# Pre-emption in Property - Muwatta Malik - Sunnah.com - Sayings and Teachings of Prophet Muhammad (صلى الله عليه و سلم)

Yahya related to me from Malik from Ibn Shihab from Said ibn al- Musayyab and from Abu Salama ibn Abd ar-Rahman ibn Awf that the Messenger of Allah, may Allah bless him and grant him peace, decreed for partners the right of preemption in property which had not been divided up. When boundaries had been fixed between them, then there was no right of pre-emption.

حَدَّثَنَا يَحْيَى، عَنْ مَالِكٍ، عَنِ ابْنِ شِهَابٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَعَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم قَضَى بِالشُّفْعَةِ فِيمَا لَمْ يُقْسَمْ بَيْنَ الشُّرَكَاءِ فَإِذَا وَقَعَتِ الْحُدُودُ بَيْنَهُمْ فَلاَ شُفْعَةَ فِيهِ ‏.‏

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Malik said, "That is the sunna about which there is no dispute among us."

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Malik said that he heard that Said ibn al-Musayyab, when asked  
about pre-emption and whether there was a sunna in it, said, "Yes.  
Pre-emption is in houses and land, and it is only between partners."

قَالَ مَالِكٌ إِنَّهُ بَلَغَهُ أَنَّ سَعِيدَ بْنَ الْمُسَيَّبِ سُئِلَ عَنِ الشُّفْعَةِ هَلْ فِيهَا مِنْ سُنَّةٍ فَقَالَ نَعَمْ الشُّفْعَةُ فِي الدُّورِ وَالأَرَضِينَ وَلاَ تَكُونُ إِلاَّ بَيْنَ الشُّرَكَاءِ ‏.‏

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Malik related to me that he heard the like of that from Sulayman  
ibn Yasar.  
  
  
Malik spoke about a man who bought out one of the  
partners in a shared property, by paying the man with an animal, a  
slave, a slave-girl, or the equivalent of that in goods. Then another  
partner decided to exercise his right of pre-emption after that, and  
he found that the slave or slave-girl had died, and no one knew what  
her value had been. The buyer claimed, "The value of the slave or  
slave-girl was 100 dinars." The partner with the right of pre-emption  
claimed, "The value was 50 dinars."  
  
  
Malik said, "The buyer  
takes an oath that the value of what he payed was 100 dinars. Then if  
the one with the right of pre-emption wishes, he can compensate him,  
or else he can leave it, unless he can bring a clear proof that the  
slave or slave-girl's value is less than what the buyer said. If  
someone gives away his portion of a shared house or land and the  
recipient repays him for it by cash or goods, the partners can take it  
by pre-emption if they wish and pay off the recipient the value of  
what he gave in dinars or dirhams. If someone makes a gift of his  
portion of a shared house or land, and does not take any remuneration  
and does not seek to, and a partner wants to take it for its value, he  
cannot do so as long as the original partner has not been given  
recompense for it. If there is any recompense, the one with the right  
of pre-emption can have it for the price of the recompense."  
  
  
Malik spoke about a man who bought into a piece of shared land for a  
price on credit, and one of the partners wanted to possess it by right  
of pre-emption . Malik said, "If it seems likely that the partner can  
meet the terms, he has right of pre-emption for the same credit terms.  
If it is feared that he will not be able to meet the terms, but he can  
bring a wealthy and reliable guarantor of equal standing to the one  
who bought into the land, he can also take possession."  
  
  
Malik  
said, "A person's absence does not sever his right of pre-emption.  
Even if he is a way for a long time, there is no time limit after  
which the right of preemption is cut off."  
  
  
Malik said that if  
a man left land to a number of his children, then one of them who had  
a child died and the child of the deceased sold his right in that  
land, the brother of the seller was more entitled to pre-empt him than  
his paternal uncles, the partners of his father.  
  
  
Malik said,  
"This is what is done in our community."  
  
  
Malik said, "Pre-  
emption is shared between partners according to their existing shares.  
Each of them takes according to his portion. If it is small, he has  
little. If it is great, it is according to that. That is if they are  
tenacious and contend with each other about it."  
  
  
Malik said,  
"As for a man who buys out the share of one of his partners, and one  
of the other partners says, 'I will take a portion according to my  
share,' and the first partner says, 'If you wish to take all the  
preemption, I will give it up to you. If you wish to leave it, then  
leave it.' If the first partner gives him the choice and hands it over  
to him, the second partner can only take all the pre-emption or give  
it back. If he takes it, he is entitled to it. If not, he has  
nothing."  
  
  
Malik spoke about a man who bought land, and  
developed it by planting trees or digging a well etc., and then  
someone came, and seeing that he had a right in the land, wanted to  
take possession of it by pre-emption. Malik said "He has no right of  
preemption unless he compensates the other for his expenditure. If he  
gives him the price of what he has developed, he is entitled to pre-  
emption . If not, he has no right in it."  
  
  
Malik said that  
someone who sold off his portion of a shared house or land and then,  
on learning that some one with a right of pre-emption was to take  
possession by that right, asked the buyer to revoke the sale, and he  
did so, did not have the right to do that. The pre-emptor has more  
right to the property for the price for which he sold it.  
  
  
In  
the case of some one who bought along with a section of a shared house  
or land, an animal and goods (that were not shared), so that when any  
one demanded his right of pre-emption in the house or land he said,  
"Take what I have bought altogether, for I bought it altogether,"  
Malik said, "The pre-emptor need only take possession of the house or  
land. Each thing the man bought is assessed according to its share of  
the lump sum the man paid. Then the pre-emptor takes possession of his  
right for a price which is appropriate on that basis. He does not take  
any animals or goods unless he wants to do that."  
  
  
Malik said,  
"If someone sells a section of shared land, and one of those who have  
the right of preemption surrenders it to the buyer and another refuses  
to do other than take his pre-emption, the one who refuses to  
surrender has to take all the preemption, and he cannot take according  
to his right and leave what remains.  
  
  
In the case where one of  
a number of partners in one house sold his share when all his partners  
were away except for one man, the one present was given the choice of  
either taking the pre-emption or leaving it, and he said, 'I will take  
my portion and leave the portions of my partners until they are  
present. If they take it, that is that. If they leave it, I will take  
all the pre-emption,' Malik said, 'He can only take it all or leave  
it. If his partners come, they can take from him or leave it as they  
wish. If this is offered to him and he does not accept, I think that  
he has no pre-emption.' "

وَحَدَّثَنِي مَالِكٌ، أَنَّهُ بَلَغَهُ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، مِثْلُ ذَلِكَ ‏.‏ قَالَ مَالِكٌ فِي رَجُلٍ اشْتَرَى شِقْصًا مَعَ قَوْمٍ فِي أَرْضٍ بِحَيَوَانٍ عَبْدٍ أَوْ وَلِيدَةٍ أَوْ مَا أَشْبَهَ ذَلِكَ مِنَ الْعُرُوضِ فَجَاءَ الشَّرِيكُ يَأْخُذُ بِشُفْعَتِهِ بَعْدَ ذَلِكَ فَوَجَدَ الْعَبْدَ أَوِ الْوَلِيدَةَ قَدْ هَلَكَا وَلَمْ يَعْلَمْ أَحَدٌ قَدْرَ قِيمَتِهِمَا فَيَقُولُ الْمُشْتَرِي قِيمَةُ الْعَبْدِ أَوِ الْوَلِيدَةِ مِائَةُ دِينَارٍ وَيَقُولُ صَاحِبُ الشُّفْعَةِ الشَّرِيكُ بَلْ قِيمَتُهُمَا خَمْسُونَ دِينَارًا ‏.‏ قَالَ مَالِكٌ يَحْلِفُ الْمُشْتَرِي أَنَّ قِيمَةَ مَا اشْتَرَى بِهِ مِائَةُ دِينَارٍ ثُمَّ إِنْ شَاءَ أَنْ يَأْخُذَ صَاحِبُ الشُّفْعَةِ أَخَذَ أَوْ يَتْرُكَ إِلاَّ أَنْ يَأْتِيَ الشَّفِيعُ بِبَيِّنَةٍ أَنَّ قِيمَةَ الْعَبْدِ أَوِ الْوَلِيدَةِ دُونَ مَا قَالَ الْمُشْتَرِي ‏.‏ قَالَ مَالِكٌ مَنْ وَهَبَ شِقْصًا فِي دَارٍ أَوْ أَرْضٍ مُشْتَرَكَةٍ فَأَثَابَهُ الْمَوْهُوبُ لَهُ بِهَا نَقْدًا أَوْ عَرْضًا فَإِنَّ الشُّرَكَاءَ يَأْخُذُونَهَا بِالشُّفْعَةِ إِنْ شَاءُوا وَيَدْفَعُونَ إِلَى الْمَوْهُوبِ لَهُ قِيمَةَ مَثُوبَتِهِ دَنَانِيرَ أَوْ دَرَاهِمَ ‏.‏ قَالَ مَالِكٌ مَنْ وَهَبَ هِبَةً فِي دَارٍ أَوْ أَرْضٍ مُشْتَرَكَةٍ فَلَمْ يُثَبْ مِنْهَا وَلَمْ يَطْلُبْهَا فَأَرَادَ شَرِيكُهُ أَنْ يَأْخُذَهَا بِقِيمَتِهَا فَلَيْسَ ذَلِكَ لَهُ مَا لَمْ يُثَبْ عَلَيْهَا فَإِنْ أُثِيبَ فَهُوَ لِلشَّفِيعِ بِقِيمَةِ الثَّوَابِ ‏.‏ قَالَ مَالِكٌ فِي رَجُلٍ اشْتَرَى شِقْصًا فِي أَرْضٍ مُشْتَرَكَةٍ بِثَمَنٍ إِلَى أَجَلٍ فَأَرَادَ الشَّرِيكُ أَنْ يَأْخُذَهَا بِالشُّفْعَةِ ‏.‏ قَالَ مَالِكٌ إِنْ كَانَ مَلِيًّا فَلَهُ الشُّفْعَةُ بِذَلِكَ الثَّمَنِ إِلَى ذَلِكَ الأَجَلِ وَإِنْ كَانَ مَخُوفًا أَنْ لاَ يُؤَدِّيَ الثَّمَنَ إِلَى ذَلِكَ الأَجَلِ فَإِذَا جَاءَهُمْ بِحَمِيلٍ مَلِيٍّ ثِقَةٍ مِثْلِ الَّذِي اشْتَرَى مِنْهُ الشِّقْصَ فِي الأَرْضِ الْمُشْتَرَكَةِ فَذَلِكَ لَهُ ‏.‏ قَالَ مَالِكٌ لاَ تَقْطَعُ شُفْعَةَ الْغَائِبِ غَيْبَتُهُ وَإِنْ طَالَتْ غَيْبَتُهُ وَلَيْسَ لِذَلِكَ عِنْدَنَا حَدٌّ تُقْطَعُ إِلَيْهِ الشُّفْعَةُ ‏.‏ قَالَ مَالِكٌ فِي الرَّجُلِ يُوَرِّثُ الأَرْضَ نَفَرًا مِنْ وَلَدِهِ ثُمَّ يُولَدُ لأَحَدِ النَّفَرِ ثُمَّ يَهْلِكُ الأَبُ فَيَبِيعُ أَحَدُ وَلَدِ الْمَيِّتِ حَقَّهُ فِي تِلْكَ الأَرْضِ فَإِنَّ أَخَا الْبَائِعِ أَحَقُّ بِشُفْعَتِهِ مِنْ عُمُومَتِهِ شُرَكَاءِ أَبِيهِ ‏.‏ قَالَ مَالِكٌ وَهَذَا الأَمْرُ عِنْدَنَا ‏.‏ قَالَ مَالِكٌ الشُّفْعَةُ بَيْنَ الشُّرَكَاءِ عَلَى قَدْرِ حِصَصِهِمْ يَأْخُذُ كُلُّ إِنْسَانٍ مِنْهُمْ بِقَدْرِ نَصِيبِهِ إِنْ كَانَ قَلِيلاً فَقَلِيلاً وَإِنْ كَانَ كَثِيرًا فَبِقَدْرِهِ وَذَلِكَ إِنْ تَشَاحُّوا فِيهَا ‏.‏ قَالَ مَالِكٌ فَأَمَّا أَنْ يَشْتَرِيَ رَجُلٌ مِنْ رَجُلٍ مِنْ شُرَكَائِهِ حَقَّهُ فَيَقُولُ أَحَدُ الشُّرَكَاءِ أَنَا آخُذُ مِنَ الشُّفْعَةِ بِقَدْرِ حِصَّتِي ‏.‏ وَيَقُولُ الْمُشْتَرِي إِنْ شِئْتَ أَنْ تَأْخُذَ الشُّفْعَةَ كُلَّهَا أَسْلَمْتُهَا إِلَيْكَ وَإِنْ شِئْتَ أَنْ تَدَعَ فَدَعْ فَإِنَّ الْمُشْتَرِيَ إِذَا خَيَّرَهُ فِي هَذَا وَأَسْلَمَهُ إِلَيْهِ فَلَيْسَ لِلشَّفِيعِ إِلاَّ أَنْ يَأْخُذَ الشُّفْعَةَ كُلَّهَا أَوْ يُسْلِمَهَا إِلَيْهِ فَإِنْ أَخَذَهَا فَهُوَ أَحَقُّ بِهَا وَإِلاَّ فَلاَ شَىْءَ لَهُ ‏.‏ قَالَ مَالِكٌ فِي الرَّجُلِ يَشْتَرِي الأَرْضَ فَيَعْمُرُهَا بِالأَصْلِ يَضَعُهُ فِيهَا أَوِ الْبِئْرِ يَحْفِرُهَا ثُمَّ يَأْتِي رَجُلٌ فَيُدْرِكُ فِيهَا حَقًّا فَيُرِيدُ أَنْ يَأْخُذَهَا بِالشُّفْعَةِ إِنَّهُ لاَ شُفْعَةَ لَهُ فِيهَا إِلاَّ أَنْ يُعْطِيَهُ قِيمَةَ مَا عَمَرَ فَإِنْ أَعْطَاهُ قِيمَةَ مَا عَمَرَ كَانَ أَحَقَّ بِالشُّفْعَةِ وَإِلاَّ فَلاَ حَقَّ لَهُ فِيهَا ‏.‏ قَالَ مَالِكٌ مَنْ بَاعَ حِصَّتَهُ مِنْ أَرْضٍ أَوْ دَارٍ مُشْتَرَكَةٍ فَلَمَّا عَلِمَ أَنَّ صَاحِبَ الشُّفْعَةِ يَأْخُذُ بِالشُّفْعَةِ اسْتَقَالَ الْمُشْتَرِي فَأَقَالَهُ ‏.‏ قَالَ لَيْسَ ذَلِكَ لَهُ وَالشَّفِيعُ أَحَقُّ بِهَا بِالثَّمَنِ الَّذِي كَانَ بَاعَهَا بِهِ ‏.‏ قَالَ مَالِكٌ مَنِ اشْتَرَى شِقْصًا فِي دَارٍ أَوْ أَرْضٍ وَحَيَوَانًا وَعُرُوضًا فِي صَفْقَةٍ وَاحِدَةٍ فَطَلَبَ الشَّفِيعُ شُفْعَتَهُ فِي الدَّارِ أَوِ الأَرْضِ فَقَالَ الْمُشْتَرِي خُذْ مَا اشْتَرَيْتُ جَمِيعًا فَإِنِّي إِنَّمَا اشْتَرَيْتُهُ جَمِيعًا ‏.‏ قَالَ مَالِكٌ بَلْ يَأْخُذُ الشَّفِيعُ شُفْعَتَهُ فِي الدَّارِ أَوِ الأَرْضِ بِحِصَّتِهَا مِنْ ذَلِكَ الثَّمَنِ يُقَامُ كُلُّ شَىْءٍ اشْتَرَاهُ مِنْ ذَلِكَ عَلَى حِدَتِهِ عَلَى الثَّمَنِ الَّذِي اشْتَرَاهُ بِهِ ثُمَّ يَأْخُذُ الشَّفِيعُ شُفْعَتَهُ بِالَّذِي يُصِيبُهَا مِنَ الْقِيمَةِ مِنْ رَأْسِ الثَّمَنِ وَلاَ يَأْخُذُ مِنَ الْحَيَوَانِ وَالْعُرُوضِ شَيْئًا إِلاَّ أَنْ يَشَاءَ ذَلِكَ ‏.‏ قَالَ مَالِكٌ وَمَنْ بَاعَ شِقْصًا مِنْ أَرْضٍ مُشْتَرَكَةٍ فَسَلَّمَ بَعْضُ مَنْ لَهُ فِيهَا الشُّفْعَةُ لِلْبَائِعِ وَأَبَى بَعْضُهُمْ إِلاَّ أَنْ يَأْخُذَ بِشُفْعَتِهِ إِنَّ مَنْ أَبَى أَنْ يُسَلِّمَ يَأْخُذُ بِالشُّفْعَةِ كُلِّهَا وَلَيْسَ لَهُ أَنْ يَأْخُذَ بِقَدْرِ حَقِّهِ وَيَتْرُكَ مَا بَقِيَ ‏.‏ قَالَ مَالِكٌ فِي نَفَرٍ شُرَكَاءَ فِي دَارٍ وَاحِدَةٍ فَبَاعَ أَحَدُهُمْ حِصَّتَهُ وَشُرَكَاؤُهُ غُيَّبٌ كُلُّهُمْ إِلاَّ رَجُلاً فَعُرِضَ عَلَى الْحَاضِرِ أَنْ يَأْخُذَ بِالشُّفْعَةِ أَوْ يَتْرُكَ ‏.‏ فَقَالَ أَنَا آخُذُ بِحِصَّتِي وَأَتْرُكُ حِصَصَ شُرَكَائِي حَتَّى يَقْدَمُوا فَإِنْ أَخَذُوا فَذَلِكَ وَإِنْ تَرَكُوا أَخَذْتُ جَمِيعَ الشُّفْعَةِ ‏.‏ قَالَ مَالِكٌ لَيْسَ لَهُ إِلاَّ أَنْ يَأْخُذَ ذَلِكَ كُلَّهُ أَوْ يَتْرُكَ فَإِنْ جَاءَ شُرَكَاؤُهُ أَخَذُوا مِنْهُ أَوْ تَرَكُوا إِنْ شَاءُوا فَإِذَا عُرِضَ هَذَا عَلَيْهِ فَلَمْ يَقْبَلْهُ فَلاَ أَرَى لَهُ شُفْعَةً ‏.‏

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Yahya said that Malik related from Muhammad ibn Umara from Abu  
Bakr ibn Hazm that Uthman ibn Affan said, "When boundaries are fixed  
in land, there is no pre-emption in it. There is no pre-emption in a  
well or in male palm trees. "  
  
  
Malik said, "This is what is  
done in our community."  
  
  
Malik said, "There is no pre-emption  
in a road, whether or not it is practical to divide it."  
  
  
Malik said, "What is done in our community is that there is no pre-  
emption in the courtyard of a house, whether or not it is practical to  
divide it."  
  
  
Malik spoke about a man who bought into a shared  
property provided that he had the option of withdrawal and the  
partners of the seller wanted to take what their partner was selling  
by pre-emption before the buyer had exercised his option. Malik said,  
"They cannot do that until the buyer has taken possession and the sale  
is confirmed for him. When the sale is confirmed, they have the right  
of pre-emption."  
  
  
Malik spoke about a man who bought land and  
it remained in his hands for some time. Then a man came and saw that  
he had a share of the land by inheritance. Malik said, "If the man's  
right of inheritance is established, he also has a right of  
preemption. If the land has produced a crop, the crop belongs to the  
buyer until the day when the right of the other is established,  
because he has tended what was planted against being destroyed or  
being carried away by a flood."  
  
  
Malik continued, "If the time  
has been long, or the witnesses are dead or the seller has died, or  
the buyer has died, or they are both alive and the basis of the sale  
and purchase has been forgotten because of the length of time, pre-  
emption is discontinued. A man only takes his right by inheritance  
which has been established for him. If his situation differs from  
this, because the sale transaction is recent and he sees that the  
seller has concealed the price in order to sever his right of pre-  
emption, the value of the land is estimated, and he buys the land for  
that price by his right of pre-emption. Then the buildings, plants, or  
structures which are extra to the land are looked at, so he is in the  
position of some one who bought the land for a known price, and then  
after that built on it and planted. The owner of pre-emption takes  
possession after that is included."  
  
  
Malik said, "Pre-emption  
is applied to the property of the deceased as it is applied to the  
property of the living. If the family of the deceased fear to break up  
the property of the deceased, then they share it and sell it, and they  
have no pre-emption in it."  
  
  
Malik said, "There is no pre-  
emption among us in a slave or a slave-girl or a camel, a cow, sheep,  
or any animal, nor in clothes or a well which does not have any  
uncultivated land around it. Pre-emption is in what can be usefully  
divided, and in land in which boundaries occur. As for what cannot be  
usefully divided, there is no pre-emption in it."  
  
  
Malik said,  
"Some one who buys land in which people who are present have a right  
of pre-emption, refers them to the Sultan and either they claim their  
right or the Sultan surrenders it to him. If he were to leave them,  
and not refer their situation to the Sultan and they knew about his  
purchase, and then they left it until a long time had passed and then  
came demanding their pre-emption, I do not think that they would have  
it."

قَالَ يَحْيَى قَالَ مَالِكٌ عَنْ مُحَمَّدِ بْنِ عُمَارَةَ، عَنْ أَبِي بَكْرِ بْنِ حَزْمٍ، أَنَّ عُثْمَانَ بْنَ عَفَّانَ، قَالَ إِذَا وَقَعَتِ الْحُدُودُ فِي الأَرْضِ فَلاَ شُفْعَةَ فِيهَا وَلاَ شُفْعَةَ فِي بِئْرٍ وَلاَ فِي فَحْلِ النَّخْلِ ‏.‏ قَالَ مَالِكٌ وَعَلَى هَذَا الأَمْرُ عِنْدَنَا ‏.‏ قَالَ مَالِكٌ وَلاَ شُفْعَةَ فِي طَرِيقٍ صَلُحَ الْقَسْمُ فِيهَا أَوْ لَمْ يَصْلُحْ ‏.‏ قَالَ مَالِكٌ وَالأَمْرُ عِنْدَنَا أَنَّهُ لاَ شُفْعَةَ فِي عَرْصَةِ دَارٍ صَلُحَ الْقَسْمُ فِيهَا أَوْ لَمْ يَصْلُحْ ‏.‏ قَالَ مَالِكٌ فِي رَجُلٍ اشْتَرَى شِقْصًا مِنْ أَرْضٍ مُشْتَرَكَةٍ عَلَى أَنَّهُ فِيهَا بِالْخِيَارِ فَأَرَادَ شُرَكَاءُ الْبَائِعِ أَنْ يَأْخُذُوا مَا بَاعَ شَرِيكُهُمْ بِالشُّفْعَةِ قَبْلَ أَنْ يَخْتَارَ الْمُشْتَرِي إِنَّ ذَلِكَ لاَ يَكُونُ لَهُمْ حَتَّى يَأْخُذَ الْمُشْتَرِي وَيَثْبُتَ لَهُ الْبَيْعُ فَإِذَا وَجَبَ لَهُ الْبَيْعُ فَلَهُمُ الشُّفْعَةُ ‏.‏ وَقَالَ مَالِكٌ فِي الرَّجُلِ يَشْتَرِي أَرْضًا فَتَمْكُثُ فِي يَدَيْهِ حِينًا ثُمَّ يَأْتِي رَجُلٌ فَيُدْرِكُ فِيهَا حَقًّا بِمِيرَاثٍ إِنَّ لَهُ الشُّفْعَةَ إِنْ ثَبَتَ حَقُّهُ وَإِنَّ مَا أَغَلَّتِ الأَرْضُ مِنْ غَلَّةٍ فَهِيَ لِلْمُشْتَرِي الأَوَّلِ إِلَى يَوْمِ يَثْبُتُ حَقُّ الآخَرِ لأَنَّهُ قَدْ كَانَ ضَمِنَهَا لَوْ هَلَكَ مَا كَانَ فِيهَا مِنْ غِرَاسٍ أَوْ ذَهَبَ بِهِ سَيْلٌ ‏.‏ قَالَ فَإِنْ طَالَ الزَّمَانُ أَوْ هَلَكَ الشُّهُودُ أَوْ مَاتَ الْبَائِعُ أَوِ الْمُشْتَرِي أَوْ هُمَا حَيَّانِ فَنُسِيَ أَصْلُ الْبَيْعِ وَالاِشْتِرَاءِ لِطُولِ الزَّمَانِ فَإِنَّ الشُّفْعَةَ تَنْقَطِعُ وَيَأْخُذُ حَقَّهُ الَّذِي ثَبَتَ لَهُ وَإِنْ كَانَ أَمْرُهُ عَلَى غَيْرِ هَذَا الْوَجْهِ فِي حَدَاثَةِ الْعَهْدِ وَقُرْبِهِ وَأَنَّهُ يَرَى أَنَّ الْبَائِعَ غَيَّبَ الثَّمَنَ وَأَخْفَاهُ لِيَقْطَعَ بِذَلِكَ حَقَّ صَاحِبِ الشُّفْعَةِ قُوِّمَتِ الأَرْضُ عَلَى قَدْرِ مَا يُرَى أَنَّهُ ثَمَنُهَا فَيَصِيرُ ثَمَنُهَا إِلَى ذَلِكَ ثُمَّ يُنْظَرُ إِلَى مَا زَادَ فِي الأَرْضِ مِنْ بِنَاءٍ أَوْ غِرَاسٍ أَوْ عِمَارَةٍ فَيَكُونُ عَلَى مَا يَكُونُ عَلَيْهِ مَنِ ابْتَاعَ الأَرْضَ بِثَمَنٍ مَعْلُومٍ ثُمَّ بَنَى فِيهَا وَغَرَسَ ثُمَّ أَخَذَهَا صَاحِبُ الشُّفْعَةِ بَعْدَ ذَلِكَ ‏.‏ قَالَ مَالِكٌ وَالشُّفْعَةُ ثَابِتَةٌ فِي مَالِ الْمَيِّتِ كَمَا هِيَ فِي مَالِ الْحَىِّ فَإِنْ خَشِيَ أَهْلُ الْمَيِّتِ أَنْ يَنْكَسِرَ مَالُ الْمَيِّتِ قَسَمُوهُ ثُمَّ بَاعُوهُ فَلَيْسَ عَلَيْهِمْ فِيهِ شُفْعَةٌ ‏.‏ قَالَ مَالِكٌ وَلاَ شُفْعَةَ عِنْدَنَا فِي عَبْدٍ وَلاَ وَلِيدَةٍ وَلاَ بَعِيرٍ وَلاَ بَقَرَةٍ وَلاَ شَاةٍ وَلاَ فِي شَىْءٍ مِنَ الْحَيَوَانِ وَلاَ فِي ثَوْبٍ وَلاَ فِي بِئْرٍ لَيْسَ لَهَا بَيَاضٌ إِنَّمَا الشُّفْعَةُ فِيمَا يَصْلُحُ أَنَّهُ يَنْقَسِمُ وَتَقَعُ فِيهِ الْحُدُودُ مِنَ الأَرْضِ فَأَمَّا مَا لاَ يَصْلُحُ فِيهِ الْقَسْمُ فَلاَ شُفْعَةَ فِيهِ ‏.‏ قَالَ مَالِكٌ وَمَنِ اشْتَرَى أَرْضًا فِيهَا شُفْعَةٌ لِنَاسٍ حُضُورٍ فَلْيَرْفَعْهُمْ إِلَى السُّلْطَانِ فَإِمَّا أَنْ يَسْتَحِقُّوا وَإِمَّا أَنْ يُسَلِّمَ لَهُ السُّلْطَانُ فَإِنْ تَرَكَهُمْ فَلَمْ يَرْفَعْ أَمْرَهُمْ إِلَى السُّلْطَانِ وَقَدْ عَلِمُوا بِاشْتِرَائِهِ فَتَرَكُوا ذَلِكَ حَتَّى طَالَ زَمَانُهُ ثُمَّ جَاءُوا يَطْلُبُونَ شُفْعَتَهُمْ فَلاَ أَرَى ذَلِكَ لَهُمْ ‏.‏

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