

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 78/2013.

Muhammad Riaz

Versus

Muhammad Iqbal Noori

Petitioner by: Barrister Talha Ilyas Sheikh, Advocate.
Respondent by: Mr. Rafaqat Islam Awan, Advocate.
Date of Decision: 19.02.2020.

MOHSIN AKHTAR KAYANI J:- Through this Civil Revision, the petitioner has assailed the order dated 17.03.2010, passed by learned Civil Judge, 1st Class (West), Islamabad, whereby plaint of the suit for possession through pre-emption & permanent injunction filed by petitioner was rejected U/O VII Rule 11 CPC. The petitioner has also assailed the judgment & decree dated 04.03.2013, passed by learned Additional District Judge (West), Islamabad, whereby appeal filed by the petitioner against the order dated 17.03.2010, was also dismissed.

2. Learned counsel for the petitioner contends that question for application of the correct law has not been adjudicated by the trial Court, nor the same was considered by the Appellate Court, even matter was adjudicated upon in haste under the garb of Muslim Personal Law, although the question of application of correct law is the primary consideration by the Courts which is missing in this case; that judgment dated 04.12.2019, passed in **Civil Revision No.129/2019** titled **Rab Nawaz and others Vs. Rusmat Ali** has declared the application of Punjab Pre-emption Act, 1913, therefore, jurisdiction exercised by the Courts below on the basis of Muslim Personal Law is incorrect view which requires correction at this revisional stage.

3. Conversely, learned counsel for the respondent contends that both the Courts below have rightly appreciated the legal controversy and rejected the plaint

in terms of Order VII Rule 11 CPC as petitioner has no cause of action to agitate the matter.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner has filed a suit for possession through pre-emption & permanent injunction against the respondent, plaint of said suit was rejected U/O VII Rule 11 CPC with the following observations:-

After hearing the arguments and perusal of record, I have come to the conclusion that plaintiff himself sold this land to one Zahid Hussain. Registered sale deed No.2670 dated 28.09.2000 is available on file. Now said Zahid Hussain has further sold out the same land to defendant vide registered sale deed No.1911 dated 22.08.2006 on which plaintiff has filed instant suit for pre-emption. In these circumstances, plaintiff has no right to pre-empt the suit property. By alienating the land in favour of Zahid Hussain plaintiff has become disentitled to claim any right of pre-emption over the suit property. According to the law laid down in PLD 2006 Supreme Court 594, Urban property has immunity against the law of pre-emption. In these circumstances application in hand is hereby accepted and the plaint is hereby rejected plaintiff is entitled to withdraw one third amount deposited by him. Parties are left to bear their own cost. File be consigned to the record room after due completion.

6. The above mentioned order has been assailed by the petitioner in RFA before the Court of Additional District Judge (West), Islamabad, who also dismissed the same vide judgment & decree dated 04.03.2013 with the following observations:-

I have given my anxious and jade considerations to respective arguments and with the able assistance of both law officer gone through the record as well as splendid precedents adduced microscopically. The following issues require determination:-

- a. It is admitted that appellant had himself sold out the subject matter (land) to one Zahid Hussain voluntarily. Thereafter when the land was further sold out by said Zahid Hussain to the present respondent, then he became claimant of his previously owned land sold out against allegedly received sale consideration. This factum creates suspicions even for a person of ordinary prudence that as to why he had become claimant*

when the land had previously been sold out to one Zahid Hussain. This somehow depicts that the suit had maliciously been instituted.

- b. With regard to application of pre-emption laws over I.C.T. I have statistically gone through magnificent precedents adduced from both sides. But P.L.D. 2006 S.C. 594 is much relevant and persuasive, reason being that Urban property of I.C.T. is directly controlled by Capital Development Authority just in order to curb long standing pre-emptive litigations. It is further submitted that there are 02 Registrars one for Urban Area and other for Rural Area. The title deed possessed by respondent was copied and got issued by Registrar Urban Area, which also depicts that the subject matter (land) comes within the sphere of Urban territory. Few areas which initially remained ousted from Urban Area had subsequently been regulated as Urban territory. Therefore, in my humble view Urban territory is exempted from pre-emption.*
- c. With regard to the application of pre-emption laws in Islamabad it is humbly submitted that the same do not apply over I.C.T. having super scheme attached herewith to curb prolonged litigation of pre-emption.*
- d. With regard to the application of Islamic Shufa in I.C.T. it is submitted that for that purposes the ingredients of Zarar & Zarurat must be fulfilled prior to resorting to such litigation. As per record no such ingredients has had been relied upon. Therefore, application of Islamic Shufa is also very much restricted in Urban Area of I.C.T.*

Nutshell of my humble and delinquent submissions are that the impugned order dated 17.03.2010 had rightly been passed, by declaring that Urban property of I.C.T. is immuned from the clutches of snail law of pre-emption.

*Therefore, by maintaining the impugned order dated 17.03.2010 the instant appeal is hereby regretfully **dismissed**, without any order as to costs. Decree sheet be prepared.*

- 7. In order to resolve the controversy as to whether the question of pre-emption within ICT has to be regulated under Muslim Personal Law or under any other law for the time being enforced, the matter has already been dealt by this

Court in **Civil Revision No.129/2019** titled **Rab Nawaz and others Vs. Rusmat Ali** through reported judgment (not yet published) in the following manner:-

It is not disputed that the 1913 Act was in force in the I.C.T. prior to the passing of the President's Order No.1 of 1970. By virtue of Article 19 of the President's Order of 1970, the 1913 Act continued to apply to the I.C.T. The President, in exercise of powers under Article 6 of the President's Order No.1 of 1970, could have amended the 1913 Act to the extent that it applied to the I.C.T. or could have passed an Order with respect to the laws of pre-emption. This, the President did not do. However, in exercise of the powers conferred under Article 89 of the Constitution, the President promulgated the 1997 Ordinance dealing with the laws of pre-emption applicable to the I.C.T. Therefore, upon the repeal of the 1997 Ordinance by efflux of time, the 1913 Act stood revived to the extent of its application to the I.C.T. Until the 1913 Act is not repealed or amended by the competent legislature, its provisions (other than the ones that were declared unIslamic in the case of Government of N.-W.F.P. Vs. Said Kamal Shah (supra)) would continue to apply in the I.C.T. Even though the 1991 Act had repealed the Punjab Pre-emption Ordinance, 1991 and other Ordinances which in turn had repealed the 1913 Act, the application of the 1991 Act would be confined to the Province of the Punjab and cannot by implication be extended to the I.C.T. The enactment of the 1991 Act would not operate as a repeal of the 1913 Act to the extent of its application to the I.C.T. This is because the provisions of the 1913 Act continued to apply to the I.C.T. by virtue of Article 19 of the President's Order No.1 of 1970.

8. Keeping in view the above ratio, proposition in hand has been answered in a proper manner. Even otherwise, learned trial Court as well as learned Appellate Court have travelled beyond their jurisdiction and mandate of law while deciding different question of disputed facts U/O VII Rule 11 CPC, therefore, concurrent findings of Courts below have been set aside as the Courts are bound to apply the pre-emption Act, 1913 in its true perspective, which has not been considered by the Courts below in this matter, therefore, instant Civil Revision is **allowed**, both the orders/judgments are hereby **set aside** and matter is **remanded** to the learned trial

Court to decide the same afresh in the light of judgment of this Court passed in C.R No.129/2019.

9. Before parting with this judgment, it is necessary to observe that instant matter pertains to year 2006, therefore, learned trial Court seized with the matter is directed to concluded the same within period of four (04) months under intimation to this Court.

(MOHSIN AKHTAR KAYAN)
JUDGE

Zahid