

IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(*Judicial Department*)

WP No.172-B/2024

Syed Akbar Khan

Vs

Rehmat Ullah, etc.

JUDGMENT

Date of hearing: 20.11.2025

For petitioner(s): Mr. Waris Fahim Advocate

For respondent(s): Mr. Mohammad Saleem Awan
Advocate

ABDUL FAYAZ, J.- Through the instant writ petition, filed under Article 199 of the Constitution, the petitioner has assailed the judgment and decree dated 15.02.2024 passed by the learned Additional District Judge-II, Bannu, whereby Civil Revision was accepted and the plaint of the petitioner was rejected under Order VII Rule 11 CPC, setting aside the order dated 09.01.2024 of Civil Judge-III, Bannu.

2. Briefly stated, the facts of the case are that the plaintiff Syed Akbar Khan (hereinafter referred to as the petitioner) instituted a suit against the defendants Rehmat Ullah etc. (hereinafter referred to as the respondents) for possession through pre-emption of the suit property, fully detailed in the head note of the plaint. It was averred that the suit property had

been orally sold to the respondents at the rate of Rs.1,00,000/- per Kanal, without effecting any mutation in the revenue record or registry, so as to defeat his right of pre-emption; and that possession of the suit property had been delivered to the respondents on 10.08.2023. It was further averred that the petitioner came to know of the sale transaction on 15.08.2023 at 04:00 p.m. in the Baithak of Aman Ullah, through informer Zahid Khan, in the presence of one Ala-ud-Din. The petitioner claimed that immediately upon acquiring such knowledge, he made Talb-i-Muwathibat in the presence of witnesses. A formal notice of Talb-i-Ishhad was thereafter sent to the respondents on 24.08.2023 through registered post. The petitioner asserted a superior right of pre-emption on the basis of being Shafi Sharik, Shafi Khalit, and Shafi Jar, contending that the respondents were strangers to the property in question. The denial of this right by the respondents prompted the petitioner to institute the suit.

3. The respondents, upon receipt of summons, entered appearance and contested the suit. They filed their written statement denying the assertions of the petitioner and further submitted an application under Order VII Rules 10 and 11 CPC, seeking rejection of the plaint on the ground of limitation and non-maintainability. It was contended that the suit property had in fact been transferred through registered sale deeds, namely

Sale Deed No.2150 dated 30.12.2022 and Sale Deed No.986 dated 09.06.2023, and that the suit instituted on 28.08.2023 was ex facie barred by the limitation of 120 days prescribed under Section 31 of the Khyber Pakhtunkhwa Pre-emption Act, 1987. The learned Civil Judge-III, Bannu, after hearing arguments of both sides, dismissed the said application vide order dated 09.01.2024.

4. Aggrieved of the said order, the respondents preferred Civil Revision before the learned Additional District Judge-II, Bannu. The Revisional Court, upon appraisal of the record and hearing arguments of both sides, accepted the revision petition vide judgment and decree dated 15.02.2024, holding that the suit property had in fact been transferred through registered sale deeds, namely Sale Deed No.2150 dated 30.12.2022 and Sale Deed No.986 dated 09.06.2023, and that the suit instituted on 28.08.2023 was ex facie barred by limitation under Section 31 of the 1987 Act. Consequently, the order of the Trial Court was set aside and the plaint was rejected under Order VII Rule 11 CPC. Hence, the present writ petition.

5. Arguments heard. Record perused.

6. The legal position with regard to limitation in suits for pre-emption is well settled. Section 31 of the Khyber Pakhtunkhwa Pre-emption Act, 1987 prescribes a special

limitation of 120 days for instituting a suit for pre-emption. For the sake of ready reference, this statutory provision is reproduced hereunder:

31. Limitation. The period of limitation for a suit to enforce a right of pre-emption under this Act shall be one hundred and twenty days from the date—

- (a) of the registration of the sale deed; or
- (b) of the attestation of the mutation, if the sale is made otherwise than through the registered sale deed; or
- (c) on which the vendee takes physical possession of the property if the sale is made otherwise than through the registered sale deed or the mutation; or
- (d) of knowledge by the pre-emptor, if the sale is not covered under paragraph (a) or paragraph (b) or paragraph (c).

7. A plain reading of Section 31 of the 1987 Act makes it abundantly clear that the legislature has provided a special limitation of 120 days, which is exhaustive in nature and overrides the general law of limitation in pre-emption cases. The provision lays down four distinct eventualities from which limitation may commence. Where the sale is evidenced by a registered sale deed, clause (a) applies, and limitation begins from the date of registration. Where the sale is otherwise than through a registered deed, clause (b) applies if mutation is attested, and clause (c) applies if possession is delivered without mutation. Clause (d), which speaks of "date of knowledge," is residual in nature and comes into play only when the sale is not covered under clauses (a), (b), or (c).

8. Thus, once a transaction is evidenced by a registered sale deed, the date of registration itself constitutes constructive notice to all concerned, and the plea of late knowledge cannot be invoked to extend or suspend the limitation period. The requirement of public notice under Section 32 of the Act is directory, and its non-compliance does not enlarge the limitation prescribed under Section 31 of the Act. The consistent view of the Superior Courts is that limitation in pre-emption suits runs from the date of registration of the sale deed, and not from the alleged date of knowledge, where the sale is evidenced by a registered instrument.

9. In the present case, the suit property was admittedly transferred through registered sale deeds No.2150 dated 30.12.2022 and No.986 dated 09.06.2023. The petitioner instituted the suit on 28.08.2023, which, reckoned from the date of registration of the first deed, was clearly beyond the prescribed period of 120 days. The plea set up by the petitioner that he acquired knowledge of the transaction on 15.08.2023 in the Baithak of Aman Ullah, and that limitation should run from such date of knowledge, is misconceived in law. Once the sale was evidenced by registered instruments, clause (a) of Section 31 squarely applied, and the date of registration itself constituted constructive notice. The residual clause (d), which

speaks of "date of knowledge" could not be invoked in the presence of registered sale deeds.

10. The Trial Court, while dismissing the respondents' application under Order VII Rules 10 and 11 CPC vide order dated 09.01.2024, held that since the petitioner had alleged an oral sale between the parties, it was imperative upon him to prove his case through evidence. It was further observed that as the petitioner had not challenged any registered deed or mutation, but rather set up a case of oral sale, clause (d) of Section 31 of the 1987 Act was attracted and, therefore, the suit filed within 120 days of the alleged date of knowledge was well within time. In doing so, however, the Trial Court fell into error by ignoring the admitted fact that the suit property had already been transferred through registered sale deeds No. 2150 dated 30.12.2022 and No. 986 dated 09.06.2023, which squarely attracted clause (a) of Section 31 of the Act.

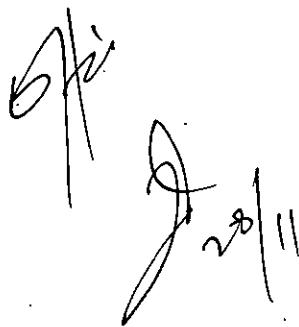
11. The Revisional Court, upon appraisal of the record, rightly corrected this error and held that once the transaction was evidenced by registered instruments, limitation commenced from the date of registration, and the plea of oral sale or late knowledge could not override the statutory scheme. The Revisional Court, therefore, set aside the order of the Trial Court and rejected the plaint under Order VII Rule 11 CPC.

This Court concurs with the findings of the Revisional Court, which are based on admitted facts and the plain language of the statute, and finds no illegality, material irregularity, misreading or non-reading of evidence, or perversity in the impugned judgment and decree dated 15.02.2024.

12. For the foregoing reasons, this writ petition is found devoid of merit and is accordingly dismissed.

Announced

20.11.2025


A handwritten signature consisting of stylized letters and numbers, appearing to read "Ghafur Zaman".