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Judgment Sheet

LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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CIVIL REVISION NO.398-D of 2016

MUHAMMAD ANAYAT

Versus

MUHAMMAD RAZZAQ

JUDGMENT

Date of hearing:	02.12.2025
Applicant by:	Raja Saghir-ur-Rehman, Advocate.
Respondent by:	Mr. Tassawar Shabbir Ch., Advocate.

MIRZA VIQAS RAUF, J. The instant revision application under Section 115 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as "**C.P.C.**") calls in question the judgment and decree dated 7th January, 2016, whereby learned Additional District Judge, Gujar Khan proceeded to allow the appeal preferred by the respondent and set aside the judgment and decree dated 22nd October, 2013 passed by learned Civil Judge, Gujar Khan.

2. Precisely the facts necessary for adjudication of instant application are that the applicant instituted a suit for possession through pre-emption averring therein that land which is duly described in headnote of the plaint was purchased by the respondent from Arshad Mehmood through mutation No.1727 dated 21st January, 2010 in lieu of sale consideration of Rs.5,25,000/- but in order to defeat the right of pre-emption of the applicant the same was mentioned as Rs.8,00,000/-. As per averments contained in the plaint, the applicant attained the knowledge of sale on 2nd May, 2010 at 5:00

pm when he was present in his house alongwith Muhammad Yaqoob and the information was disclosed by Ch. Muhammad Naseer. It is the case of the applicant that immediately on attaining the knowledge, he performed necessary Talbs in furtherance of his superior right of pre-emption.

3. Suit was resisted by the respondent being defendant, who submitted his written statement wherein he controverted the assertions contained in the plaint. From the divergent pleadings of the parties multiple issues were framed and evidence of both the sides was recorded. On completion of evidence suit was partly decreed by the trial court vide judgment dated 22nd October, 2013. The respondent, being dissatisfied from the said judgment and decree preferred an appeal before learned Additional District Judge, Gujar Khan, who allowed the same through judgment and decree dated 7th January, 2016.

4. Learned counsel for the applicant submitted that the applicant being pre-emptor performed the necessary Talbs and also led sufficient evidence to prove the same. He added that the trial court after properly analyzing the evidence decreed the suit but learned Additional District Judge in an illegal and unlawful manner set aside the well-reasoned judgment. Learned counsel contended that the impugned judgment is not tenable under the law. Learned counsel next submitted that the findings recorded by learned Additional District Judge are presumptive and the applicant has been non-suited on flimsy grounds. In order to supplement his contentions, learned counsel placed reliance on *LIAQAT ALI and others versus SAFDAR KHAN* **(2020 SCMR 863)** and *ZILLA MUHAMMAD and others versus QAMAR ALI KHAN and another* **(2016 SCMR 184)**.

5. Conversely, learned counsel for the respondent, while defending the impugned judgment submitted that learned Civil Judge, while decreeing the suit has erred in law. He added that learned Additional District Judge has rightly exercised its appellate

jurisdiction, while setting aside the judgment and decree of the learned Civil Judge. Learned counsel next contended that evidence of the applicant was self-discrepant and he was unable to prove the performance of necessary Talbs as required under the law. Learned counsel argued that no illegality was committed by learned Additional District Judge, while interfering with the judgment of the trial court.

6. Heard. Record perused.

7. Talb-i-Muwathibat is the first and foremost important step for exercise of right of pre-emption. Claim of pre-emption always set to motion on the basis of information received by the pre-emptor from the informer. As per claim of the applicant, he attained the knowledge about the sale transaction on 2nd May, 2010 at 5:00 pm from Muhammad Naseer (PW3). During cross-examination the informer disclosed that he became acquainted with the sale transaction from Patwari but the said Patwari was not produced as witness to prove the source of information. It would not be out of context to reiterate that onus to prove the basic source of information through which the pre-emptor attained the knowledge of sale always rests upon him. The applicant was though obliged to establish whole chain of information but it is clearly missing in the present case, which even otherwise is very essential element to prove Talb-i-Muwathibat. In this aspect case of *SUBHANUDDIN and others versus PIR GHULAM* **(PLD 2015 Supreme Court 69)** is relevant wherein the Supreme Court of Pakistan held as under :-

> **"**7. It was, the respondent's case that upon his return from Punjab he was informed about the sale by his brother (Taj Ali). Taj Ali, lives in the same house as the respondent, but did not know whether the respondent was in the village when the sale took place, nor when the respondent returned from the Punjab and that he was informed about the sale by his nephew Nazir. The initial burden of proof with regard to these facts (the conveying of the information of sale and price) lay upon the respondent, and to establish the same Nazir could have been called to give evidence, as the evidence in this regard (which was oral) was required to be direct and of the witness who saw, heard or perceived it himself (Article 71 of the Qanun-e-Shahadat Order, 1984), but Nazir was not produced as a witness. Consequently, an important and

> relevant fact was not proved by the respondent and on this ground alone the suit merited dismissal as *Talb-i-Muwathibat* is required to be made immediately upon learning of the sale.**"**

The Supreme Court of Pakistan, however, in the case of *ZILLA MUHAMMAD and others versus QAMAR ALI KHAN and another* **(2016 SCMR 184)** while taking into consideration the principles laid down in the case of ***Subhanuddin*** *supra* held that law laid down in the said case was not good law. Later on, in the case of *FARID ULLAH KHAN versus IRFAN ULLAH KHAN* **(2022 SCMR 1231)** the Supreme Court of Pakistan reiterated the above principles in the following manner :-

> **"*Source of information of sale - hearsay evidence***
>
> 8.2 Secondly, no person who could have testified that he had direct knowledge of the sale of the suit land, has been examined by the respondent. All the evidence produced on the source of information, as to the sale of the suit land, is hearsay. The brother of the respondent, Farman Ullah **(PW-4)**, who had informed him about the sale of the suit land, could not tell the names of the persons, who were talking about sale of the suit land in the Chok of the village, except the one who had died. Thus, no one was produced by the respondent to substantiate the version of Farman Ullah **(PW-4)** of how he had come to know of the sale.
>
> 8.3 In *Subhanuddin v. Pir Ghulam,* a case of similar facts, where the person who had conveyed the information of the sale to the brother of the pre-emptor, who in turn passed it onto the pre-emptor, as is in the present case, was not produced as a witness. Based on the said facts, this Court held that the elements of Talb-i-Muwathibat had not been proved, with the following observation:
>
> > "7. It was the respondent's case that upon his return from Punjab he was informed about the sale by his brother (Taj Ali). Taj Ali, lives in the same house as the respondent, but did not know whether the respondent was in the village when the sale took place, nor when the respondent returned from the Punjab and that he was informed about the sale by his nephew Nazir. The initial burden of proof with regard to these facts (the conveying of the information of sale and price) lay upon the respondent, and to establish the same Nazir could have been called to give evidence, as the evidence in this regard (which was oral) was required to be direct and of the witness who saw, heard or perceived it himself (Article 71 of the Qanun-e-Shahadat Order, 1984), but Nazir was not produced as a witness. Consequently, an important and relevant fact was not proved by the respondent and on this ground alone the suit merited dismissal as *Talb-i-Muwathibat* is required to be made immediately upon learning of the sale".
> >
> > (Emphasis added)
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> In essence, this Court in the above case came to the

> conclusion in view of the provisions of Article 71 of the Qanun-e-Shahadat 1984, which mandates that oral evidence must be direct, that is to say, if it refers to a fact, which could be seen, it must be the evidence of a witness who says he saw it; if it refers to a fact, which could be heard, it must be the evidence of a witness who says he heard it; if it refers to a fact, which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; and if it refers to an opinion or to the grounds on which that opinion is held, it must be, subject to the proviso, the evidence of the person who holds that opinion on those grounds.
>
> 8.4 The fact of a sale of land is a fact that can be seen, such as, by observing or taking part in the sale-transaction or by seeing the sale deed or sale mutation. The person who conveys the information of the fact of sale must be a person who has seen the fact of sale and it is he who can then pass on the said fact to another person(s). Thus, the chain of the source of information, as to the fact of sale, from the very first person, who has the direct knowledge thereof and passes on the same to the person who lastly informs the pre-emptor, must be complete. Only the complete chain of the source of information of the sale can establish the essential elements of *Talb-i-Muwathibat*, which are: (i) the time, date and place when the pre-emptor obtained the first information of the sale, and; (ii) the immediate declaration of his intention by the pre-emptor to exercise his right of pre-emption, then and there, on obtaining such information. In the present case, such chain of the source of passing on the information, as to the fact of sale of the suit land has not been proved, and the entire case as to making of *Talb-i-Muwathibat* is built on the hearsay evidence of the respondent's brother, Farman Ullah (PW-4). This omission raises doubts on the veracity and truthfulness of the witnesses produced by pre-emptor.**"**

8. Latest in the series is the case of *MUHAMMAD RIAZ versus MUHAMMAD AKRAM and others* **(2024 SCMR 692)** wherein Full Bench of the Supreme Court of Pakistan observed as under :-

> **"**10. On the other hand, Muhammad Basharat Ali, from whom PW-2 (the informer) received information regarding the sale of the suit land, appeared as DW-3 and contradicted the account given by PW-2 (the informer). He asserted that he did not meet the informer in Pasrur on 05.02.2004, nor did he inform him about the sale of the suit land. We believe that the fact of the sale of the suit land is a fact that can be seen, such as, by observing or taking part in the sale transaction or by seeing the sale deed or sale mutation. The person who conveys the information of the fact of sale must be a person who has observed the fact of sale and it is he who can then pass on the said fact to another person(s). Thus, the chain of information regarding the sale, starting from the very first person with direct knowledge and passing it on to the person who lastly informs the pre-emptor, must be complete. Only the complete chain of the source of information of the sale can establish the essential elements of

> *Talb-i-Muwathibat*, which are: (i) the time, date and place when the pre-emptor obtained the first information of the sale, and; (ii) the immediate declaration of his intention by the pre-emptor to exercise his right of pre-emption, then and there, on obtaining such information. Reference in this regard may be made to the case of *Farid Ullah Khan v. Irfan Ullah Khan* (2022 SCMR 1231). In the present case, such chain of the source of passing on the information, as to the fact of the sale of the suit land has not been proved as Muhammad Basharat Ali has categorically refused to meet and share the information about the sale of the suit land with Ghulam Mustafa (the informer). The entire case of the respondents regarding the issuance of *Talb-i-Muwathibat* built on the hearsay evidence of Ghulam Mustafa (the informer) falls to the ground due to an incomplete chain of information about the sale of the suit land. Therefore, the learned trial Court correctly observed that when the source of information provided by the informer is not proved, the transmission of this information to the respondents also becomes highly doubtful. However, both the learned first appellate court and the learned High Court failed to take note of this important fact of the matter and set-aside the judgment and decree of the learned trial court. Therefore, we feel no hesitation to hold that the respondents failed to prove the validity of *Talb-i-Muwathibat* made by them for exercising their right of pre-emption over the suit land.**"**

After having an overview of the principles laid down hereinabove Law to this effect is well settled that when there are conflicting views with regard to question of law of Bench comprising of equal number of Judges, the view of latter will prevail. Reliance to this effect can be placed on *Engineer JAMEEL AHMAD MALIK versus SHAUKAT AZIZ and 6 others* **(2007 CLC 1192),** *Mst. HIRA REHMAN versus CHANCELLOR, GOVERNMENT COLLEGE UNIVERSITY, LAHORE and 2 others* **(2011 CLC 377)** and *MUHAMMAD HANIF and 2 others versus MUHAMMAD SADIQ and 14 others* **(2019 MLD 846).**

9. It would not be out of context to mention here that the suit land was purchased by the respondent by way of mutation No.1727 dated 21st January, 2010 (Exhibit-D2) with sale consideration of Rs.8,00,000/-. The applicant instituted the suit in order to pre-empt the suit land. As per contents of the plaint, the applicant attained the knowledge about the sale transaction in his house, without specifying the exact portion of house. Needless to observe that house is vast place and non-mentioning of exact portion by itself is fatal to right of pre-emption. Guidance in this respect can be sought from *ALLAH DITTA through L.Rs. and others versus MUHAMMAD ANAR* **(2013 SCMR 866)**.

Reference in this respect can also be made to the cases of *NOOR MUHAMMAD SULTAN versus Hafiz ALLAH BAKHSH* **(2014 YLR 1381)** and *MUHAMMAD AFZAL versus ALI MUHAMMAD* **(2014 YLR 87)**.

10. Needless to observe that the applicant in order to overcome the deficiency in his plaint though while entering into the witness box stated that at the time of receipt of information and performance of Talb-i-Muwathibat he was present in the courtyard of his house but this part of statement is clearly beyond the pleadings, which is of no avail to him. Reference to this effect can be made to *Messrs PAK SUZUKI MOTORS COMPANY LIMITED through Manager versus FAISAL JAMEEL BUTT and another* **(PLD 2023 Supreme Court 482)** and *Sardar MUHAMMAD NASEEM KHAN versus RETURNING OFFICER, PP-12 and others* **(2015 SCMR 1698).**

11. Adverting to the performance of Talb-i-Ishhad, it is observed that being pre-emptor it was incumbent upon the applicant in terms of Section 13(3) of the Punjab Pre-emption Act, 1991 that soon after performance of Talb-i-Muwathibat as soon as possible but not later than two weeks from the date of knowledge to perform Talb-i-Ishhad, by sending a notice in writing attested by two truthful witnesses, under registered cover acknowledgment due, to the vendee, confirming his intention to exercise the right of pre-emption. The respondent in his written statement denied the receipt of notice of Talb-i-Ishhad. The applicant in such circumstances was thus obliged to prove the service of notice by producing cogent and convincing evidence. The applicant though produced Muhammad Akbar Postman as PW1 but during cross-examination he admitted that he has not delivered the registered mail containing notice of Talb-i-Ishhad to the respondent and it was delivered by the postman posted prior to him but admittedly said postman was not produced by the applicant. It is now well settled principle of law that it is the bounden duty of the pre-emptor to prove the service of notice of Talb-i-Ishhad by producing the postman as held in *ALLAH DITTA through L.Rs. and others versus*

MUHAMMAD ANAR **(2013 SCMR 866)**. For the sake of guidance, the relevant extract from the same is reproduced below:-

> **"**2…….As regards, the issuance of notice of Talb-i-Ishhad is concerned, admittedly the postman has not been examined by the respondent-pre-emptor in terms of the law laid down in Muhammad Bashir and others v. Abbas Ali Shah (2007 SCMR 1105). The argument of the respondent's side that the attorney of the petitioner while appearing as D.W.1 has admitted the receipt of the notice and, therefore, the respondent-plaintiff was not obliged to prove the same, suffice it to say that the affirmative onus to prove Talb-i-Ishhad was on the plaintiff and as the petitioner had denied the factum in the written statement, therefore, notwithstanding any subsequent admission of the defendant's attorney, it was obligatory on the plaintiff-pre-emptor to have proved the sending of the notice by leading affirmative evidence, which undoubtedly required the production and examination of the postman. This vital aspect has also eluded the attention of the two courts below.**"**

Reference in this regard can be made to *BASHARAT ALI KHAN versus MUHAMMAD AKBAR* **(2017 SCMR 309).**

12. This application is though arising out of divergent views of the courts below as the conclusion are contrary to each other but this Court, while exercising revisional jurisdiction is supposed to make comparative analysis of both the judgments in order to determine their validity on the touchstones of Section 115 of the **C.P.C.** It is cardinal principle of law that in the matter of giving preference to the judgments of lower courts, while analyzing the same in exercise of revisional jurisdiction, the preference and regard is always given to the findings of the appellate court, unless those are suffering with any legal infirmity or material irregularity. Reference in this respect, if needed can safely be made to the case of *MUHAMMAD NAWAZ through L.Rs versus Haji MUHAMMAD BARAN KHAN through L.Rs. and others* **(2013 SCMR 1300)**. Relevant extract from the same is reproduced herein below:-

> **"**12……We have also taken into consideration the judgment of the Appellate Court which is based on proper appraisal of evidence on record and the findings of the Appellate Court are to be preferred as it has been held by this Court in the case of *Madan Gopal and others vs Maran Bepari and others* (PLD 1969 SC 617) that *"If the findings of fact reached by the first appellate Court is at variance with that of the trial Court, the*

> *former will ordinarily prevail, although it would not possess the same value or sanctity as a concurrent finding."* This view also finds support from the case of *Muhammad Shafi and others vs. Sultan Mahmood and others* (2010 SCMR 827)……..**"**

The above view also finds support from the cases of *AMJAD IKRAM versus Mst. ASIYA KAUSAR and 2 others* **(2015 SCMR 1)** and *MUHAMMAD HAFEEZ and another versus DISTRICT JUDGE, KARACHI EAST and another* **(2008 SCMR 398)**.

13. After having a comparative analysis of both the judgments, I am of the candid and firm view that the learned Additional District Judge, Gujar Khan has rightly interfered with the judgment passed by learned Civil Judge, Gujar Khan. The applicant has failed to point out any illegality or material irregularity in the impugned judgment, warranting interference by this Court in exercise of revisional jurisdiction so as to set at naught the impugned judgment. The instant application thus fails and is **dismissed** with no order as to costs**.**

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE

Shahbaz Ali*