

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Faisal Arab
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Appeal No.303 of 2014

*(Against judgment dated 28.10.2013 of the
Peshawar High Court D.I. Khan Bench passed in
C.R. No.195 of 2010)*

Ahmad Bakhsh (deceased) through LRs

...Appellant(s)

Versus

Ameer Ali Khan

...Respondent(s)

For the Appellant(s): Mr. Anwar Khan, ASC

For the Respondent(s): Mr. M. Waheed Anjum, ASC
Mr. Mehmood A. Sheikh, AOR

Date of hearing: 03.03.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.-Ahmed Bukhsh, predecessor-in-interest, pre-empted sale through mutation dated 14.9.1999, asserting his superior right of being a co-sharer in the estate; Ameer Ali, vendee/respondent, contested the suit, decreed by the trial Court vide judgment and decree dated 7.1.2000, a finding maintained by the Appellate Court, however, reversed by the High Court vide judgment dated 28.10.2013, for failure to perform *Talabs* in accordance with law, vires whereof are being impugned through this right appeal.

2. The High Court recapitulated plaintiff's evidence regarding performance of *Talabs* and found it fraught with contradictions, discrepancies and improvements to arrive at a conclusion that *Talabs* were not performed in accordance with law.

3. With the assistance of learned counsel for the appellants, we have examined the record. Notice (Ex.PW-5/1), purportedly issued by the plaintiff sans reference to Khalid (PW-5), a witness produced to prove *Talab-i-Ishhad*; he surfaced for the first time on 14.5.2009 to depose that he along with the plaintiff

was present in a *Baithak* when Hameedullah (PW-3) disclosed the factum of sale; Hameedullah when himself examined remained silent, conspicuously omitted any such encounter with Khalid PW. Witnesses are also discrepant on other relevant details regarding time and manner, the *Talabs* were made; contradictions are such in nature that stance taken by one witness cannot be accepted without first excluding the others' and vice versa; the High Court has been justified to exclude their statements from consideration and, on our own independent analysis, conclusion being irresistible, we have not been able to persuade ourselves to take a contra view. Appeal fails. Dismissed.

Judge

Judge

Islamabad, the
3rd March, 2020
Not approved for reporting
Azmat/-