mutation on basis of decree passed by civil court and cannot refuse mutation on ground that decree had not been put into execution within prescribed period of limitation and therefore, had become ineffective.

10. The petitioner is estopped by his conduct to file present revision petition as he has received the amount as stated in Paragraph No.6 of this judgment and preemption decree was passed with his consent.

11. Learned counsel for the petitioner has failed to point out any illegality and jurisdictional defect in the impugned judgment and decree passed by the learned court below.

12. Sequel to above, this civil revision being devoid of any force is dismissed with no order as to costs.

**(SHAHID MUBEEN)  
JUDGE**

**APPROVED FOR REPORTING**

**JUDGE**