

FORM No. HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT

MULTAN BENCH MULTAN

JUDICIAL DEPARTMENT

C.R. No.744-D of 2013

Ghulam Rasool Versus Ghulam Hussain and others

Sr. No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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23.10.2025 Muhammad Umar, Advocate for petitioner.
Nemo for the respondents

Judgment and decree dated 30.1.2013 and 10.7.2013 of the courts below whereby suit for preemption filed by the petitioner was dismissed and appeal thereagainst also met the same fate, are under challenge in this revision petition.

2. Petitioner/plaintiff filed a suit for preemption against respondents No. 1 to 6 to preempt the sale of land made in their favour vide sale deed dated 25.9.2006, claiming that the petitioner came to know of the sale on 09.11.2006 when he was sitting at the shop of Hafiz Hamid at Taunsa, where Ghulam Shabbir son of Muhammad Usman came and informed about the sale of land in favour of respondent Nos. 1 to 6 upon which the petitioner spontaneously announced his right of preemption and intention to enforce the same through the court of law, which was followed by a notice of Talb-e-Ishhad dated 13.11.2006. It was asserted that petitioner being co-sharer as Shafi Sharik had superior right of preemption and that the requisite Talbs having been made, the suit be decreed. Respondents contested the suit by controverting the assertions in their written statement and asserted that the petitioner had the knowledge of sale from the day

one and entire story of getting information of sale from Ghulam Shabbir was false and concocted one and that requisite Talbs were not made. Issues were framed, evidence recorded whereafter the learned Civil Judge dismissed the suit vide judgment and decree dated 30.1.2013. Appeal of petitioner was also dismissed by learned Addl. District Judge, Taunsa Sharif vide judgment dated 10.7.2013.

3. Learned counsel submits that findings of the courts below are legally untenable, the evidence was misread, the findings having been recorded without application of judicial mind and that the courts below have erred in law in deciding the question of Talbs by misapplication of law.

4. Points raised have been duly considered in the light of evidence on record and it is observed that for the reasons hereafter the contentions are without substance and that no valid ground has been made out for interference in concurrent findings of facts of the courts below.

5. Perusal of the documents available with this petition reveals that the respondents No.1 to 6 purchased the suit property for Rs. 12,00,000/- vide sale deed bearing document No. 51 on 25.9.2006 from Muhammad Iqbal Saif son of Noor Khan and that the petitioner filed a suit to preempt the sale on the plea that he had acquired knowledge of sale through Ghulam Shabbir on 09.11.2006 at 12.00 noon when he was sitting at the shop of Hafiz Hamid at Taunsa where the former came and disclosed about the sale of land whereupon petitioner made requisite Talb-e-Muwathibat by asserting his right of preemption and intention to enforce the same.

Thereafter on 13.11.2006 notice of Talb-e-Ishhad was sent to the respondents and that the petitioner having made requisite Talbs and being co-sharer in the Khata he had superior right to preempt the sale. Respondents controverted the facts alleged by the petitioner and maintained that the suit was mala fide and that the petitioner had full knowledge of sale from the day one but he failed to make requisite Talbs. Needless to mention that the petitioner had also challenged the sale price of the land as mentioned in the sale deed and alleged that land was sold for Rs. 25,000/- . During the pendency of suit respondent No.7 was impleaded as defendant on account of parties alienation of land in his favour. Petitioner appeared in evidence as PW1 and produced Ghulam Farid as PW2, Ghulam Shabbir as PW3, Rab Nawaz as PW4, Faiz Muhammad, Postmaster and Registry Clerk as PW5 and Naseer Ahmad, Postman as PW6. It was the case of the petitioner that he acquired knowledge of the sale on 09.11.2006 through Ghulam Shabbir at the shop of Hafiz Hamid at Taunsa. He deposed the same in his statement as PW1. The alleged informer Ghulam Shabbir appeared as PW 3 and stated that he on 09.11.2006 at 12.00 pm came to the shop of Hafiz Hamid at Taunsa where Ghulam Rasool was sitting and he informed about the sale of property on which he alleged announced his intention of preemption. In the same breath the witness stated that he was told about the sale by his maternal uncle. It is manifest from the statement of PW3 that he was making hearsay statement. Witness did not claim to be present at the time of sale or at the time of settlement

of bargain or at the time of execution and registration of sale deed nor he was a witness in the sale deed. So much so he did not disclose the time, date and place of getting information of sale.

6. In Farid Ullah Khan v. Irfan Ullah Khan (2022 SCMR 1231) while considering the question of proof of Talb-e-Muwathibat and the requirement of law to produce the informer it was observed by the Supreme Court Of Pakistan to the effect that as per Article 71 of Qanun-e-Shahadat Order 1984, oral evidence of fact must be direct and that fact of sale of land being fact of such specie (that can be seen by observing or taking part in the sale-transaction or by seeing the sale deed or sale mutation) 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 to complete the chain of information and only with complete chain of source of information of the sale could essential elements of Talb-e-Muwathabit be established. Reference can also be made to the case of Muhammad Riaz v. Muhammad Akram and others (2024 SCMR 692) in this regard.

7. The maternal uncle as such was the material witness who was not produced and it is claimed by PW3 that he had died. Neither the date, time and month of his death nor details of his particulars were disclosed. Law required that if a witness is dead, the person who is banking upon his statement has to prove the factum of death by producing death certificate, children of the deceased, etc. No endeavor was made towards this end, therefore, the plea of death could not be accepted in view of the rule in

Sheikh Muhammad Munir v. Mst. Feezan (PLD 2021 SC 538) where it was observed to the effect that as per Article 80 of the Qanun-e-Shahadat Order, 1984 simply alleging that a witness cannot be found did not discharge onus to locate and produce the witness and in such case evidence either to establish death or disappearance of such witness had to be adduced.

8. It is also noteworthy that no direct evidence of any witness from the shop or in the area of location of shop was produced in evidence to prove the receipt of information at the alleged time and date and only reliance was placed on the hearsay statement of PW3 which was inadmissible in law. Even no explanation as to why the shopkeeper or any other connected person could not be produced that stimulated doubt qua veracity of PW3. Being so, same could not be relied upon. The courts below, therefore, rightly observed that petitioner has failed to prove making of requisite Talb-e-Muwathibat. The findings of courts below do not call for any interference. As upshot of the above, this revision petition fails and is dismissed. No Order as to costs.

(RASAAL HASAN SYED)
JUDGE

Approved for reporting

Judge