

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Faisal Arab
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Appeal No.240-P of 2014

*(Against judgment dated 29.11.2010 passed by
Peshawar High Court Peshawar in C.R. No.1845 of
2010 with C.M. No.1887 of 2010)*

Liaqat Ali & others

...Appellant(s)

Versus

Safdar Khan

...Respondent(s)

For the Appellant(s): Mr. M. Shoaib Khan, ASC

For the Respondent(s): Mr. Abdul Sattar Khan, ASC

Date of hearing: 02.03.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- A piece of land measuring 15-Kanal 3-Marla, situate within the remit of Chak Turangzai District Charsadda has been a proverbial battle field for a contest, raging since its sale on 13.6.2005; it was purchased by the appellant, ostensibly for a consideration of Rs.600,000/-, a transaction pre-empted by Safdar Khan respondent/plaintiff, on account of his acclaimed superior rights to the land as enumerated in Section 6 of the K.P.K. Pre-emption Act, 1987. The suit was dismissed by the learned trial Court vide judgment and decree dated 13.09.2008 for pre-emptor's failure to perform *Talabs* in accordance with law; the failure plunged adjudication on collateral issues into irrelevance; plaintiff's appeal before a learned Additional District Judge met with no better fate vide judgment and decree dated 13.6.2009; undeterred by consecutive failures, the plaintiff successfully impugned dismissals in the High Court; a learned Judge-in-Chamber vide judgment dated 5.7.2010 remanded the case to the Appellate Court to re-appraise entire evidence regarding performance of "*Talabs*" in consequence whereof, the learned Additional District Judge allowed plaintiff's

appeal vide judgment and decree dated 8-9-2010, impugned by the vendee defendant in the High Court with no success. It is in this backdrop that High Court judgment dated 29.11.2010 is being assailed by leave of the Court granted, *inter alia*, to consider whether the respondent had succeeded in establishing *Talabs* in accordance with law, his superior right on the basis of his being a co-sharer as well as the actual sale price; in his last ditch effort, the appellant, through C.M.A. No.10899 of 2019 seeks permission to produce additional documents.

2. Learned counsel for the appellant contends that the respondent/pre-emptor miserably failed to establish performance of *Talabs*, an inherent flaw that escaped notice both by the Appellate Court as well as the High Court; it is next argued that the defendant was intimated prior to the sale and he had acquiesced the transaction; appearance of Fazal Majeed, Registration Clerk GPO Charsadda, as PW-2, to establish dispatch of postal notice, has been assailed on the ground that he was not the postman who had actually delivered the notice. Sale consideration as Rs.600,000/- was vehemently defended as real by the learned counsel while concluding his submissions. The judgment has been defended by the respondent being well within the remit of law.

3. Heard. Record perused.

4. Respondent's preferential right to pre-empt the sale, on account of his being *Shafi Jar* is recognized even by the learned trial Judge who otherwise had dismissed the suit; cross-objections raised by the appellant before the learned Additional District Judge were also repelled on the strength of statement of Fazal Karim Patwari (PW-1) who produced relevant revenue record, i.e. *Aks Shajjra Kashat* (Ex.PW-1/2) to clinch the question of contiguity. Regarding the actual sale price as Rs.3,61,240/- there has been judicial consensus throughout. In this backdrop, performance of *Talabs* is the moot point. Supported by Syed Muhammad Arshad (PW-6) and Salar (PW-7), the plaintiff entered the witness box as PW-5 to solemnly affirm as under:-

کہ میں اپنے دوکان میڈیکل سٹور واقع حجرہ خود میں بمعہ
ہم زلف ارشد باچا بیٹھے تھے کہ اسی دوران بوقت 5 بجے
02.08.2005 سہ پہر میرا کاشتکار سالر آیا۔ اور

مجھے کہا کہ آپ کے پیوست حاجی صاحب جان محمد
 وغیرہ کی اراضی مدعا علیہم نے خرید لی تو میں نے اُس
 بیع کے خلاف دعویٰ شفع دائر کرنے کا اظہار کیا۔ مورخہ
 03.08.2005 کو میں نے رجسٹرار آفس سے رجسٹری
 بیع کا فوٹو سٹیٹ مصدقہ نقل وصول کیا۔ پھر مورخہ
 06.08.2005 کو میں نے مدعا علیہم کو نوٹس شفع دے
 دی۔ نوٹس مذکور کا فوٹو سٹیٹ نقل بنام مدعا علیہم EX-
 PW 5/1 تا EX-PW 5/3 ہے۔

Syed Muhammad Arshad (PW-6) and Salar (PW-7) corroborated plaintiff's position; the witnesses are in a comfortable unison on all the relevant details as well as the manner, the plaintiff declared his intention to pre-empt the sale; positions inconsonance with the pleadings. Argument that the witnesses were discrepant is beside the mark; "contradictions" blown out of proportion are merely narrative variations that inevitably occur in a truthful discourse, particularly after flux of time. A statutory right cannot be allowed to be defeated on subjective hyper technical assertions, as held by this Court in cases reported as Abdul Qayum through Legal Heirs Vs. Mushk-e-Alam and another (2001 SCMR 798), Hameed ullah Khan and others Vs. Mst. Zeenat Khatoon (2008 SCMR 1444), Muhammad Tariq and 4 others Vs. Asif Javed and another (2009 SCMR 240), Abdul Latif alias Muhammad Latif alias Babu Vs. Dil Mir and others (2010 SCMR 1087), Daud Shah Vs. Waris Shah and others (2014 SCMR 852). Appellants' claim that they had intimated the respondent about their intention to purchase the land and transacted the sale only after they forewent the option, fails to inspire us. Afsar Ali (DW-2), Shoaib (DW-3) and Liaqat Ali (DW-4) are diametrically apart in their quest to establish plaintiff's acquiescence; statement of one witness cannot be accepted without first excluding the remainders and vice versa. We are also not impressed by the argument that the postman who had actually delivered the notice ought to have appeared in person instead of Fazal Majeed, Registration Clerk GPO and Zahid Ahmed, Postman, who respectively appeared as PW-2 & PW-3. Plaintiff by producing these official witnesses along with relevant receipts and acknowledgement due aptly discharged the onus to establish dispatch of notice. There is perpetual continuity in State business, sustained by officials in succession. Conclusions concurrently

drawn by the courts below do not call for interference. Appeal fails.
Concomitantly, C.M.A. No.10899/2019 is also dismissed.

Judge

Judge

Islamabad, the
2nd March, 2020
Not approved for reporting
Azmat/-