

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE AMIN-UD-DIN KHAN

C.A. No. 170 OF 2017

C.A. No. 171 OF 2017

*Against the judgment dated 21.09.2016
passed by the Lahore High Court,
Rawalpindi Bench, Rawalpindi in Civil
Revision Nos. 688-D of 2011 and Civil
Revision No. 689-D of 2011.*

Hasham Khan (deceased) through LRs.

.....Appellants

Versus

Waheed Ahmed

....Respondent

For the appellants:

Sh. Ahsan ud Din, ASC.
Ch. Akhtar Ali, AOR.

For the respondent:

Sardar Abdur Raziq Khan, ASC.
Syed Rifaqat Hussain Shah, AOR.

Research made by:

Bibi Tayyaba Kakar, Law Clerk.

Date of Hearing:

07.06.2023

ORDER

AMIN-UD-DIN KHAN, J:- Leave was granted vide order

dated 6.2.2017, which is reproduced:-

"Contentends, inter alia, that besides unconformable contradictions in the statements of the witnesses showing them to be untruthful, the documents showing the respondents having superior right of pre-emption have not been proved in accordance with Article 78 of the Qanoon-e-Shahadat Order, therefore, the superior right of pre-emption on the basis of the documents thus produced cannot be said to have been established.

2. Points raised need consideration. We, therefore, grant leave to appeal in both these petitions to consider the same. Let the appeals be prepared on the available record with the liberty to the parties to add thereto.

CMAs Nos. 7715 and 7717 of 2016:- Since we have granted leave to appeal in the petitions, these CMAs are allowed and the execution is stayed till the final disposal of the appeals."

2. These appeals emanate from two separate suits of pre-emption filed by the respondent-plaintiff to preempt the sale of land in favour of appellants on the basis that the plaintiff is co-owner in the suit land. It is pleaded by the respondent-plaintiff that sale mutation No. 7468 (subject matter of C.A.No.170 of 2017) and No. 7469 (subject matter of C.A.No.171 of 2017) were attested on 20.5.2008 and that he came to know about sale on 30.6.2008 at 10:00 AM while he was sitting in his house. A notice for each sale was given to the vendee/defendant in compliance of Section 13 of the Punjab Preemption Act, 1991 under registered cover AD and for performance of Talab-e-Khasoomat, the suits were filed on 9.7.2008. Written statement in each case was filed. Suits were contested. Learned trial court framed the issues in each case and invited the parties to produce their evidence. Both the parties produced their respective evidence. Learned trial court was pleased to decree both the suits vide separate judgments and decrees dated 23.09.2010. Appeals preferred by the appellant were dismissed vide judgment and decree dated 8.6.2011, same was the fate of the Civil Revisions filed by the appellant vide judgment and decree dated 21.09.2016. Hence, these appeals with the leave of the Court.

3. There are two questions which require consideration/adjudication; whether the preemptor/respondent-plaintiff proved his right of preemption on the sale of land, and whether he remained successful in proving the Talabs in accordance with law. First we take up the point of right of preemption. The respondent-plaintiff pleaded in his plaint that he is a co-owner. He appeared as PW-3 as his own witness and stated that he is a co-owner. His assertion was denied by the defendant/vendee through

cross-examination and in his statement the appellant when appeared as DW-1 as his own witness denied the right of preemption claimed by the respondent-plaintiff. We have noticed that when a person is required under the law to prove a fact pleaded by him and his oral assertion is challenged in the cross-examination and then the other side comes against it in the witness-box and after oath rebuts the same, the result is that the person required to prove the fact fails, when against an oral assertion the oral assertion is made by the other side. The plaintiff was required to prove through documentary evidence his right of preemption upon the land sold in favour of the appellant/vendee/defendant.

4. In the suit subject matter of appeal No. 170 postal receipts, the envelope and the alleged notice of Talb-e-Ishhad are Exh.P1, Exh.P2 and Exh.P.3 respectively, Register Haqdaran Zameen for the year 2004-2005 regarding Khata No. 654 and Khata No. 655 was produced as Exh.P.4 and Exh.P.5 is the copy of Mutation No. 7468 whereas in the other suit the postal receipt, envelope and notice of Talb-e-Ishhad are Exh. P1, P2 and P3 respectively, Aks Shajra Exh.P.4 and copy of mutation is Exh.P5 and copy of Register Haqdaran Zameen for the year 2004-2005 was produced as Exh.P.6. The documents Exh.P.4 and Exh.P.5 in both the suits as well as Exh.P.6 produced in Appeal No. 171 of 2017 were produced in the statement of the learned counsel for the plaintiff-respondent.

5. Admittedly, in Column of ownership in Register Haqdaran Zameen Exh.P4 and Exh.P5 the name of the respondent-plaintiff is mentioned in Khana Kafiyat and not in owner column in the khata wherefrom the property pre-empted was sold. The pivotal question in this regard is, whether "all the entries" in the Register

Record of Rights/Jamabandi carry presumption of correctness in terms of s.52 of Punjab Land Revenue Act 1964? Before proceeding to answer this question, it would be relevant to restate the relevant law and procedure as to the entries in Register of Record of Rights are incorporated and after crossing what threshold they qualify for the presumption of correctness as stated above.

6. According to Rule 7.1 of the Land Record Manual, in accordance with sections 33(3) and 34 of the Land Revenue Act, the mutation register serves as the repository for recording various acquisitions of rights or interests in land, be it as a landowner, assignee, or occupancy tenant. Nonetheless, it's imperative to note that the mutation register is distinct from the record-of-rights and consequently does not benefit from the legal presumption of truthfulness commonly associated with the latter. For the procedure concerning mutations of ownership or occupancy rights, inclusive of voluntary partitions, the Patwari is obligated to make requisite entries into the mutation register once such mutations are duly reported to him by the transferee.

7. In accordance with Rule 7.2 of the Land Record Manual, when a mutation case is registered, the Patwari is required to annotate the relevant jamabandi entry with the mutation's serial number and type, initially in pencil. Upon approval of the mutation, the notation is to be made permanent in red ink. Similarly, serial numbers of fard badar entries are to be noted, and to distinguish them from regular mutations, the term "badar" should be appended.

8. Under Rule 7.56 of the Land Record Manual, Tehsildars and Naib-Tehsildars are mandated to prioritise estates for which new

detailed jamabandis are to be created. Mutations with final orders passed up to 15th June, or any later date authorised by the Director of Land Records, must be incorporated into the jamabandi. The objective is to ensure all mutations up to that specified date are duly entered in the register and attested accordingly.

9. In accordance with Rule 7.60 of the Land Record Manual, the field Kanungo is required to check and attest 100% of the Periodical Records during July and August. The focus is to ensure that mutations finalised by June 30th, or any other approved date, have been accurately reflected. On the other hand, under Rule 7.62, the Tehsildar or Naib-Tehsildar must validate a minimum of 25% of the khatauni and khewat holdings as well as 25% of the mutations linked to the jamabandis, executing these checks on site and in the presence of the respective right-holders.

10. It may be noted that Register Haqdaran Zameen/Jamabandi form has 10 columns. It is prepared after every four years. The name of owners is mentioned in Column No. 3. The owners can transfer a property through mutation. During the four years transfer of property through mutation continues by the persons mentioned as owners in Column No. 3. Every entry of mutation is endorsed in this document. The person who intends to acquire rights in the property mentioned in the ownership column of this document is required to report the matter to the Patwari Halqa concerned who records events in his Roznamcha and the Roznamcha is maintained serial-wise and a date of event is mentioned on each Roznamcha. After recording the event in the Roznamcha the Patwari enters a mutation on the basis of the Roznamcha. After recording mutation the reference of mutation number is made in this document with a pencil and after the

attestation of the mutation the noting of pencil is replaced with noting through red ink. This practice continues for four years and on 30th June after every four years all the mutations attested during the said four years are implemented in Column of ownership and the mutation number mentioned through red ink in Column No. 10 are replaced with black ink which remains there for four years and same are removed after completion of four years. If the existing owner sells whole of his property, his name is removed, otherwise, the share he sells to that extent the new owner becomes owner to the extent of purchase of share in the column of ownership. Same is the procedure of correction of revenue record through Fard Badar.

11. It may be noted that s. 52 of the Punjab Land Revenue Act 1967 confers presumption of correctness in favour of entries in records-of-rights and periodical records only when they are made as per law. The relevant provision runs as under:-

52. Presumption in favour of entries in records-of-rights and periodical records.– Any entry made in a record-of-rights in accordance with the law for the time being in force, or in a periodical record in accordance with the provisions of this Chapter and the rules made thereunder, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

While interpreting this provision, Lahore High Court in the judgement reported as "Pervez Alam Khan vs. Muhammad Mukhtar Khan" (2001 CLC 1489) while relying on the judgement of this court reported as "Shad Muhammad v. Khan Poor" (PLD 1986 SC 91) correctly held that presumption of correctness is attached only to the column of

ownership and of possession of record of right and no such presumption is attached to the column of Lagan. In the same line, it is incrementally held that the same is the correct law for the entries made in Khana Kafiyaat of Register of Record of Rights/Jamabadi. Whenever, a party relies on this Column, they will have to prove the incorporated statement/entry through independent evidence. Hence, in the instant case, Khana Kafiyaat of Register of Record of Rights (Exh.P4 and Exh.P5) is not covered by Section 52 of the Punjab Land Revue Act 1967. The said entry could have been proved by proving the stated mutation transaction in accordance with law. It is also noteworthy that the copy of Jamabandi **Exh.P.6** produced for the year 2004-2005 does not contain the name of the plaintiff as co-owner in the Khata. Hence, the respondent has failed to prove his right of pre-emption on the basis of co-ownership against the appellants.

12. Now comes the question of performance of Talabs in accordance with law. There are many contradictions in the statement of the plaintiff and his witnesses which are not required to be minutely gone through as the plaintiff failed to prove his right of preemption upon the sale in question. The names of witnesses of Talb-e-Ishhad notice have not been mentioned in the plaint, which is a fatal defect. The alleged notice of Talb-e-Ishhad Exh.P.3 in both the suits is allegedly by Mr. Ahmad Nawaz Khan, Advocate on behalf of the respondent-plaintiff, though the said notice contains the signatures of the plaintiff but Mr. Ahmad Nawaz Khan, Advocate was required to prove the notice when he issued the notice on behalf of the plaintiff to the vendee. The language of the notice states that on behalf of the plaintiff the learned Advocate is issuing the notice, therefore, it was required that learned counsel should have appeared

before the Court in witness-box to prove the same. There is a further defect that registered post was sent on a village address whereas the plaintiff admitted in cross-examination that the vendee/defendant is living in Dubai. When Hashim Khan appellant/vendee appeared as his own witness as DW-1 and stated that real brother of the plaintiff is also working in Dubai and the plaintiff knows the Dubai address of vendee and even his telephone number, this fact was not disputed in cross-examination by the learned counsel for the plaintiff, which means that it is admission on the part of the respondent-plaintiff. There is another important fact that one of the vendors who is relative of the plaintiff, namely Safdar Khan appeared as DW-2 and stated that on 1st of May, 2008 he went to the plaintiff and stated he wants to sell his share in the suit property but the plaintiff refused to purchase the suit property. In whole of the cross-examination upon this witness, except the suggestion that the fact of 1st of May, 2008 was wrong, his statement was not cross-examined on material facts. In these circumstances, it cannot be held that plaintiff proved the performance of Talabs in accordance with law, therefore, the findings recorded by the learned trial court with regard to performance of Talabs as well as right of preemption of plaintiff affirmed by the learned appellate court and the revisional court are not sustainable under the law, which are reversed. These appeals are allowed. The suits of the plaintiff-respondent stand dismissed with cost throughout.

JUDGE

Islamabad, the
7th of June, 2023
(Mazhar Javed Bhatti)
APPROVED FOR REPORTING.

JUDGE