Stereo.HCJDA-38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

C.R. No.220345 of 2018

Riasat Ali Sahi
v.
Ijaz Ahmad and others

J U D G M E N T

Date of Hearing	**15.02.2024**
Petitioner by	Ch. Muhammad Aslam, Advocate.
Respondents by	Mr. Zafar Iqbal Bhatti, Advocate.

RASAAL HASAN SYED, J. Petitioner filed a suit to preempt the sale of land reflected through sale deed dated 23.2.2008 on the plea of having superior right of preemption which was contested and ultimately dismissed by the learned Civil Judge vide judgment and decree dated 06.1.2016. Petitioner's appeal thereagainst also met the same fate vide judgment dated 30.4.2018 of the learned Addl. District Judge which judgments are now under challenge in this revision petition.

2. Facts necessary for the disposal of this petition are that the petitioner filed a suit to preempt the sale of land measuring 80 kanals purchased by respondents vide sale deed bearing document No. 884 claiming that the sale was made

in a secret manner, the actual sale price was Rs.1,49,59,375/- which was fictionally shown as Rs. 2,50,00,000/- and that the factum of sale came to the knowledge of preemptor on 05.3.2008 at 5.00 p.m. when Irshad Ullah came to the petitioner's dera "Khoh Burj Wala", Mandranwala, Tehsil Daska and that the petitioner having superior right of preemption immediately made jumping demand to preempt the sale whereafter notices of Talb-e-Ishhad were sent which were received by the respondents and that the petitioner having superior right of preemption being Shafi Sharik, Shafi Khaleet and Shafi Jar was entitled to preempt the sale as against the respondents.

3. Suit was resisted both on legal and factual premises. Issues were framed and parties led oral and documentary evidence. On considering the submissions made pro and contra in light of the evidence adduced the learned Civil Judge dismissed the suit on the ground that superior right of preemption could not be proved, requisite Talbs could not be established in accordance with law and that the price given in the sale deed could not be proved to be fictional. This was vide judgment and decree dated 06.1.2016. Petitioner's appeal thereagainst also ended in dismissal vide judgment

dated 30.4.2018 by the learned Addl. District Judge, Daska.

4. Main stance of the learned counsel for the petitioner was that the evidence on record was misconstrued and misread by the courts below and that the petitioner had proved the requisite Talbs and that the superior right of preemption was also proved beyond any iota of doubt. Learned counsel for the respondents on the other hand supported the judgments of the courts below and requested for dismissal of the revision petition.

5. Petitioner's claim for superior right of preemption was on counts of being co-sharer in the khata, of contiguity of land and common source of irrigation. The learned Civil Judge recorded findings to the effect that the petitioner could not prove to be co-sharer in the khata as such he could not claim to be Shafi Sharik. This finding was based on the admission of the petitioner in his statement as P.W.4 to the effect that he did not own land in the same khata. The findings on the plea of Shafi Khaleet and Shafi Jar were also recorded against the petitioner. In regard to the Talbs it was observed that the petitioner could not prove Talb-e-Muwathibat by any credible and independent evidence and that the evidence on the question of

Talb-e-Ishhad was also contradictory and deficient. In appeal the learned Addl. District Judge affirmed the findings as to non-existence of the qualifications of Shafi Sharik, Shafi Khaleet but modified the findings of the learned Civil Judge in regard to the qualification of Shafi Jar and it was held that the petitioner's property and the suit property had common source of irrigation and, therefore, petitioner was found to have the superior right of preemption.

6. It may be gleaned from the appended documents that findings of the courts below in the matter of Talbs are concurrent inasmuch as it was observed that the petitioner did not mention in the plaint the specific place of knowledge of sale or making of Talb-e-Muwathibat and that there was no independent evidence and that the source of knowledge claimed from petitioner's own son, namely, Irshad Ullah was not creditworthy and also that the statements made by witnesses P.W.5 to P.W.7 added to being hearsay in nature.

7. Scrutiny of the pleadings and evidence on the file shows that petitioner's stance in the plaint was that his son Irshad Ullah visited him at his dera "Khoh Burj Wala" at 5:00 p.m. on 05.3.2008 and disclosed that the land adjacent to the petitioner's

had been sold at which the petitioner spontaneously proclaimed his intention of exercising right of preemption which was followed by notice of Talb-e-Ishhad. In his examination-in-chief as P.W.4 petitioner deposed that Irshad Ullah came to his dera “Khoh Burj Wala”, Mandranwala Tehsil, Daska and disclosed about the sale when he immediately announced his right of preemption as co-sharer in the khata with common passage and source of irrigation. Later on 10.3.2008 he sent notices of Talb-e-Ishhad. In his cross-examination he stated that his dera comprised a godown, courtyard, a room, cattle-shed and pond, etc. and that the total area of the dera was 2 to 3 kanals and that he was sitting in the courtyard when Irshad Ullah approached him and disclosed about the sale and that on his query as to where his son had acquired the knowledge, he disclosed it to be from one Shabbir Hussain Cheema who told him the price to be Rs.1,50,00,000/-. Evidently, these facts were not stated in the plaint or in petitioner’s examination-in-chief. It is settled rule that mentioning of date, time and place in the plaint qua Talb-e-Muwathibat in a suit for preemption is a condition precedent in the context of subsection 3 of section 13 of the of the Punjab Preemption Act,

1991 and that in the absence of such specification of date, time and place, the period for making Talb-e-Ishhad cannot be calculated with required accuracy. Reference can be made to the case of Haq Nawaz v. Muhammad Kabir **(2009 SCMR 630)**, Mian Pir Muhammad v. Faqir Muhammad **(PLD 2007 SC 302)** and Muhammad Akram and another v. Ghulam Sarwar **(2013 MLD 1662)**.

8. Irshad Ullah the real son of the petitioner who was claimed to be an informer, appeared as P.W.5. In his statement-in-chief he did not specify the actual place where he divulged the information about the alleged communication of factum of sale or as to where the alleged Talb-e-Muwathibat was made. Perusal of the statement as a whole leaves no manner of doubt that his account was hearsay as in his cross-examination he admitted that he had not seen the sale deed till the date of his deposition and that he was told by one Shabbir Hussain Cheema about the sale and that he came to know about the date of sale deed when Shahbaz Munshi came after getting the particulars of sale and that he did not accompany Shahbaz Munshi for the said purpose and that about the price he came to know from Shabbir Hussain Cheema who stated to Irshad Ullah that the land was sold for Rs.1,50,00,000/-.

P.W.5 Irshad Ullah expressed lack of knowledge as to whether Shabbir Hussain Cheema was present at the occasion of the sale deed itself or at the office of Registrar, Daska. He further deposed that Shabbir Hussain Cheema did not reveal to him his source of information about the asserted sale price to infer its inflatedness. Shabbir Hussain Cheema appeared as P.W.7 and in his examination-in-chief deposed that he had told Irshad Ullah about the sale. On being asked about his source of knowledge of the sale he claimed that it was from Sardar Mustafa, father of the respondents. It is also discernable that there was no independent evidence and neither was Irshad Ullah, the claimed informer, either witness of the sale itself nor did he claim to be present at the time of transaction. Rather he was deposing hearsay from Shabbir Hussain Cheema P.W.7. None of the witnesses was, as such, evidently present at the time of sale. So much so that Shahbaz Munshi made a statement that he came to know about the sale from one Sardar Mustafa, father of the respondents, who had not been produced in the witness-box to confirm the chain of claim made by the three witnesses.

9. Be that as it may, the petitioner did not disclose the actual site where the alleged

information was passed nor could the informer prove his credibility by claiming direct knowledge of the sale itself but instead recorded a hearsay account of little probative value. In these circumstances the courts below correctly observed that the statement of Irshad Ullah, real son of petitioner, was not worthy of consideration. Both the courts below, therefore, justifiably disbelieved the evidence and declared that Talb-e-Muwathibat could not be proved.

10. Same is the case of Talb-e-Ishhad which could not be proved. In this context the petitioner produced the Registry Clerk as P.W.2 and Muhammad Farooq Postman as P.W.3. P.W.2 admitted that he had not brought the relevant record with him and during cross-examination admitted that the date, month and year and name of Post Office was not visible on Exh.P-3 and Exh.P-4. He also admitted that the same was not issued by him and that the receipts did not carry the name of signatory. P.W.3 claimed that notices of Talb-e-Ishhad No. 960 to 964 were delivered to defendant No. 2 which meant that he failed to discharge his duty by delivering the same to the respective recipients/purchasers.

11. In view of the evidence the conclusion drawn was that notice of Talb-e-Ishhad was not proved, therefore, the petitioner failed to prove the requisite Talbs. Findings of the courts below do not suffer from any misreading and non-reading of evidence and no ground for interference is made out.

12. Resultantly the revision petition is **dismissed**.

(RASAAL HASAN SYED)
JUDGE

Announced in open Court on **06.3.2024**

JUDGE

Approved for reporting

JUDGE

Rabbani