

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
C. P. No.D-264 of 2023.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.
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16.05.2023.

PRESENT:

**Mr. Justice Irshad Ali Shah,
Mr. Justice Arbab Ali Hakro,**

1. For orders on M. A. No.982/2023.
2. For orders on office objection.
3. For hearing of Main Case.

Petitioner : Abdul Rauf Khoso, through Mr. Riaz Hussain Khoso,
Advocate.

Respondents : Manzoor Ahmed & others.

ORDER.

Arbab Ali Hakro, J.- The petitioner by way of instant Constitutional Petition has assailed the order dated 22.03.2023 passed by learned District Judge, Kashmore at Kandhkot, whereby the Civil Review Application No.01/2023 was dismissed.

2. From the available record it appears that F.C. Suit No.2/2013 filed by the petitioner before the learned Senior Civil Judge, Kashmore, for declaration, cancellation and permanent injunction in respect of suit property was decreed vide judgment and decree dated 13.10.2016. Execution Application No.2/2018 was allowed by the learned trial/executing Court vide order dated 02.02.2021, whereby entry No.166, dated 30.8.1990 and entry No.1, dated 06.8.1984 were cancelled, as observed by the learned executing and revisional Courts in their orders. On being refused by the revenue authorities to mutate the record of rights in respect of suit plot in favour of petitioner in terms of the judgment and decree of the trial Court, he filed an application u/s 51 read with Section 151, CPC before the trial Court seeking such direction to the revenue

authorities, which was dismissed vide order dated 19.9.2022. The petitioner challenged such order before the learned District Judge, Kashmore at Kandhkot by filing Civil R. A. No.44/2022, which was dismissed vide order dated 07.2.2023.

3. Learned Counsel for the petitioner is unable to satisfy the Court how the prayer in application u/s 51 read with Section 151, CPC seeking mutation of record in favour of petitioner/decree-holder in respect of the suit property is executable in terms of decree dated 13.10.2016 passed by the learned trial Court, when no such prayer was made by the petitioner in his suit. Apparently, the prayer is beyond the scope of decree, therefore, enforcement of such prayer is an unexecutable in execution proceedings even after its final disposal irrespective per findings on issues No.2 & 4 in judgment dated 13.10.2016 of learned trial Court, suit plot has been allotted to petitioner by the competent authority and he has right, title and interest in it. Additionally, once petitioner has availed remedy of review in terms of Section 114, CPC before revisional Court, then the petition is not maintainable. We are of the view that the impugned orders passed by the learned executing as well as learned revisional Courts do not suffer from any illegality, which require interference by this Court in its extraordinary Constitutional jurisdiction. The compliance in respect of the execution proceedings in terms of decree dated 13.10.2016 has already been made. In such circumstances, instant Constitutional Petition being devoid of merits is dismissed in *limine* along with listed application.

JUDGE

JUDGE