

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Justice Musarrat Hilali  
Justice Shakeel Ahmed  
Justice Ishtiaq Ibrahim

**Civil Appeal No.79-P/2016**

[Against the judgment dated 21.10.2016 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Civil Revision No. 116-M/2014]

***Abdul Sattar Khan***

*...Appellant*

***Versus***

***Umar Ayar***

*...Respondent*

For the Appellant	: Mr. Zia ur Rehman Khan, ASC
For the Respondent	: Mr. Alam Khan, ASC
Date of Hearing	: 10 <sup>th</sup> of June, 2025

**JUDGMENT**

**Musarrat Hilali, J.-** This direct appeal is filed against the impugned judgment dated 21.10.2016 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Civil Revision No. 116-M/2014 whereby the civil revision filed by the appellant was allowed, the judgment and decree of the appellate court dated 06.03.2014 was set aside, and the respondent's suit for pre-emption was dismissed.

2. The appellant filed a suit for possession through pre-emption on 05.08.2010 in respect of land situated in Moza Bara Durushkhela, Swat, bearing Khasra Nos. 776, 777, 778, and 779, which was purchased by the respondent through sale mutation No. 2372 attested on 10.04.2010. The learned Trial Court dismissed the suit vide judgment and decree dated 30.09.2011 on the ground that the appellant/pre-emptor had no superior right of pre-emption, though it found in his favour regarding the performance of *Talb-i-Muwathibat* in accordance with law. On appeal, the learned Additional District Judge

reversed the findings of the Trial Court and decreed the suit on 06.03.2014. The respondent's revision against that decision was allowed by the High Court through the impugned judgment dated 21.10.2016. Hence, this civil appeal.

3. We have heard the learned counsel for the parties and carefully examined the record.

4. In a nutshell, the Trial and Appellate Court had both concurrently held that the *Talb-i-Muwathibat* performed by the appellant was in compliance with the law (Section 13 of the Khyber Pakhtunkhwa Pre-emption Act, 1987(**the Act**)). Therefore, the central issue before the High Court, and now before this Court, pertains to the performance and validity of *Talb-i-Muwathibat* in compliance with the mandatory requirement of Section 13 of the Act. The appellant, appearing as PW-1, stated that on 25.07.2010 at around 6:00 PM he was informed by one Umar about the sale transaction and immediately declared his intention to pre-empt the same in the presence of two witnesses, namely Bakht Nawab and Sher Muhammad Khan, who subsequently appeared as PW-2 and PW-3. However, the said informer namely Umar, was never produced before the Court nor was any explanation given for his absence throughout the proceedings.

5. The omission to produce the person through whom knowledge of the sale was acquired is a significant shortcoming in the evidentiary chain. The requirement of Section 13 of the Act is not merely procedural but foundational to the enforceability of the right of pre-emption. It mandates that the first demand (*Talb-i-Muwathibat*) be made immediately upon acquiring knowledge of the sale and be proven through unimpeachable evidence. The appellant's version remained uncorroborated at the most critical point, how and when he came to know of the sale. The lapse of more than three months between the date of mutation (10.04.2010) and the claimed knowledge (25.07.2010) further undermines the promptness and credibility of the alleged *Talb*.



6. The High Court, in setting aside the concurrent findings of the courts below regarding *Talb-i-Muwathibat*, rightly invoked its revisional jurisdiction. It is by now well settled that a revisional court is fully empowered under Section 115 of the Code of Civil Procedure, 1908 (**'the Code'**) to do so where such findings are based on misreading, non-reading, or misinterpretation of the evidence on record. In the present case, both the Trial Court and the Appellate Court overlooked a critical deficiency: the appellant's failure to produce the informer, namely Umar, who allegedly informed the appellant about the sale. This omission was neither explained nor justified. The importance of the informer's evidence cannot be ignored, as it forms the basic foundation for the performance of *Talb-i-Muwathibat*. Without his evidence, the appellant's version regarding the time, place, and manner of acquiring knowledge of the sale remained uncorroborated. The supporting witnesses, PW-2 and PW-3, may have been present at the time of the alleged declaration, but in the absence of the informer himself, the requirement of immediacy and authenticity, as required under Section 13 of the Act, remains unproven. This Court has consistently held that non-production of the informer may be fatal and may result in an adverse inference being drawn against the pre-emptor. This exactly also applies upon the instant case. [Ref: *Abdul Rehman Vs. Haji Ghazan Khan* (2007 SCMR 1491) and *Subhanuddin & others Vs. Pir Ghulam* (PLD 2015 Supreme Court 69)]. The Courts below fell into error by ignoring this key aspect. Their findings on the issue of *Talb-i-Muwathibat* are a result of mis-reading of evidence and, hence liable to be set aside. The High Court, in correcting this error, acted well within its powers under the revisional jurisdiction.

7. The second aspect requiring further consideration is whether the High Court, in the exercise of its revisional jurisdiction, was competent to interfere with and set-aside the concurrent findings of the two Courts below on the issue of *Talb-i-Muwathibat*. The answer is in the affirmative. Where findings suffer from misreading or non-reading of material

evidence or are otherwise perverse, the High Court is fully empowered under section 115 of the Code to rectify such errors.

8. The High Court has rightly held that the appellant failed to establish the statutory requirement of *Talb-i-Muwathibat* in the manner required by the law. No misreading or non-reading of evidence, or jurisdictional error, has been pointed out to warrant interference with the impugned judgment.

9. For the foregoing reasons, we find no merit in this appeal. Accordingly, the impugned judgment is maintained and this Civil Appeal is dismissed.

Peshawar, the  
10<sup>th</sup> of June, 2025  
Muhammad Saifullah Khan, RO  
Syed Farhan Ali

**APPROVED FOR REPORTING**