

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

CIVIL REVISION NO. 476 OF 2015

Muhammad Sagheer

Vs.

Fazal Karim, etc

Petitioner by : Syed Mohammad Ali Bokhari, Advocate.

**Respondents by : Mr. Muhammad Wajid Hussain Mughal,
Advocate.**

Date of hearing : 15.03.2021.

LUBNA SALEEM PERVEZ, J. Through instant Civil Revision, the petitioner [Muhammad Sagheer] has assailed judgment and decrees dated 28.10.2015, and 28.07.2015, passed by learned Additional District Judge, East-Islamabad, and learned Civil Judge, East-Islamabad, respectively where by the suit filed by the petitioner was dismissed by both the respective Courts.

2. As per record, this is the second round of litigation. Facts in brief are that the Petitioner filed a Suit for Pre-emption of property in Khasra Nos. 248/255/225/2, Khewat No. 47, Khatooni No. 79, situated in Mouza Bangreel Khurd, Tehsil and District Islamabad, measuring 05 marla (*hereinafter referred to as the suit property*), originally owned by one Iftikhar Ahmad who sold the property along with two shops to respondent (Fazal Karim, etc) vide sale deed No. 12317 dated 26.08.2006 for a consideration of Rs. 500,000/-. The petitioner invoked Haq-e-Shufa/right of pre-emption when came to know about the sale on 21.11.2006 at about 05:00 pm and then sent a notice, attested by two witnesses in the name of vendee/purchaser on 24.11.2006, claiming superior right over the property on the basis of being owner of the adjacent land and co-sharer in the suit property and thereafter filed the suit on 28.11.2006. This suit was proceeded ex-parte against the respondents (defendants in the suit), however, the suit was dismissed, vide judgment and decree dated 11.12.2010, against the petitioner (plaintiff in the suit) stating reason that no supportive document was provided to prove the ownership of holding jointly the suit property. The appeal was filed by the petitioner against the

said judgment and decree whereby the learned Additional District Judge-East, Islamabad, vide order dated 31.01.2013, remanded back the case to the learned Trial Court on the ground that the case was decided ex-parte and directed the parties to appear before the Senior Civil Judge on 12.02.2013. The respondents felt aggrieved with the decision dated 31.01.2013 and filed Civil Revision No. 38 of 2013 before this Court under section 115 of CPC, however, the remand order passed by learned Additional District Judge-East, Islamabad, was upheld, vide order dated 09.05.2014. The learned Trial Court, vide order dated 28.07.2015 framed the issues for decision of the case though no written statement was filed by the respondents. After recording of evidence and submission of documents, the suit of the petitioner / plaintiff was dismissed while holding that the adjacent property to the suit land was purchased by the petitioner on 30.04.2010, therefore, he has no right of pre-emption on the suit property and as such no cause of action accrue to the petitioner to file the suit. This decision was again challenged in appeal and the learned Additional District Judge-II, East-Islamabad, who vide judgment and decree dated 28.10.2015, after discussing the law and re-appraising the evidence in the trial proceedings, dismissed the appeal filed by the petitioner. Being dissatisfied with the said judgments of both the courts below, the petitioner has preferred the instant civil revision under section 115 CPC.

3. Learned counsel for the petitioner submitted that both the courts below have misread the evidence and at the same time have failed to take into consideration that notice of *Talab-e-Ishhad* was sent under register cover acknowledgment due and that the cross examination of the attesting witnesses who remained consistent on the point of notice of *Talab-e-Ishhad*; that the petitioner had successfully proved his preferential right over the suit property; that the learned courts below had overlooked the record and erred in law while concluding against the petitioner and submitted that the judgments and decrees of the Trial and Appellate Courts suffer from illegalities and liable to be set-aside. He, in support, referred judgments reported as *M/s Attock Gen Limited vs. Additional Commissioner (Audit), LTU Islamabad [2019 MLD 870]* and *Parveen Akhtar v. Mian Salahuddin, etc [2019 MLD 1630]*.

4. On the other hand, learned counsel for the respondents submitted that the petitioner has failed to prove the *Talabs* provided under the law as well as his right of pre-emption on the suit property, being *Shafi Sharik*, *Shafi Khalit* or *Shafi Jar*

before the learned Trial Court; that the petitioner failed to substantiate his superior right over the suit property as the adjacent property on the basis of which he was claiming pre-emption right, was purchased by him in the year 2010. Learned counsel denied the compliance of *Talabs* and submitted that the petitioner never visited the seller nor any notice for *Talab-e-Ishhad* was sent to the vendee/purchaser nor the postman was produced as a witness to prove service of *Talab*. Learned counsel placed reliance on the judgments re: *Mian Pir Muhammad v. Faqir Muhammad* (PLD 2007 SC 302), *Nawab din v. Faqir Sain* (2007 SCMR 401), *Allah Diwaya v. Mst. Sukah Khatoon* (2012 MLD 1309), *Allah Ditta v. Muhammad Anar* (2013 SCMR 866), *Basharat Ali Khan v. Muhammad Akbar* (2017 SCMR 309) and *Bilal Ahmed v. Abdul Hameed* (2020 SCMR 445).

5. Heard learned counsel for the parties and record of the case has been perused.

6. The petitioner is claiming his right of pre-emption over the suit property on the basis of owning a property adjacent to the suit property and claims superior right as Shafi Sharik, Shafi Khalit and Shafi Jar. He claimed that as soon as he received information on 21.11.2006 (*wrongly typed as "2005" in the judgment*) at about 05:00 pm that the suit property has been sold to the present respondents, vide sale deed No. 12317 dated 26.08.2006, he expressed his intention to purchase the suit property in front of two witnesses namely Muhammad Miskeen s/o Jahandad and Aziz-ur-Rheman s/o Meharban and thus complied with *Talab-e-Muwathibat* and soon thereafter sent notice to the vendee/purchaser of the suit property / respondent on 24.11.2006 to establish *Talab-e-Ishhad* and thereafter filed suit for Pre-emption on 28.11.2006 to establish *Talab-e-Khusumat*.

7. *Shuffa* or the pre-emption is a statutory right, possessed by the owner of an immoveable property having preferential legal claim to purchase the property being sold to another person by paying the price paid by vendee in respect of the property. Three types of persons have been classified under section 6 of Punjab Pre-Emption Act, 1991 (*referred to as Act, 1991*), who possess the Haq-e-Shuffa/right of pre-emption:-

- (i) *Shafi Sharik* i.e. the person who is the co-owner or co-sharer in the undivided immovable property;
- (ii) *Shafi Khalit* i.e. the person having special participatory rights attached with the land and

(iii) *Shafi Jar* i.e. the person who owns the adjoining land.

8. The above classified persons are entitled to exercise the right of *shuffa* after compliance of the procedure provided in section 13 of the Act, 1991 according to which it is obligatory on the pre-emptor to strictly observe and establish the *talabs* i.e. the demands in following sequential order:-

- (i) *Talab-e-Muwathibat has been explained as immediate demand or jumping demand, to be performed by the pre-emptor immediately after he gained the knowledge of the sale of property by declaring the intention of exercising the right of pre-emption; [section 13(2)];*
- (ii) *Talab-e-Ishhad is the second demand has been defined as demand by establishing evidence. It is the performed by sending the notice in writing to the purchaser/vendee of the property, attested by two truthful witnesses, through register post/acknowledge due, as soon as possible after the performance of talab-e-muwathibat but not later than two weeks; [section 13(3)];*
- (iii) *Talab-e-Khusumat is the third demand means demand by filing suit. The talab is performed on the occasion if the vendee declines to acknowledge right of the pre-emptor and performed after satisfying the first two talabs by filing a suit before competent jurisdiction to enforce the right of pre-emption. [section 13(4)]*

9. The right of pre-emption is considered to be a special right granted to the pre-emptor whereby he exercises preferential right of acquiring property against established right of vendee accrued on the basis of lawful purchase of the property, thus the provisions of Section 13 of Act 1991 being of special character and mandate are required to be strictly interpreted with regard to the compliance of stepwise procedural requirements of starting from *talab-e-muwathibat* by announcing immediate demand and soon thereafter *talab-e-ishhad* by sending notice for exercising right of pre-emption. Section 13 of the Act, 1991, thus provides for necessary pre-conditions for imploring and enforcing the superior right over the immoveable property, as such it is obligatory on the pre-emptor to discharge the onus of performance of first and second talab in accordance with prescribed procedure of Section 13 of the Act 1991. In case titled as ***Mian Pir Muhammad and another vs. Faqeer Muhammad (PLD 2007 SC 302)*** it has been observed that: *It is now well settled law that performance of both these talabs successfully is sine qua non for getting a decree in a pre-emption suit.*

10. It is equally well settled that compliance of *Talab-e-Ishhad* is not a formality but statutory requirement to inform the vendee/purchaser regarding knowledge of sale and his interest in the property in terms of *shuffa* for exercising right of pre-emption, as such, the law provides for service through registered post acknowledgement due. The onus is on the pre-emptor to prove through witness and evidence of successful service of notice in writing of talab-e-ishhad duly received by the vendee/purchaser. Reliance can be placed on the judgment reported as *Sultan versus Noor Asghar (2020 SCMR 682)* and *Manzoor Hussain versus Misri Khan (2020PLD 749 SC)* whereby the Hon'ble Supreme Court dismissed the appeal for failure of the pre-emptor to establish delivery/receipt of notice of *talab-e-ishhad* by the purchaser.

11. Keeping the settled principles of law in view regarding right of pre-emption, the impugned judgments dated 28.07.2015 and 28.10.2015 have been perused and after careful examination of witnesses and record, I am of the opinion that findings in the impugned judgments appeared to be in consonance with the documentary evidence produced before the Learned Trial Court. The case of the Petitioner is that he being *shafi shareek* of the suit property has a preferential and superior right to acquire and possess the suit property, he therefore, on receipt of information regarding sale of suit property, vide sale deed No. 12317 dated 26.08.2006 performed *talab-e-muwathibat* on 21.11.2006 to comply the requirement of section 13(2) of the Act 1991 and performed *talab-e-issHAD* on 24.11.2006 and thereafter filed suit for pre-emption on 28.11.2006 as *talab-e-khusumat*. However, the evidence adduced by the petitioner shows that the notice of *talab-e-issHAD* was sent through registered post but not through registered acknowledgment due thus, it could not be established by the petitioner that vendee/purchaser had received such notice and had acquired information of invoking claim of pre-emption right of petitioner over the suit property. Thus, non-compliance of mandatory statutory requirement disentitles the petitioner from acquiring the suit property by invoking extraordinary right of pre-emption.

12. Petitioner also claimed that he being co-owner of the suit property has a superior right to purchase suit property, he, however, during the trial, failed to establish the co-ownership of the property and *Fard Jamabandi* produced as evidence to substantiate that he is a *shafi jar* rather revealed that the immoveable property adjacent to the suit property was purchased by the Petitioner, vide

mutations No. 338 & 339 dated 30.04.2010. The evidence sufficiently proved that the petitioner was not the owner of any adjacent land or he was co-owner of the suit property in the year 2006, when the sale of the suit land took place. Thus in the presence of the documentary evidence, I am also of the opinion that Petitioner has no right to purchase the suit property through right of pre-emption which has been sold to the Respondents on 26.8.2006.

13. For the above reasons, it is held that the impugned judgments and decrees dated 28.07.2015 and 28.10.2015, passed by both the Learned Trial as well as Appellate Courts, respectively, do not suffer from any illegality or infirmity or misreading or non-reading of evidence or record which are hereby upheld.

14. In view of above, instant civil revision petition is **dismissed**, accordingly

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on _____.

JUDGE

Approved for Reporting
Blue Slip added.