

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sardar Tariq Masood
Mr. Justice Mazhar Alam Khan Miankhel

Civil Petition No.331-P of 2014

[Against the judgment dated 03.03.2014, passed by the Peshawar High Court, Peshawar in Civil Revision No.544 of 2005]

Nawabzada Muhammad Fateh Khan son of
Nawabzada Muhammad Khalid Khan, Resident
of Hoti, Mardan, Tehsil and District Mardan. ...Petitioner(s)
Versus
Mumtaz Ahmad and others. ...Respondent(s)

For the Petitioner(s) : Mr. Abdul Sattar Khan, ASC
(via video link from Peshawar)

For the Respondent(s) : Mian Mohibullah Kakakhel, ASC
Mr. Saif Ullah, ASC
(via video link from Peshawar)

Date of Hearing : 02.12.2024

ORDER

Mazhar Alam Khan Miankhel, J.— The petitioner along with proforma Respondent No.10 (the Pre-emptors) had filed a pre-emption suit against the sale in favour of the predecessor of respondents Sultan Zarin (**Sultan Zarin**) *vide* Mutation No.1 attested on 18.04.1995. The suit, after a full-fledged trial was decreed by the trial Court but the appeal of the respondents against the same was accepted by the learned Additional District Judge-1, Mardan *vide* judgment and decree dated 12.02.2005, resulting in setting aside of the pre-emption decree in favour of the pre-emptors. The civil revision filed by the pre-emptors before the Peshawar High Court, Peshawar (**the High Court**) was dismissed

maintaining the dismissal of their suit by the appellate Court. Hence the present petition for leave to appeal.

2. We have heard the learned counsel for the petitioner and have also gone through the available record.

3. The record of the case reveals that the petitioner had earlier filed a declaratory suit (Exh.DW-1/2) on 21.03.1993 against the defendants including the predecessor of the respondents, Sultan Zarin challenging two different mutations, which also included the impugned sale Mutation No.1 attested on 18.04.1995. The trial Court *vide* order dated 14.07.1993 issued a temporary injunction in favour of the petitioner, copy of which is Exh.DW-1/4. At the time of issuance of the temporary injunction, the impugned mutation was yet to be attested but the statement of the vendor regarding the impugned sale was duly recorded by the Revenue Officer by issuance of the Commission on 18.01.1993. After issuance of the temporary injunction, the revenue officials refused to attest the impugned mutation despite the fact that the statement of the vendor was recorded. It is well settled law that when the statement of a vendor is recorded and the sale consideration is paid, the sale under the law gets completed as was observed in the case of Jangi vs. Jhanda and others (PLD 1961 (W.P) Baghdad-ul-Jadid 34). This observation of the High Court was approvingly referred to, first by a two member Bench of this Court in the case of Muhammad Amin Khan vs. Mst. Parveen Ramzan and others (PLD 1998 Supreme Court 1506) and then by a three member Bench of this Court in the case of Muhammad Tariq and others vs. Mst. Shamsa Tanveer and others (PLD 2011

Supreme Court 151). This would mean that prior to issuance of the temporary injunction on 14.07.1993 in the above noted declaratory suit, the statement of the vendor was recorded on 13.01.1993 resulting in completion of sale transaction in favour of the predecessor of respondents, Sultan Zarin. The vendee, Sultan Zarin feeling himself aggrieved of the said interim injunction, questioned the same by way of an appeal before the District Judge, Mardan, which was allowed, vacating the interim injunction on 12.03.1995. After vacation of the interim injunction, the impugned Mutation No.1 was attested on 18.04.1995 in the name of the vendee, Sultan Zarin.

The other limb of the present *lis* between the parties is that the petitioner along with his brother, the proforma Respondent No.10 on 31.07.1995, filed a pre-emption suit against the said sale. The pre-emptors in para-2 of their plaint alleged that they got knowledge of the impugned sale on 10.07.1995 at 9:00 A.M. in their office situated at Toru Road, Mardan known as office of the Nawab Sahib through one Iqbal son of Arshullah and then and there declared their intention to pre-empt in presence of the witnesses. The trial Court after a full-fledged trial, granted pre-emption decree in favour of the pre-emptors but the appellate Court by keeping in view the above narrated facts and circumstances dismissed the suit of the pre-emptors on the question of limitation as well as on the non-performance of requisite *Talbs* in accordance with Section 13 of the Khyber Pakhtunkhwa Pre-emption Act, 1987 (**the Act of 1987**) and the

said findings were then upheld by the learned Judge in chambers of the High Court while dismissing the civil revision.

4. The argument of the learned counsel for the petitioner that his suit of pre-emption is within the stipulated period of 120 days as provided in Section 31 of the Act of 1987 from the date of attestation of mutation. In support of his arguments he submitted that as per law the time period would start to run against the pre-emptor after the attestation of mutation. For ease of reference Section 31 of the Act of 1987 is reproduced as under: -

Section 31. Limitation

The period of limitation for a suit to enforce a right of pre-emption under this Act shall be one hundred and twenty days from the date-

- a) Of the registration of the sale deed; or*
- (b) Of the attestation of the mutation, if the sale is made otherwise than through the registered sale deed; or*
- (c) On which the vendee takes physical possession of the property if the sale is made otherwise than through the registered sale-deed or the mutation; or*
- (d) Of knowledge by the pre-emptor, if the sale is not covered under paragraph (a) or paragraph (b) or paragraph (c)"*

Looking at the above provisions of law it would show that there are four different eventualities for calculating the period of limitation for instituting a suit for pre-emption. Each one of them is independent from each other and pertains to different events

that determine the limitation period for enforcing the right of pre-emption. A suit for pre-emption may fall under one of these eventualities and there would not be an option for a pre-emptor to choose anyone of these eventualities by his choice. If a pre-emptor fails to file his suit within 120 days of the registration of the sale deed or attestation of mutation, he can not latter go for Clauses (c) or (d) and *vice versa*. While coming to the facts and circumstances of the case in hand, the sale transaction as discussed earlier was completed on the day when the vendor of the sale recorded his statement before the Revenue Officer on 13.01.1993 by confirming the receipt of the entire sale consideration from the vendee, Sultan Zarin. The argument of the learned counsel that in his case limitation period would start running from the date of attestation of mutation i.e. 18.04.1995. We are afraid to note that the submission of the learned counsel is based on some misconception of law and facts and the same will have no force at all particularly in the light of pre-emptor's established knowledge of the sale in question at the time of filing the declaratory suit. As discussed above, the statement of the vendor was recorded much prior to the filing of the declaratory suit and the sale was legally complete at that time. If such an argument of the learned counsel is accepted then the parties, in order to defeat the right of pre-emption, will deliberately delay the process of attestation or registration of their sales. It is also settled law that in case of a registered sale deed, sale gets completed on the day of execution of sale deed and not on the day of registration of the same. Section 47 of the Registration Act, 1908 (XVI of 1908) is reproduced below: -

SECTION 47. "Time from which registered document operates.—

"A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

The legislature in order to address this issue has introduced clauses (c) and (d) in the section of law. These clauses ensure that the right of pre-emption is not circumvented or unnecessarily delayed. The attestation of mutation or registration of sale deed is admittedly an administrative step in the process of transfer of property. This can safely be held that where a suit is covered by any of the Clauses i.e. (a) to (d), the period of limitation would start running under that clause. It is, therefore, an established fact that the pre-emptors had the knowledge of sale of the suit land at the time of filing of their earlier declaratory suit along with an application for the interim injunction. His case at that time was covered under Clause (d) of Section 31 of the Act of 1987. A subsequent attestation of mutation does not give rise to a fresh cause of action in their favour. As discussed earlier the sale in this case was completed but they failed to file their pre-emption suit under Cause (d) and as such their suit was rightly dismissed for being barred by limitation.

5. The next argument of the learned counsel for the petitioner was that the pre-emptors had established their performance of *talbs* strictly in accordance with law and that evidence has not been shattered at all. We before proceedings

further would like to reproduce the relevant provisions of Section 13 of the Act of 1987, which reads as under: -

13. Demand of pre-emption. (1) The right of pre-emption of a person shall be extinguished unless such person makes demands of pre-emption in the following order, namely:-

- (a) Talb-i-Muwathibat;
- (b) Talb-i-Ishhad; and
- (c) Talb-i-Khusumat.

Explanations. I. "Talb-i-muwathibat" means immediate demand by a pre-emptor in the sitting or meeting (Majlis) in which he has come to know of the sale declaring his intention to exercise the right of pre-emption.

Explanation. II. "Talb-i-ishhad" means demand by establishing evidence.

Explanaton. III. "Talb-i-Khusumat" means demand by filing a suit.

(2) When the fact of sale comes within the knowledge of a pre-emptor through any source, he shall make Talb-i-Muwathibat.

(3).....

(4) Where a pre-emptor has satisfied the requirements of Talb-i-Muwathibat under subsection (2) and Talb-i-Ishhad under subsection (3), he shall make Talb-i-Khusumat in the Court of competent jurisdiction to enforce his right of pre-emption.

6. A perusal of the above provisions of law makes it clear that for the performance of Talb-i-Muwathibat, a prospective pre-emptor has to perform his jumping demand there and then without slightest loss of time, as held by this Court in the case of Mian Pir Muhammad and another vs. Faqir Muhammad through L.Rs. and

others (PLD 2007 Supreme Court 302) by making *Talb-i-Muwathibat* in the same sitting/majlis, wherein he gets knowledge of the sale. The law on the point is well settled by now. Once it is proved on the record that *Talb-i-Muwathibat* was not made by the pre-emptor just after getting knowledge of sale in the same meeting/majlis in which he came to know about the sale, then his right of pre-emption would stand extinguished and the plaintiff would not be entitled to succeed in getting the pre-emption decree.

7. Keeping in view the above noted facts and circumstances of the case, this becomes clear and established on the record that the petitioner had complete knowledge of the impugned sale at the time when he filed his declaratory suit on 11.09.2001 (Exh.DW-1/2) by challenging the said mutation and even got a temporary injunction against the same by impleading the vendee, Sultan Zarin as Defendant No.2 and in the averments of his declaratory suit, he did not even express his intention to pre-empt by making *Talb-i-Muwathibat* against the said sale as an alternate claim in the shape of pre-emption suit and under the law, this could have been done by simple exercise i.e. along with his declaratory suit. The story of performance of *talbs* and getting knowledge of the impugned sale, on the face of it appears to be a concocted story. The vendee has brought on the record all the relevant and important documents on the record which cannot be denied by the pre-emptors. A story of getting information and declaring his intention to pre-empt as narrated by the pre-emptors and his witnesses, on the face of it appears to be unbelievable and the concocted one.

8. This would make it absolutely clear that pre-emptors had the knowledge of the sale much prior to the alleged date of knowledge i.e. 10.07.1995, as shown by them in para-2 of their pre-emption suit. This very blunder is a stumbling block in their way to exercise their right of pre-emption. Since the pre-emptors have failed to establish their first jumping demand of *Tabl-i-Muwathibat*, we therefore, would not like to discuss *Talb-i-Ishhad* and further evidence. This very deficiency alone would be sufficient to disentitle them to exercise their right of pre-emption.

9. Learned counsel for the petitioner tried his level best but was unable to persuade us.

10. In view of the above, this petition being meritless is, therefore, dismissed with no order as to costs and leave is refused.

Islamabad
02.12.2024
APPROVED FOR REPORTING
Rabbani*/ Habib (Law Clerk)