SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Justice Shahid Waheed
Justice Musarrat Hilali

Civil Appeal No.228-L/2010

[Against the order dated 03.05.2010 passed by the Lahore High Court, Lahore in Civil Revision No.791/2006]

Shameer, etc. ...*Appellants*

Versus

Allah Ditta, etc. ...*Respondents*

For the Appellants	:	Mr. Manzoor Hussain, ASC (via video link from Lahore)
For the Respondents	:	Mian Muhammad Nawaz, ASC (via video link from Lahore)
Date of Hearing	:	14th May, 2025

ORDER

Musarrat Hilali, J.- This direct appeal is filed against the impugned judgment dated 24.05.2010 passed by the Lahore High Court, Lahore in Civil Revision No.791/2006, whereby the civil revision was allowed, the judgments and decrees of the Courts below were set aside, and the suit for possession through pre-emption filed by the appellants/plaintiffs was dismissed. The appellants' civil suit for possession through pre-emption was decreed by the Trial Court vide judgment and decree dated 08.12.2004. The respondents' appeal against the said judgment was dismissed by the Appellate Court through judgment dated 03.04.2006, thereby affirming the findings of the Trial Court. Aggrieved by the concurrent findings of the Courts below, the respondents filed a civil revision before the Lahore High Court, Lahore, which was allowed vide the impugned judgment dated 24.05.2010.

2. Learned counsel for the appellants has primarily contended that the impugned judgment does not provide adequate reasoning for deviating from the concurrent findings of the Courts below, which, ought to have been upheld. It is further submitted that the case law relied upon by the High Court, particularly *Mian*

Pir Muhammad and another v. Faqir Muhammad through L.Rs. and others **(PLD 2007 SC 302)**, was erroneously applied retrospectively to the appellants' case in relation to the requirement of *Talb-i-Muwathibat*. Furthermore, the omission to mention the date, time, and place of *Talb-i-Muwathibat* in the plaint filed on 15.06.1999 should not have been treated as fatal to the appellants' claim, as such a requirement was not mandated under the law prevailing at the time of institution of the suit. In rebuttal, learned counsel for the respondents has supported the impugned judgment, contending that there exists no legal restriction on the High Court to set aside concurrent findings of the courts below where such findings are found to be erroneous or perverse. It is argued that the impugned judgment is well-reasoned, legally sound, and free from any infirmity. Furthermore, it is submitted that the appellants were bound by their pleadings and could not be permitted to lead evidence beyond that.

3. The primary issue before the High Court and now before us concerns the non-compliance with the mandatory requirement of *Talb-i-Muwathibat* under the law governing pre-emption. Upon reviewing the plaint it appears that the plaintiff came to know of the sale on 02.06.1999. However, the plaintiff failed to specify the time and place of such knowledge, both in the pleadings and during examination in chief as PW.3. These omissions are material as establishing the time, date and place of knowledge is prompt demand, which is a statutory prerequisite under Section 13 of the Punjab Pre-emption Act, 1991.

4. It is now a settled principle of law that *Talb-i-Muwathibat* must be specifically pleaded by mentioning time, date, and place in the plaint and later corroborated by evidence. The High Court rightly held that the failure to do so is not a curable defect and vitiates the claim. The reliance placed by the High Court on the judgments of this Court reported as Mst. Saleem Akhtar v. Chaudhry Shauk Ahmed **(2009 SCMR 673)**, Mian Pir Muhammad and another v. Faqir Muhammad through L.Rs. and others **(PLD 2007 SC 302)** and Muhammad Iqbal v. Ali Sher **(2008 SCMR 1682)** is well-founded. The omission to mention such crucial

particulars in the pleadings amounts to failure to establish the foundational element of a pre-emption suit.

5. Before proceeding further, we find it necessary to address an argument advanced by the learned counsel for the appellant. He submitted that requirement of incorporating a detailed statement of *Talb-i-Muwathibat,* as laid down in the case of Mian Pir Muhammad ***(PLD 2007 SC 302)***, should not be applied retrospectively, particularly in relation to the appellants' case, which was instituted on 15.06.1999. This contention, however, is not being raised for the first time before this Court. The very argument came under consideration in the case of *Mst. Bashiran Bengum v. Nazar Hussain and another* **(PLD 2008 SC 559),** wherein it was unequivocally held that a comprehensive account of *Talb-i-Muwathibat* within the plaint is mandatory. Moreover, the Court clarified that this requirement is not confined to newly instituted suits but applies equally to all pending cases, thereby affirming the principle of consistency in judicial interpretation. This principle was further reiterated in case of *Haq Nawaz v. Muhammad Kabir* **(2009 SCMR 630),** underlining its significance. In view of the weight of these precedents, we are constrained to hold that the argument of learned counsel for the appellants lacks substantive merit and accordingly stands repelled.

6. Furthermore, we affirm the High Court's observation that a party is bound by its pleadings, and no amount of oral evidence can be allowed to introduce a new or materially different case that was not pleaded. It is a cardinal rule of civil jurisprudence that issues are framed based on the pleadings, and the scope of trial is confined to those issues. Where a party seeks to lead evidence on a fact which is not pleaded, then such evidence must be excluded from consideration. Allowing otherwise would violate the rules of fair notice and prejudice the other side.**[Ref: *Mst. Murad Begum etc. Vs. Muhammad Rafiq etc.* (1974 PLD 322 SC), *Major (retired) Barkat Ali & others Vs. Qaim Din & others* (2006 SCMR 562) *and Haji Qari Abdul Fateh through LRs Vs. Ms. Urooj Fatima & others* (2024 S C M R 1709)]**. The appellants were, from the very outset of filing the civil suit, bound

by the contents of their plaint, in accordance with the governing legal principles and the settled law laid down by this Court.

7. We have heard the learned counsel for the appellants at length and examined the record. No legal infirmity, mis-reading or non-reading of evidence has been pointed out in the impugned judgment. The High Court has correctly appreciated the law and rightly concluded that the claim of pre-emption could not succeed in the absence of proper compliance with the statutory requirements of *Talb*, when the same have not been pleaded in the plaint.

8. For the reasons stated above, we find no merit in this appeal. The impugned judgment is upheld and this Civil Appeal is dismissed.

Judge

Judge

Islamabad, the
14th May, 2025
Syed Farhan Ali