

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Musarrat Hilali
Justice Shakeel Ahmed
Justice Ishtiaq Ibrahim

Civil Appeal No.60-P/2016

[Against the judgment dated 15.06.2016 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Civil Revision No. 512-M/2012]

Rahim Shah Mian

...Appellant

Versus

Muhammad Iqbal

...Respondent

For the Appellant : Mr. Khalid Mehood, ASC

For the Respondent : Mr. Zia ur Rehman, ASC

Date of Hearing : 12th of June, 2025

JUDGMENT

Musarrat Hilali, J.- This direct appeal is filed against the judgment dated 15.06.2016 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Civil Revision No. 512-M/2012 whereby the civil revision petition filed by the respondent was allowed, the concurrent judgments and decrees of the Courts below were set aside, and the appellant's suit for pre-emption was dismissed.

2. The appellant filed a suit for possession through pre-emption on 05.12.2006 in respect of land situated in Moza Lalku, Tehsil Matta, District Swat, bearing Khasra No. 223/1, which was purchased by the respondent through sale mutation No. 1203 attested on 20.09.2006. The appellant based his right of pre-emption on dual grounds, firstly being a *Shafi Khalit* (contiguous owner) and secondly being a *Shafi Jaar* (participant in irrigation). The Trial Court decreed the suit on 29.09.2011, and the Appellate Court upheld the said judgment and decree vide its judgment dated 10.05.2012. The respondent's civil revision against the judgment and decree of the Appellate Court was allowed by the High Court through the impugned judgment. Hence, the instant civil appeal.

3. We have heard the learned counsel for the parties and carefully examined the record.

4. The appellant's right of pre-emption revolves around the three material aspects: (i) whether he was a *Shafi Khalit*, (ii) whether he was a *Shafi Jaar*, and (iii) whether the mandatory Talbs under Section 13 of the Khyber Pakhtunkhwa Pre-emption Act, 1987 ("**the Act**") were performed in accordance with the law. The High Court has answered each of these questions against the appellant, and rightly so.

5. The report of the local commission categorically found that the appellant's land (Khasra No. 226) was not contiguous to the suit land (Khasra No. 223/1), as the two were separated by Khasra No. 225, which was owned by third parties and recorded in the revenue record as a "Ghair Mumkin Nijji Raasta." This finding was further supported by the evidence of CW-1 and CW-2, who admitted the existence of the private passage. Mere construction of a retaining wall or possession over part of a separate Khasra cannot establish contiguity unless the appellant had ownership of the intervening land, which he did not. The Trial and Appellate Courts overlooked this crucial fact, and their conclusions on the appellant's status as a *Shafi Khalit* were based on misreading of the evidence.

6. Likewise, the claim of the appellant being a *Shafi Jaar* was contradicted by the physical layout of the land. The appellant's land is at a higher elevation than the water channel, making irrigation from a common source impossible. This critical aspect was again ignored by the Trial and Appellate Court. The High Court, in revisional jurisdiction, was justified in correcting these errors which went to the root of the claimed right.

7. Turning to the issue of Talbs, the appellant alleged that he was informed of the sale by one Akbar Shah and immediately declared his intention to pre-empt in the latter's presence. However, Akbar Shah (alleged informer) was never produced before the Court. The High Court, in setting aside the concurrent findings of the Courts below regarding Talb-i-

Muwathibat, rightly invoked its revisional jurisdiction. It is by now well settled that a revisional Court is fully empowered under Section 115 of the Code of Civil Procedure, 1908 (**'the Code'**) to do so where such findings are based on misreading, non-reading, or misinterpretation of the evidence on record. In the present case, both the Trial Court and the Appellate Court overlooked a critical deficiency; the appellant's failure to produce the informer, Akbar Shah. This omission was neither explained nor justified. The importance of the informer's evidence cannot be ignored, as it forms the basic foundation for the performance of *Talb-i-Muwathibat*. Without his evidence, the appellant's version regarding the time, place, and manner of acquiring knowledge of the sale remained uncorroborated. This Court has consistently held that non-production of the informer may be fatal and may result in an adverse inference being drawn against the pre-emptor. The requirement of *Talb-i-Muwathibat* under Section 13 of the Act, therefore, remained unproved. [Ref: **Abdul Rehman Vs. Haji Ghazan Khan (2007 SCMR 1491)** and **Subhanuddin & others Vs. Pir Ghulam (PLD 2015 Supreme Court 69)**]. The Courts below fell into error by ignoring this key aspect. Their findings on the issue of *Talb-i-Muwathibat* are a result of mis-reading of evidence and, hence liable to be set aside. The High Court, in correcting this error, acted well within its powers under the revisional jurisdiction.


8. The performance of *Talb-i-Ishhad* was similarly flawed. The appellant admitted that he did not personally send the notice; instead, he handed it over to Akbar Shah, who again never appeared to confirm that whether any notice was dispatched. More importantly, the notice was not sent through registered cover acknowledgment due, as specifically required under the statute. These procedural lapses render the *Talb-i-Ishhad* ineffective in the law.

9. Another key aspect requiring further consideration is whether the High Court, in the exercise of its revisional jurisdiction, was competent to interfere with and set-aside the concurrent findings of the two Courts below regarding the right

and claim of pre-emption of the appellant being *Shafi Khalit* or *Shafi Jaar* and the performance of Talbs. The answer is in the affirmative. Where findings suffer from misreading or non-reading of material evidence or are otherwise perverse, the High Court is fully empowered under section 115 of the Code to rectify such errors.


10. The findings of the High Court, therefore, do not call for any interference. No jurisdictional error, misreading, or perversity has been demonstrated in the impugned judgment.

11. For the foregoing reasons, we find no merit in this appeal. Accordingly, the impugned judgment is maintained and this Civil Appeal is dismissed.


Peshawar, the
12th of June, 2025
Muhammad Saifullah Khan, RO
Syed Farhan Ali

APPROVED FOR REPORTING


Judge


Judge


Judge