

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

C.R. No.63814 of 2023

Muhammad Munir (deceased) **Versus** Muhammad Zia Ullah and others
through L.Rs

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| Sr. No. of order/ proceeding | Date of order/ Proceeding | Order with signature of Judge, and that of parties of counsel, where necessary |
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04.12.2023 Mian Khalid Habib Elahi, Advocate for the petitioners.

Petitioners in this civil revision challenge the judgments and decree dated 30.6.2022 and 26.4.2023 of the courts below whereby their suit for preemption was dismissed and appeal thereagainst was declined.

2. Late Muhammad Munir now represented by the petitioners instituted a suit for preemption to preempt the sale of suit property claiming to possess superior right of preemption as *Shafi Sharik* and *Shafi Jar* with the averments that he came to know of the sale through Muhammad Riaz son of Faiz Ahmad on 02.12.2013 at 3.00 p.m. in the presence of Muhammad Sharif son of Abdul Haq and that he spontaneously made *Talb-e-Muwathibat* by declaring that he would file suit for preemption and that, thereafter, notices of *Talb-e-Ishhad* were separately sent to the purchasers through registered post with acknowledgment due and that the respondents did not accept the right of preemption,

therefore, indulgence of the court for decree of preemption was sought. Respondents contested the suit on legal and factual grounds mainly stating that lack of knowledge of sale was feigned by the plaintiff and that the story of *Talbs* was entirely concocted. He throughout knew of the sale and requisite *Talbs* were never made as obligated under the provision of section 13 of the Punjab Preemption Act, 1991 (the “**Act**”), therefore, the plea of preemption stood extinguished and that the suit property was purchased at the price as reflected in the mutation which was actually paid. Issues were framed, evidence was led by the parties whereafter the learned Civil Judge on analytical scrutiny of evidence, concluded that the petitioners had the superior right of preemption, the price fixed in the mutation was not proved to be fictional and that the requisite *Talbs* having not been made, the right of preemption was extinguished. In result, the suit was dismissed. In appeal, the learned Addl. District Judge affirmed the findings as to the superior right of preemption with the modification that the claimant was *Shafi Jar* only. Findings as to *Talbs* were not interfered with and it was noted that the same had not been specifically challenged in the grounds of appeal which

would entail that such findings of the trial court had been accepted. Findings qua price were also affirmed. As upshot the appeal was dismissed vide impugned judgment dated 26.4.2023.

3. Heard.

4. Facts discernible from the file are that late Muhammad Munir instituted a suit to preempt the sale made in favour of respondents vide mutation No. 283 dated 11.11.2013. The suit was filed on 19.12.2013 wherein it was asserted that the plaintiff had no knowledge of the sale; that on 02.12.2013 Muhammad Riaz son of Muhammad Faiz came to his house at 3:00 p.m. and disclosed that the land in front of his house had been sold by the respondents at which the plaintiff proclaimed his intent to bring a suit to preempt the sale and that on the very next day i.e. 03.12.2013 notices of *Talb-e-Ishhad* were duly sent which were allegedly served and that the plaintiff had superior right of preemption as against the respondents and that the sale was made for Rs.65,00,000/- but the price was instead fictionally inflated to Rs. 1,65,00,000/- in the mutation for prohibitive purposes. Defense taken was that suit was not maintainable; that Muhammad Munir was very much cognizant of the sale from day one; that no *Talbs*

were made; that the preconditions of *Talbs* as per section 13 of Act supra having not been observed the suit was not maintainable and that the alleged plea of *Talbs* was false and fabricated. Claimant Muhammad Munir appeared in the evidence as P.W.2 and deposed in his examination-in-chief that the land was sold on 11.12.2013 (though in point of fact mutation was attested on 11.11.2013) and that on 02.12.2013 at 3.00 p.m. when he was sitting in his house with Muhammad Sharif son of Abdul Haq, Muhammad Riaz son of Muhammad Faiz came to his house and informed that he had gone to Lala Musa where it was disclosed that the suit land in front of the house of the plaintiff had been sold and that in the same *Majlis* he made jumping-demand and announced intent to sue to preempt the sale. In cross-examination P.W.2 was unable to disclose the number of the *khatuni* and *khasra* of the suit property or basic details of the *khatajaat* of which the suit land was comprised. He was asked as to who told Muhammad Riaz in Lala Musa about the sale when he expressed his ignorance about the name of the source/informer. Muhammad Riaz appeared as P.W.3 who deposed that on 02.12.2013 at 3:00 p.m. he went to the house of late Muhammad

Munir where Muhammad Sharif was sitting when he told Muhammad Munir that the land in front of his house had been sold at which Muhammad Munir declared that he would file a suit to preempt the same.

In cross-examination Muhammad Riaz was specifically asked about the person from whom he got the information of sale in Lala Musa but he expressed his ignorance about the name of the informer. Muhammad Sharif a close relative of the plaintiff while appearing in the witness-box as P.W.3 reiterated the same narrative and also indicated his ignorance about the name of the informer who had allegedly brought Muhammad Riaz the news of sale.

5. Section 13 of the Act contemplates that right of the preemptor shall extinguish if the preemptor fails to make the requisite *Talbs* in terms of the law. As per said provision the right of preemption shall be extinguished unless a person makes the mandatory *Talb-e-Muwathibat*, *Talb-e-Ishhad* and *Talb-e-Khasoomat*. It is a tight-rope walk. The preemptor in the first instance has to establish that *Talb-e-Muwathibat* (i.e. the demand to preempt the sale at the very spur of cognition of sale) failing which the right shall become extinct. For proving *Talb-e-Muwathibat* it

was incumbent to prove who informed about the sale, at what date, time and place the preemptor received the information, who was present in the *Majlis* when *Talb-e-Muwathibat* was made and further that there was no delay in this expression of intent as the very first reaction on information of sale i.e. immediate declaration by the preemptor that he had a right to preempt the reported sale which he shall enforce. In this respect, the source of knowledge i.e. the person who informed about the sale, the precise time at which he received the information and his immediate response to preempt the sale are integral elements that need to be established by evidence of unimpeachable probative value in the form of credible, independent and truthful witnesses. The statement of the informer in this context becomes a necessary condition to weight the value and operation of other factors. The property subject-matter of preemption was admittedly located in front of the house of the plaintiff which is so admitted by P.W.3 and also by P.W.2. The land was sold on 11.11.2013, the mutation was attested in an open public meeting in the village on 11.11.2013 but it was claimed that plaintiff had no knowledge. It was not the case in the plaint that the plaintiff had been away from the village on material

dates. It is a safe generalization that at the time of concluding the terms and conditions of sale for settlement of transaction, a prudent buyer would visit the property to satisfy about title and possession as a part of bona fide inquiry. Even after the sale, possession is transferred pursuant to the conveyance of title and physical change takes place at site. In the case at hand possession was given with the sale (i.e. on the very same date) yet the plaintiff expected that courts should receive his disavowal of knowledge of sale as credible and accept his attribution of this knowledge to Muhammad Riaz, his brother, of communicating the factum of sale on reverting from Lala Musa. On the face of it the story did not stick. Change of physical possession at site under the sale served as a public notice in the area. In agricultural settings such news spreads like bushfire. Yet the claimant Muhammad Munir who was residing in house in front of the suit property, attempted to come across as blissfully ignorant of it.

6. Be that as it may, the claimant to action of preemption could not prove version about communication of sale by P.W.3 Muhammad Riaz who was his real brother and admitted to this close relation

and alleged in his statement that he travelled to Lala Musa where he received news about the sale and that on the next day at 3:00 p.m. he visited his brother Muhammad Munir and exited the house of the latter just after five minutes. Strangely enough he did not know the name of the person who allegedly had told him of the sale at Lala Musa. Same was the statement of the plaintiff as P.W.2 who testified that he did not know the name of the person who allegedly told Muhammad Riaz about the sale. It was not denied that P.W.3 was neither a witness to the sale nor claimed to be present at the time of attestation of mutation and he was not even able to offer the proper name of the individual who gave him news of the sale. In such circumstances the statement being completely hearsay could not be banked upon. The production of the person who allegedly informed P.W.3 about the sale was very material which was withheld and raised adverse inference against the claim.

7. Under the law the informer is expected to show and prove that he acquired information through reliable source, like the patwari and/or tehsildar or that he himself was present at the time of sale or had the occasion to be present in the *patwarkhana* for any other

personal purpose but no such context was claimed to exist. It also begs the question as to why Muhammad Riaz P.W.3 was interested in getting information of the sale from a third person or why he felt it necessary to immediately visit the plaintiff to communicate about the sale, unless he claimed that the plaintiff was interested in purchasing the property beforehand and that he had deputed P.W.3 to keep an eye out for getting information if any transaction took place so as to exercise the right of preemption. This however would make the plaintiff's disavowal of the developments under his own nose ring all the more hollow. In any case no such instructions were claimed either by the plaintiff in his deposition or by P.W.3 to have been imparted. Another question would be as to why a third person shall discuss about the sale of a third party which did not have any concern with P.W.3 and what was the occasion for such person to make such disclosure to Muhammad Riaz and also as to how such informer came into the specific knowledge about the sale being allegedly imparted to P.W.3. This entire link of necessary contextual facts required to be established remained beclouded in mystery as the name of the third person was not known to alleged informer P.W.3 nor

was he produced in the witness-box and total reliance of the plaintiff was on the hearsay evidence of Muhammad Riaz. Plaintiff in these circumstances failed to prove that he got knowledge of the sale on 02.12.2013 at 3:00 p.m from Muhammad Riaz. Rest of the superstructure built on this assumption with such failure shall come aground.

8. The learned Addl. District Judge also made an indepth scrutiny of the evidence and correctly observed that there were discrepancies in statements of witnesses and that the statements of P.W.2 to P.W.4 were unworthy of consideration and that the plaintiff had failed to prove *Talbs* in accordance with law. In result his right to preemption had extinguished. The findings of the courts below as to the absence of requisite *Talbs* are proper and do not suffer from any error of law, legal infirmity or misreading of record as to warrant interference.

9. In result there is no merit in this revision petition which is **dismissed**.

**(RASAAL HASAN SYED)
JUDGE**