SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE AMIN-UD-DIN KHAN

CIVIL APPEALS NO.1080 AND 1113 OF 2013

(On appeal from judgment dated 24.5.2013, passed by the Peshawar High Court, D.I. Khan Bench, in C.Rs. No.179 and 180 of 2011)

Sultan *...Appellant (s)*
(in both cases)

Versus

Noor Asghar *...Respondent(s)*
(n both cases)

For the Appellant (s) (in both cases) : Syed Mastan Ali Shah Zaidi, ASC

Respondent (s) (in both cases) : Nemo

Date of Hearing : 28.01.2020

JUDGMENT

AMIN-UD-DIN KHAN, J.- These Civil Appeals have been filed under Article 185(2) of the Constitution of the Islamic Republic of Pakistan, 1973, whereby the Appellant, in both cases, has challenged the judgment dated 24.05.2013, passed by the learned Peshawar High Court, D.I. Khan Bench, in Civil Revisions bearing No.179 and 180 of 2011, filed by the Respondent/Vendee. The Civil Revisions were allowed, and the Suit of the Appellant/Pre-emptor was dismissed.

2. Admittedly, the Appellant has not produced the postman to prove the service or refusal of the notice of *Talb-i-Ishhad* allegedly issued through registered acknowledgement due by the Appellant/Plaintiff. The learned counsel for the Appellant states that the Vendee/Defendant, when appeared as a witness, admitted the receipt of notice of *Shufa*, and the same was sufficient to prove that notice had been served. We have gone through the portion of the statement so referred and find that the Vendee/Defendant has not admitted that he has received a notice of *Talb-i-Ishhad,* duly attested by two truthful witnesses issued within two weeks from the alleged date of knowledge, as pleaded by the Appellant/Plaintiff. Rather, the full statement of DW-1 gives the impression that notice was served by the Court whereafter he contacted the Plaintiff/Appellant, who, upon being contacted by DW-1, had stated that he was being compelled by his sons, hence, he filed the Suit. The statement of DW-1 makes is evident that the notice was served after filing of the Suit, and the notice was issued by the Court. Further, it is on the record, even the original notice of alleged *Talb-i-Ishhad* has not been produced and got exhibited in the documentary evidence.

3. There is no cavil to the proposition that the Plaintiff/Appellant was required to prove the *Talbs* in

accordance with law. The performance of *Talb* is not a formality, rather it is substantial for the Plaintiff/Appellant to prove *Talbs* in accordance with law, otherwise the Suit of the Plaintiff/Appellant is defeated. When confronted with as to whether the Defendant had admitted issuance and receipt of notice of *Talb-i-Ishhad* in the written statement, answer is negative. In this view, when the Plaintiff/Appellant failed to plead and prove performance of *Talbs,* a decree on the basis of any defect on the part of the Vendee/Defendant could not be passed. Even the argument that the Defendant has admitted issuance of notice of *Talb-i-Ishhad* is without force, and factually incorrect. The judgment of this Court reported as Allah Ditta through L.Rs. and others v. Muhammad Anar (2013 SCMR 866) is relevant.

4. In a suit for pre-emption, the Plaintiff must has to stand on its own legs and may not rely on the weaknesses or admissions of the Defendants to prove the whole claim; the balance of probabilities would not determine the outcome in a suit for pre-emption, which is a suit *sui generis* in its own nature and requires each *Talb* to be proved in accordance with the law.

5. In a pre-emption suit, performance of *Talbs* is a *sine qua non* before filing a Suit, for instance in a written statement a Vendee/Defendant denies performance of *Talb-*

i-Ishhad by the Plaintiff/Pre-emptor and when appears as a witness admits receipt of notice of *Talb-i-Ishhad.* This admission is not sufficient to hold that the Plaintiff has proved performance of *Talb-i-Ishhad* because the admission of receipt of notice does not confirm that the notice was sent within two weeks after the date of knowledge by the Plaintiff. It also does not confirm that the same was attested by two truthful witnesses. Further, that the same was sent through registered post acknowledgement due, therefore, we are clear in our mind that the Plaintiff before filing a Suit is required to fulfill the requirements of filing the Suit of pre-emption including performance of *Talb-i-Ishhad* and if he pleads and performs *Talb-i-Ishhad* in accordance with law only then he can prove the same after producing requisite evidence i.e. that the notice was issued within two weeks from the date of knowledge, it was attested by two truthful witnesses and it was sent through registered cover acknowledgement due where the facility of postal services were available. Though in the case in hand, there is no admission on the part of the Vendee/Defendant as we have noticed *supra* that notice of *Talb-i-Ishhad* was received by them confirming the intention to exercise the right of pre-emption.

6. In this view of the matter, no case for interference in the impugned judgment of the learned High Court is made out.

7. Consequently, both the Civil Appeals are dismissed with no order as to cost.

JUDGE

JUDGE

Islamabad, the
28th of January, 2020
'APPROVED FOR REPORTING'
*Mahtab H. Sheikh/**