

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa

Mr. Justice Amin-ud-Din Khan

Civil Appeal No. 1698 of 2014

*(On appeal from the judgment dated 14.10.2014
of the Lahore High Court, Rawalpindi Bench
passed in C.R No. 134/2008)*

Manzoor Hussain (deceased) through L.Rs.

... Appellants

Versus

Misri Khan.

... Respondent

For the Appellants:

Mr. Ghulam Asghar Khokhar, ASC.
Mr. Ahmed Nawaz Ch., AOR.

For the Respondent:

Mr. Muhammad Amir Butt, ASC.
Syed Rifaqat Hussain Shah, AOR.

Date of Hearing:

24.09.2020.

JUDGMENT

Qazi Faez Isa, J. A pre-emption suit was filed by the predecessor-in-interest of the appellants, namely Manzoor Hussain, to seek pre-emption of two *kanals* and nineteen *marlas* of land sold *vide* sale mutation No. 2830 dated 5 May 2001. The suit was dismissed by the learned Judge of the Trial Court *vide* judgment dated 27 November 2006 on the ground that there were material contradictions in the testimony of the plaintiff's witnesses. However, the appeal which was filed was allowed by the learned District Judge, Chakwal *vide* judgment dated 25 February 2008 and the suit was decreed. Thereafter, the respondent (purchaser) invoked the revisional jurisdiction of the High Court and the learned Judge of the Rawalpindi Bench of the Lahore High Court *vide* impugned judgment dated 14 October 2014 was pleased to allow it on the grounds that the pre-emptor failed to establish delivery or receipt of the *Talb-i-Ishhad* notice and the postman who took the said notice for delivery was not produced, consequently, the pre-emption suit filed by Manzoor Hussain was again dismissed.

2. The learned counsel for the appellants states that there was no need to produce the postman when the acknowledgement receipt was received back and tendered into evidence as exhibit P4. We enquired from the learned counsel for the appellants whether the respondent was confronted with

exhibit P4 and the learned counsel stated that this was not done but added that it was for the respondent to deny its receipt. Therefore, we asked him whether the respondent had admitted receipt of the *Talb-i-Ishhad* notice in his written statement or in his testimony, to which the learned counsel conceded that he did not do so, however, added that the copies of exhibit P4, *aks shajarah kishtwar* (exhibit P2), registered post receipt (exhibit P3), mutation (exhibit P5) and *jamabandi* for the year 2000-2001 (exhibit P6) were tendered in evidence through the pre-emptor's counsel without objection, therefore, the respondent cannot deny receipt of the said notice.

3. This appeal was filed as of right under Article 185(2) of the Constitution of the Islamic Republic of Pakistan because the High Court had set aside the Appellate Court's judgment and restored that of the Trial Court, which had dismissed the pre-emption suit. Since the respondent denied the receipt of the *Talb-i-Ishhad* notice it was necessary for the plaintiff to have established its delivery to the respondent or receipt of it by the respondent. The respondent was not confronted with the acknowledgement receipt (exhibit P4) to establish that the respondent had received the said notice. Even if it is accepted that the pre-emptor's counsel had received back the acknowledgement receipt (exhibit P4), it would still not establish that the addressee (the respondent) had received it. The postman was also not produced to establish the delivery of *Talb-i-Ishhad* notice; this Court has repeatedly held the necessity to do this to establish delivery of such notice, including in *Bashir Ahmed v Ghulam Rasool* (2011 SCMR 762), *Allah Ditta v Muhammad Anar* (2013 SCMR 866), *Basharat Ali Khan v Muhammad Akbar* (2017 SCMR 309) and *Sultan v Noor Asghar* (2020 SCMR 682). Therefore, there was nothing on record to establish that *Talb-i-Ishhad* notice was delivered to or received by the respondent, who had denied receiving it, and having failed to establish the delivery/receipt of the said notice the pre-emption suit could not succeed.

4. Before parting with this case we would like to comment on a related matter. Copies of the acknowledgement receipt (exhibit P4), *aks shajarah kishtwar* (exhibit P2), registered post receipt (exhibit P3), mutation (exhibit P5) and *jamabandi* for the year 2000-2001 (exhibit P6) were produced and exhibited by the pre-emptor's counsel, but without him testifying. We have noted that copies of documents, having no concern with counsel, are often

tendered in evidence through a simple statement of counsel but without administering an oath to him and without him testifying, especially in the province of Punjab. Ordinarily, documents are produced through a witness who testifies on oath and who may be cross-examined by the other side. However, there are exceptions with regard to facts which need not be proved; these are those *which the Court will take judicial notice of* under Article 111 of the Qanun-e-Shahdat Order, 1984 and are mentioned in Article 112, and facts which are *admitted* (Article 113, Qanun-e-Shahdat Order, 1984).

5. The acknowledgement receipt was stated to have been signed when the envelope said to contain the *Talb-i-Ishhad* notice was purportedly received by the respondent. However, the respondent had not admitted receipt of the said notice, therefore, the acknowledgement receipt (exhibit P4) could not be stated to be an admitted document and did not constitute an admitted fact. Therefore, delivery to and/or receipt by the respondent of the notice had to be established. We also note that in this case the said counsel had furnished *copies* of all five documents (exhibits P2 to P6), which were produced by him. The Qanun-e-Shahadat Order, 1984 explicitly sets out the documents which must be produced in original, which in the present case would be the registered post receipt (exhibit P3) and acknowledgment receipt (exhibit P4), and photo copies, that is secondary evidence, could only be produced as permitted; and as regards extracts of official records, that is, the *aks shajarah kishtwar* (exhibit P2), mutation (exhibit P5) and *jamabandi* (exhibit P6), certified copies thereof had to be tendered in evidence. In not observing the rules of evidence unnecessary complications for litigants are created, which may result in avoidable adverse orders or in the case being remanded on such score, which would be avoided by abiding by the Qanun-e-Shahadat Order, 1984.

6. For the reasons mentioned above, this appeal is dismissed, but with no order as to costs.

Judge

Judge

Bench-IV, Islamabad:
24.09.2020
(M. Tauseef)

Approved for Reporting