Form No.:HCJD-121

Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH,
MULTAN.
(JUDICIAL DEPARTMENT)

CIVIL REVISION No.1200-D of 2002.

MUHAMMAD ANWAR and others.

Versus

ATTA ULLAH (deceased) through L.Rs.

J U D G M E N T.

Date of hearing:	*03.10.2023*.
Petitioners by:	Mian Tahir Iqbal, Advocate.
Respondents by:	*Ex-parte*.
Applicants (in C.M. No.2827/21) by:	M/s Khalid Masood Ghani, Mian Muhammad Ayub Arain & Arbab Ahmad Saeed, Advocates.

AHMAD NADEEM ARSHAD-J. This Civil Revision is directed against the judgments and decrees of learned Courts below, whereby, the petitioners' suit for recovery of possession through pre-emption was dismissed, concurrently.

2. Facts in brevity are that the plaintiffs/petitioners (hereinafter referred to as **the petitioners**) instituted a suit for recovery of possession through pre-emption on 07.03.1992 and pre-empted the sale executed through registered sale deed No.73/1 dated 14.01.1992, whereby, Muhammad Hanif son of Haji Shah Muhammad sold his land measuring 110 *kanals* to respondent No.1 namely Atta Ullah son of Rehmat Ullah for a consideration of Rs.1,47,500/-. The petitioners pleaded in their plaint that they came to know about the sale on 13.02.1992 and announced to exercise their

right of pre-emption then and there in presence of witnesses, in this way they performed *Talb-i-Muwathibat; that* thereafter they sent notices of *Talb-i-Ishhad* dated 19.02.1992 to respondent No.1 and performed *Talb-i-Ishhad*; that they have superior rights qua respondent No.1 as they are *Shafi Sharik, Shafi Khalit and Shafi Jar*. The petitioners also impleaded in their suit Mst. Bhagan, Machia and Aziz-ur-Rehman, the rival pre-emptors as defendants No.2 to 4. The suit was resisted by the respondents/defendants through filing their separate contested written statements. Contention of respondent No.1 is that the suit land was originally owned by Muhammad Hanif who agreed to sell this land through an agreement to sell but later on he backed out and for cancellation of the said agreement, he instituted a suit for declaration, whereas he (respondent No.1) also instituted a suit for specific performance against said Muhammad Hanif; that his suit was dismissed whereas suit of Muhammad Hanif was decreed; that against said judgments and decrees two separate appeals were preferred which were allowed and suit of Muhammad Hanif was dismissed, whereas, his suit for specific performance was decreed and in consequence to said decree, registered sale deed dated 14.01.1992 was executed in his favour; that the petitioners were well aware regarding said sale from the day first when agreement to sell was executed between Muhammad Hanif and him, hence, they have no right of pre-emption and prayed for dismissal of the suit. The defendants No.2 & 3 as well as defendant No.4 filed their separate contested written statements. The learned trial Court, in the light of divergent pleadings of the parties, framed necessary issues and invited the parties to produce their respective evidence. After recording evidence of the parties, pro

and contra, oral as well as documentary, dismissed the suit vide judgment and decree dated 09.12.2000. Feeling aggrieved, the petitioners preferred an appeal which was dismissed by the learned appellate Court vide judgment and decree dated 23.07.2002. Being dis-satisfied, they approached this Court through instant Civil Revision.

3. No one appeared on behalf of the respondents despite repeated calls; hence, they are proceeded against *ex-parte*.

4. I have heard learned counsel for the petitioners as well as applicants of C.M. No.2827 of 2021 at full length and perused the record with their able assistance.

5. During the pendency of this Civil Revision, a compromise has been effected between the petitioners as well as respondent No.1 and as a consequence, petitioners No.1,2 (B,C,D) and petitioners No.3,4 & 5 withdrew the Civil Revision to their extent, however, the revision petition to the extent of petitioners No.2-A and 6 to 10 have been allowed and, resultantly, the judgment and decree of learned Courts below to their extent were set-aside and their suit had been decreed to their extent vide judgment and decree dated 27.05.2015. Said judgment and decree was assailed by the subsequent transferees through moving an application under Section 12(2) C.P.C., which was allowed by this Court vide judgment dated 17.06.2021, resultantly the judgment and decree dated 27.05.2015 was set aside and the revision petition was restored to its original number.

6. After revival of the revision petition, the subsequent transferees moved an application i.e. C.M. No.2827 of 2021 under Order 1 Rule 10 read with Section 151 C.P.C., for their impleadment as

respondents in the titled Civil Revision. Said application is decided separately.

7. To prove the suit for possession through pre-emption, it is imperative for the pre-emptor to prove performance of requisite *talbs* through cogent, reliable and confidence inspiring evidence, in accordance with law. *Talbs* as enumerated in Section 13 of the Punjab Pre-emption Act X of 1991 being essential for claiming right of pre-emption, strict proof for observance thereof would be necessary. In case of failure, the pre-emptor would be legally debarred. Performance of requisite *talbs* in other words is a *sine qua non* for decree of pre-emption suit. The august Supreme Court of Pakistan in the case titled as "*Ch. Riaz Ahmad Vs. Munir Sultam Malik*" (**2022 SCMR 667**) described the criteria to get a decree of pre-emption in the following terms:-

> *"To succeed in a suit for pre-emption the first and for most condition is that plaintiff has to plead that before filing of suit he has fulfilled the requirements of Talbs and thereafter he has to prove the performance of Talb-i-Muwathibat and Talb-i-Ishhad. For proving Talb-i-Muwathibat needless to observe that there must be specific time, date and place of knowledge pleaded in the plaint as well as in the notice of Talb-i-Ishhad and thereafter plaintiff is required to prove the same by proving the gaining of knowledge at specific place, time and date and thereafter sending of notice attested by two truthful witnesses through registered post acknowledgement due where the postal facilities are available and thereafter to prove the delivery of notice to the addressee-vendee-defendant or its refusal by producing a postman in the court while producing evidence to prove the above mentioned pleadings."*

8. It is matter of record that predecessor of petitioners No.6 to 10 namely Muhammad Hanif was vendor of the suit property who agreed to sell the same to respondent No.1 through an agreement to sell. However, he denied this fact and instituted a suit for cancellation of the said agreement to sell, whereas respondent No.1 instituted suit for

specific performance of the said agreement to sell. Although the learned trial Court decreed the suit of Muhammad Hanif and dismissed the suit of respondent No.1 but the learned appellate Court reversed the findings and dismissed the suit of Muhammad Hanif and decreed the suit of respondent No.1. Said Muhammad Hanif challenged the judgment and decree of learned appellate Court through filing Regular Second Appeal (R.S.A.No.58 of 1990), which was dismissed by this Court on 11.12.1990 and CPLA No.24/L to 27/L of 1991 were dismissed by the august Supreme Court of Pakistan on 15.04.1991. Respondent No.1 filed an execution petition for the satisfaction of the decree and the learned Executing Court got executed the registered sale deed No.73/1 on 14.01.1992 (Exh.P-7). Petitioners No.6 to 10 are legal heirs of said Muhammad Hanif, whereas, petitioner No.1 namely Muhammad Anwar appeared as a witness in support of said Muhammad Hanif in his suit for declartion as he admitted said fact during cross-examination while recoding his statement as PW-4. In presence of said facts it is unbelievable that the petitioners came to know the factum of sale first time on 13.02.1992. It appears that they concocted the story of *Talb-i-Muwathibat* in order to strengthen their case.

9. The learned trial Court with regard to *Talbs* framed issue No.2 in the following words: -

> ***"Whether the plaintiffs have fulfilled the pre-requisite Talbs? OPP.***

And its burden of proof was placed upon the petitioners. The learned Courts below concurrently declared that the petitioners failed to fulfil the requisite *Talbs* in accordance with law.

10. Perusal of record it appears that the plaint is silent with regard to the name of the informer from whom they gained the knowledge of sale and time and place of *Talb-i-Muwathibat* as they did not specifically mentioned that at what time and place they gained the knowledge of the sale of pre-empted land. Relevant Para No.3 is as under:-

> یہ کہ مدعیان کو اراضی متدعویہ کی بیع کی نسبت مورخہ 92-2-13 کو علم ہوا۔ جس پر مدعیان نے روبرو گواہان مسمیان غلام محمد ولد عبداللہ ذات سیر اسکنہ موضع مصطفیٰ آباد تحصیل وہاڑی اور محمد صدیق ولد باقر ذات لاکھٹ سکنہ موضع مصطفیٰ آباد تحصیل وہاڑی در مجلس عام طلب مواثبت کی کاروائی کی۔ اور اس کے بعد بروے نوٹس مورخہ 92-2-19 کو طلب اشہاد کی نسبت طلب مواثبت کو دہراتے ہوے نوٹس طلب اشہاد بنام مدعاعلیہ /مشتری کے پتہ پر معہ واپسی رسید رجسٹری ارسال کیے رسیدات رجسٹری لف ہیں۔

11. It was not mentioned in the plaint as to who informed the pre-emptors about sale for the first time. Notices of *Talb-i-Ishhad* (Exh.P-1 to Exh.P-3) are also silent about the existence or otherwise of Muhammad Siddique as informer. This Muhammad Siddique, for the first time, while recording his statement as PW-1 introduced himself as informer. Petitioner No.1 namely Muhammad Anwar while appearing as PW-4 also made statement that one Muhammad Siddique arrived at their *Dera* and told that he has learnt from the *Halqa* Patwari that Atta Ullah has purchased the suit land. This improvement was made only to strengthen the case but failed to consider that no person can be allowed to prove his case beyond the scope of his pleadings. During cross-examination petitioner No.1 Muhammad Anwar admitted that he is neighbour of Muhammad Hanif and was also appeared as witness in his suit for cancellation of agreement to sell. In this way, an inference can safely be drawn that when the suit was decreed in favour of respondent No.1 he was fully aware of this fact apart from the reality that he lived in the neighbourhood of Muhammad Hanif, the vendor of suit property.

They have common place of sitting and he was very good relations with him. It looks very strange that he got the factum of registered sale deed from a third person i.e. Muhammad Siddique (PW-1) who told him allegedly on 13.02.1992 after about one month of sale.

12. The *Talb-i-Muwathibt* literally means immediate demand, that is commonly known as jumping demand and foundation of claim of pre-emption rested on making an immediate declaration of intention to assert one's right and if the same is not done that would be fatal for whole claim of pre-emption and making of valid demands namely the *Talb-i-Muwathibat* and *Talb-i-Ishhad,* the condition precedent to exercise of the right of pre-emption. For proving *Talb-i-Muwathibat* the plaintiffs are required to state exact date, time and place of gaining knowledge because without proving the specific time, date and place of knowledge, the plaintiffs cannot prove jumping demand. When petitioners prove that on such date at such specific time and place they gained knowledge only then they could prove that they announced their intention forthwith to file the suit for pre-emption which is called jumping demand.

13. It is evident from scanning of Para No.3 of the plaint that the petitioners neither mentioned the time nor place of alleged knowledge of sale and simply asserted that on acquiring knowledge of sale, they made announcement of their right of pre-emption. It is mandatory for the pre-emptor to mention the date, time and place. Notices of Talb-i-Ishhad (Exh.P-1 to Exh.P-3) are also silent with regard to date time, place of Talb-i-Muwathibat.

From scanning of evidence it appears that Muhammad Siddique while recording his statement as P.W-1 introduced time of *Talb-i-*

Muwathibat as 4:00 P.M., without describing the place, whereas, P.W-3 Ghulam Muhammad described it as "*Degar-Wela*" and at the "*Bhani*" of Muhammad Anwar. Petitioner Muhammad Anwar in his statement as P.W-4 deposed that Siddique came at their "*Dera*" at 4'O clock. The petitioners made these improvements in their evidence beyond their pleadings.

14. It is settled principle of law that parties are required to lead evidence in consonance with their pleadings and no evidence beyond the pleadings is permissible and even if it has been led by a party, the Court shall exclude or ignore the same from consideration. Reliance in this regard can be placed upon "*MUHAMMAD TARIQ and others versus Mst. SHAMSA TANVEER and others*" (**PLD 2011 Supreme Court 151**) wherein it is held as under:-

> *"It is settled law that in civil litigation, a party thereto has to set out its/his case in the pleadings especially which relates to the facts and in the absence thereof no plead can be allowed to be raised, agitated and set forth at a later stage, as such shall be beyond the scope thereto and impermissible as per law."*

The same view was further elaborated in a recent judgment of august Supreme Court of Pakistan in case titled *"MUHAMMAD GHAFFAR (DECEASED) through LRs and others versus. ARIF MUHAMMAD*" (**2023 SCMR 344**) wherein it is held as under: -

> *"Needless to observe that a party can only prove the case pleaded by it. The rule of secundum allegata et probates, not only excludes the element of surprise, but also precludes the party from proving what has not been alleged or pleaded. This Court, in the cases of "Government of West Pakistan (Now Punjab) through Collector, Bahawalpur v. Hail Muhammad" (PLD 1976 SC 469), "Messrs Chaudhary Brothers Ltd., Sialkot v. The Jaranwala Central Co-operative Bank Ltd, Jaranawala" (1968 SCMR 804), "Binymeen and 3 others v. Chaudhary Hakim and another" (1996 SCMR 336) and "Major (Retd.) Barkat Ali and others v. Qaim Din and others" (2006 SCMR 562), 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."*

15. The august Supreme Court of Pakistan with regard to the moot point that plaint should contain date, time and place of *Talb-i-Muwathibat* in a case "*Mian PIR MUHAMMAD and another versus FAQIR MUHAMMAD through L.Rs. and others*" (**PLD 2007 Supreme Court 302**) held as under: -

> *"It is observed that great emphasis and importance is to be given to this word in making of Talb-i-Muwathibat and it is necessary that as soon as the pre-emptor acquired knowledge of the sale of pre-empted property he should make immediate demand for his desire and intention to assert his right of pre-emption without the slightest loss of time. According to the dispensation which has been reproduced hereinabove after performing Talb-i-Muwathibat, in terms of section 13(2) of the Act, the pre-emptor has another legal obligation to perform i.e. making of Talb-i-Ishhad as soon as possible after making Talb-i-Muwathibat but not later than two weeks from the date of knowledge of performing Talb-i-Muwathibat, therefore, the question can conveniently be answered by hold that to give full effect to the provisions of subsection (2) and (3) of section 13 of the Act, it would be mandatory to mention in the plaint date, place and time of performance of Talb-i-Muwathibat because from such date, the time provided by the statue i.e. 14 days under subsection (3) of section 13 of the Act shall be calculated. Supposing that there is no mention of the date, place and time of Talb-i-Muwathibat then it would be very difficult to give effect fully to subsection (3) of section 13 of the Act, and there is every possibility that instead of allowing the letter of law to remain in force fully the pre-emptor may attempt to get a latitude by claiming any date of performance of Talb-i-Muwathibat in his statement in Court and then on the basis of the would try to justify the delay if any, occurring in the performance of Talb-i-Ishhad. It is now a well-settled law that performance of both these Talbs successfully is sine qua non for getting a decree in a pre-emption suit. It may be argued that as the law has not specified about the timing then how it would be necessary to declare that the mentioning of the time is also necessary. In this behalf it is to be noted that connotation of Talb-i-Muwathibat in its real perspective reveals that it is a demand which is known as jumping demand and is to be performed immediately on coming to know of sale then to determine whether it has been made immediately, mentioning of the time would be strictly in consonance with the provisions of section 13 of the Act."*

Further held as under: -

> *To give full effect to the provisions of subsections(2) and (3) of section 13 of the Act, it would be mandatory to mention in the plaint date, place and time of performance of Talb-i-Muwathibat because from such date, the time provided by the statute i.e. 14 days under subsection (3) of section 13 of the Act shall be calculated".*
>
> *"A plaint wherein the date, place and time of Talb-i-Muwathibat and date of issuing the notice of performance of Talb-i-Ishhad in*

> *terms of section 13 of the Act is not provided it would be fatal for the pre-emption suit."*

The said view was followed in "*Sardar Muhammad Nawaz V. Mst. Firdous Begum"* (2008 SCMR 404), "*Mst. Bashiran Begum V. Nazar Hussain and another*" (PLD 2008 SC 559) and it was also reiterated in "*JAMSHED KHAN versus MUHAMMAD SAEED and others*" (**2010 SCMR 1796**) wherein it was held as under: -

> *"It is by now well settled that no-mentioning the place, date and time of Talb-i-Muwathibat and date of issuing the notice of Talib-i-Ishhad, in terms of section 13 of the Pre-emption Act, is fatal towards maintainability of a suit for pre-emption."*

16. Perusal of record reveals that the petitioners have failed to produce the Postman in order to prove sending of notice of *Talb-i-Ishhad* to respondent No.1. It is held in the judgments reported as *"MUHAMMAD BASHIR AND OTHERS V. ABBAS ALI SHAH"* (**2007 SCMR 1105**) and "*BASHIR AHMED V. GHULAM RASOOL*" (**2011 SCMR 762**) by the august Supreme Court of Pakistan that where the plaintiff alleged performance of *Talb-i-Ishhad* by sending of notice of *Talb-i-Ishhad* through registered post and if the said fact is denied by the defendant then the plaintiff of such a suit must produce the postman to prove the delivery of the notice to the defendant or its refusal by the later as the case may be but in the instant case said mandatory requirement of production of postman was not fulfilled and the pre-requisite of notice of *Talb-i-Ishhad* was not complied with. The oral assertion, with regard to the performance of *Talb-i-Ishhad,* was not sufficient to get the relief as sought for and such default is fatal for the pre-emption suit on account of the failure of performance of *Talb-i-Ishhad.* Said dictum was followed in the

*case titled "ALLAH DITTA through L.Rs. and others Versus MUHAMMAD ANAR" (**2013 SCMR 866**) wherein it was held as under:-*

> *"As regards, the issuance of notice of Talb-i-Ishhad is concerned, admittedly the postman has not been examined by the respondent-pre-emptor in terms of the law laid down in Muhammad Bashir and others v. Abbas Ali shah (2007 SCMR 1105)."*

In another case titled "*MANZOOR HUSSAIN (deceased) through L.Rs. Versus MISRI KHAN*" (**PLD 2020 Supreme Court 749**) it was held as under:-

> *"The postman was also not produced to establish the delivery of Talb-i-Ishhad notice; this Court has repeatedly held the necessity to do this to establish delivery of such notice, including in Bashir Ahmed v Ghulam Rasool (2011 SCMR 762), Allah Ditta v Muhammad Anar (2013 SCMR 866), Basharat Ali Khan v Muhammad Akbar (2017 SCMR 309) and Sultan v Noor Asghar (2020 SCMR 682). Therefore, there was nothing on record to establish that Talb-i-Ishhad notice was delivered to or received by the respondent, who had denied receiving it, and having failed to establish the delivery/receipt of the said notice the pre-emption suit could not succeed."*

17. Perusal of record reveals that the application of Section 13(3) of the Punjab Pre-emption Act, 1991, was not followed in true perspective and the petitioners are badly failed to prove due performance of *Talbs* in accordance with law. Judicial Concept Law is that provisions of Pre-emption Law must strictly to be complied with to attract its rigour and even the technicalities, therefore, are also relevant provisions of law. A person, who wishes to avail himself of a right under such law, is required to be vigilant and see that he complied with all the conditions imposed upon him. Hence, the learned Courts below rightly dismissed their suit concurrently.

18. Learned counsel for the petitioners much emphasized that as during pendency of the instant revision petition the respondent

No.1 admitted their claim of pre-emption, therefore, they did not require to prove the *Talbs* in accordance with law.

Firstly, respondent No.1 allegedly made the compromise through his special attorney when he had already transferred the suit property, therefore, admission made by him has no value. The respondent No.1 transferred the suit property through mutation of exchange No.5369 dated 16.09.2002 in the name of Machia which he conceded by moving an application (Civil Miscellaneous No.712-C of 2004) before this Court on 01.06.2004 whereby he himself acknowledged the sanction of said mutation of exchange. Meaning thereby that at the time of execution of special power of attorney dated 21.05.2015 on his behalf (who made compromise), at the time of moving Civil Miscellaneous No.1594-C of 2015 dated 23.05.2015 (application for compromise) and at the time of decision of the revision petition dated 27.05.2015 on the basis of said compromise, respondent No.1 was not the owner of suit property and had not possessed any interest in the suit property, therefore, his admission or statement regarding acceptance of civil revision had no sanctity in the eye of law. According to Article 31 of the Qanun-e-Shahadat Order, 1984 the statement made by the party was to constitute admission only if same was during the subsistence of interest. In this regard, reliance is placed upon "*Saleem and another Vs. Malik Jalal ud Din and 7 others*" (**PLD 1982 SC 457**) and "*Muhammad Ilyas and others Vs. Muhammad Sharif and others*" (**2001 CLC 1194**).

Secondly, the pre-emptors have to prove the *Talbs* even if suit for pre-emption was not contested by the defendant. The august

Supreme Court of Pakistan in a case titled "*Nawab Din through L.Rs Vs. Faqir Hussain*" (**2007 SCMR 401**) held as under:-

> *"Talb-i-Muwathibat is a personal act of prospective pre-emptor, whereby his actual right is activated. It is to be exercised at a time when no suit is yet filed, no notice of Talb-i-Ishhad is served, no Khasomat is preferred and when no defendant is in picture. Thus, the act of Talb-i-Muwathibat being pre-requisite to activate the very right of pre-emption and being subjective and spontaneous of the pre-emptor, has little to be waived by the defendant. The proof thereof is, therefore, necessary even if some suit for pre-emption is not contested by the defendant and even if the proceedings are ex parte. Any omission in this behalf, in the written statement, does not extend any benefit to the plaintiff/pre-emptor."*
> (*underline for emphasis*)

19. I have seen no illegality, irregularity and mis-reading or non-reading of evidence on the part of learned Courts below while passing the impugned judgments and decrees. There are concurrent findings of facts in the matter recorded by learned Courts below and the Courts below while passing the impugned judgments and decrees have considered every piece of evidence, oral as well as documentary, produced before them and nothing is shown to have been overlooked any part of the record from their judicious consideration. The findings of the learned Courts below on question of facts and law having based upon proper appreciation of oral as well as documentary evidence produced in the suit are not liable to be reviewed or substituted by this Court while exercising jurisdiction under section 115 of the CPC. In this regard, reliance is placed upon "*Syed HUSNAIN NAQVI and others versus Mst. BEGUM ZAKARA CHATHA through LRs and others*" (**2015 SCMR 1081**), "*NOOR MUHAMMAD and others versus Mst. AZMAT-E-BIBI*" (**2012 SCMR 1373**), "*Muhammad Akhtar versus Mst. Manna & 3 others*" (**2001 SCMR 1700**), "*Ghulam Muhammad & 3 others versus*

Ghulam Ali" (**2004 SCMR 1001**), "*Abdul Mateen and others versus Mustakhia*" (**2006 SCMR 50**) and "*Malik Muhammad Khaqan versus Trustees of the Port of Karachi (KPT) and another*" (**2008 SCMR 428**).

20. Epitome of above discussion is that the instant Civil Revision is without any merits; hence, the same is hereby ***dismissed*** with no order as to costs.

AHMAD NADEEM ARSHAD
JUDGE.

Approved for Reporting.

JUDGE.

A.Razzaq.