# Akhtar Husain And Anr. vs Hasmat Ali Khan And Anr. on 25 April, 1951

## Equivalent citations: AIR1951ALL713, AIR 1951 ALLAHABAD 713

JUDGMENT

Agarwala, J.

1. This is a defts' appeal arising out of a suit for pre-emption.

2. The parties are Sunni Muslims. Deft. 2 executed a sale deed in favour of deft. 1 in respect of the house in suit. The pltf., who is the owner of an adjoining house filed the suit which has given rise to this appeal for pre-emption on the ground that the vendee, deft. 1, was a complete stranger & that the pltf. had a preferential right to claim the house by pre-emption. The only question which was consd. by the Munsif was whether the pltf. had made the demands as required by the Mohammadan Law in order to entitle him to pre-empt the house.

3. Under the Mohammadan Law, no person is entitled to the right of pre-emption unless :

> 1. he has declared his intention to assert the right immediately on receiving information of the sale. This formality is called 'talab-i-mowasibat (literally, demand of jumping, that is, immediate demand) : & unless
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> 2. he has with the least practicable delay affd. the intention, referring expressly to the fact that the 'talab-i-mowasibat' had already been made, & has made a formal demand :
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> (a) either in the presence of the buyer, or the seller, or on the premises which are the subject of sale, &
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> (b) in the presence at least of two witnesses. This formality is called 'talab-i-ishhad' (demand with invocation of witnesses). Vide Mulla on Mohammadan Law, p. 221, 1950 Edn.

4. That the first demand 'talab-i-mowasibat" was made by the pltf. is not in dispute. The question is whether the pltf. had made the second demand properly. The evidence disclosed that the pltf. made the demand not Inside the house which was the subject matter of the sale, but outside it about 3 or 4 ft. away from it. As the place from where the demand was made was not exactly pointed out in the trial Ct., the lower appellate Ct. asked the pltf. to mark on the plan place from where he made the demand. The pltf. pointed out the place as required. This was in front of the house sold & on a

passage leading from the same to the public road on the east. The defts. did not appear to have questioned the veracity of this marking out at the place from where the demand was made.

5. The trial Ct. held that this was not a proper demand inasmuch as it had not been made "on the premises" but had been made from a place outside the premises, though situated near the premises. In the view of the Munsif this was not a demand which would satisfy the requirements of the Mohammadan Law. He, therefore, dismissed the suit & did not give his findings on the other issues that arose in the case.

6. The pltf. appealed & the lower appellate Ct. held that the demand was made on a common courtyard & that this must be deemed to be a part of the property sold. In its view the pltf. had satisfied the requirements of the law & it, therefore, allowed the appeal & sent the case back to the Munsif for findings on the other issues that had been left undecided by him. Against this order the defts. have come up in appeal to this Ct. & the only point argued before me is that the place from where the demand was made could not be said to have been part of the property sold & that, therefore, the demand was not properly made.

7. It appears that the sale deed refers to a passage to the east appurtenant to the property sold. The demand in question, therefore, was made by the pltf. standing on the passage in front of the house sold because the passage was attached to the house & went with the house. A demand made by the pre-emptor standing on the passage of the house sold would be sufficient compliance with the requirements of the law. It would amount to a demand made on the premises. Even if the land upon which the pltf. stood while he made the demand was not sold, the demand would be a proper demand because it was made upon a passage leading to the house in dispute. The requirement that a demand must be made "on the premises which are the subject of sale" would normally be complied with by the pre-emptor standing on the premises & not by his standing outside the premises. But there may be cases in which a pre-emptor is unable to go inside the premises & in that case he will be perfectly justified in making the demand standing on the outskirts of the premises, from a place from where the premises are visible.

8. Where the sale is of land and the land is not bounded, there would obviously be no difficulty for the pre-emptor to go on the land itself. Where the premises sold, however, consist of a house, it may be difficult for the pre-emptor to go inside the house. The house may be locked or may be occupied & without the permission of the occupier it may not be feasible for the pre-emptor to get entrance into the house. If it were held that the 'talab-i-ishhad' could only be made by a person standing on the premises themselves, it would make the making of the demand impossible in many a case. The phrase "on the premises" must, therefore, receive a reasonable construction. When the property sold consists of a house, it is sufficient compliance with the requirements of the law that the pre-emptor stands outside the house but sufficiently near it, so that the house is visible & makes the demand from that place.

9. I am clearly of opinion that the decision of the lower Ct. was correct. I, therefore, dismiss this appeal with costs.

10. Leave to appeal under the Letters Patent is refused.