

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar

Mr. Justice Qazi Muhammad Amin Ahmed

Civil Appeal Nos.653 to 656 of 2014

(Against the judgment dated 10.03.2014 passed by the High Court of Peshawar in Civil Revision Nos.275, 281, 284 & 285 of 2003)

Zilla Muhammad and others

(in C.A.653/2014)

Saidi Gul (deceased) through LRs

(in C.A.654/2014)

Sher Khan (deceased) through LRs & others

(in C.A.655 & 656/2014)

...Appellant(s)

Versus

Kifayat Ali

(in all cases)

...Respondent(s)

For the Appellant(s):

Mr. Zia-ur-Rehman, ASC
Mr. Nasir Mehmood, ASC
Mr. Mehmood A. Sheikh, AOR

For the Respondent(s):

Mr. Khalid Mehmood, ASC
Mr. M. Ijaz Khan Sabi, ASC

Date of Hearing:

06.12.2021.

ORDER

Qazi Muhammad Amin Ahmed, J.- Captioned appeals, arisen out of consolidated judgment dated 10.3.2014 by a learned Judge-in-Chamber of the Peshawar High Court, overturns findings, recorded by a learned Civil Judge at Nowshera whereby he dismissed respondent's four suits for possession through pre-emption, vide judgment and decree dated 23.9.2000, affirmed by a learned Addl. District Judge vide judgment and decree dated 1.11.2002.

The suit land, comprising four pieces, situates within the revenue limits of Tehsil Lahor of District Swabi, KPK; sales were transacted through mutation Nos.419 dated 12.11.1995, 420 dated 22.11.1996, 556 dated 25.11.1996 and 484, 485 both dated 25.10.1997, respectively.

What weighed with the learned trial Judge to non-suit the respondent has been his purported failure to perform *Talab-i-Muwatibat* within the contemplation of Section 13 of the Khyber Pakhtunkhwa Pre-emption Act, 1987, besides one suit, hit by the period of limitation.

2. Learned counsel for the appellants contends that there was no occasion for the learned High Court to reverse well-reasoned findings, returned by the learned trial Judge, duly affirmed by the learned Appellate Court, leaving little space for the High Court to entertain a contra hypothesis so as to upset a finding of fact in exercise of its revisional jurisdiction. Concurrence of error was rectified, argued the learned counsel for the respondent while defending the impugned judgment.

3. Heard. Record perused.

4. Performance of *Talab-i-Muwatibat* is the core issue in three suits, instituted to pre-empt sales dated 12.11.1995, 22.11.1996 and 25.11.1996; in each case, Muhammad Nabi is informant to the plaintiff, latter a lawyer by profession; according to Muhammad Nabi, he acquired knowledge of first two sales on 1.2.1996 through one Shamsher son of Sher Bahadar and went all the way to District Courts Nowshera to lay information with the plaintiff, present in the Bar room alongside Muhammad Hanif Khan and Mian Abdul Karim Advocates, on 1.2.1996 at 11:00 a.m. however, in his cross-examination, while responding to a query as to when received information, he stated that "میں نے پڑوسی سے وقت کے بارے میں پوچھا، کہ گیارہ کا وقت ہے" Muhammad Nabi PW statedly learnt about the third sale again through the same informant on 5.3.1997 and once again went to District Courts Nowshera and informed the plaintiff at about 10:00 a.m; in cross-examination regarding the point of time, his explanation is as follows:

"میں نے پڑوسیوں سے وقت کے بارے میں پوچھا
اور انہوں نے مجھے کہا تھا کہ 10 بجے کا وقت ہے"

The learned Civil Judge viewed statement of Muhammad Nabi PW as inherently flawed and discrepant, given the *inter se* distance between the village and District Courts Nowshera, judicially noticed by him as 70 miles, though not specifically mentioned in the evidence. On an independent analysis, statement of Muhammad Nabi fails to inspire confidence for reasons more than one; after having acquired knowledge at 11:00 a.m. in the village, regardless of the *inter se* distance, he needed a speed of light to reach District Courts Nowshera, at the same point of time, a capacity that he certainly lacked. Similarly, disclosure

of sale on the three occasions through the same source i.e. Shamsheer son of Sher Bahadar and conveyance of information to the plaintiff in the Bar room of District Courts in Nowshera presents a story that may not find a prudent buyer; a script, poor by all means, resting upon a rare coincidence that seldom occurs, thus, the view taken by the learned Civil Judge, affirmed by the learned Appellate Court on factual plane, being a possible view, does not appear to be unrealistic or bombastic and as such does not constitute an error or irregularity nor can be equated with non-reading or misreading of evidence, amenable to interference by the High Court in exercise of its revisional jurisdiction.

The fourth sale was transacted by the respondent on 12.5.1995 through a Court decree dated 10.12.1995, he was judicially declared to be owner in possession of the suit land w.e.f. 12.5.1995 and, thus, the suit ought to have been filed within a period of 120 days therefrom as is mandated by clause (c) of section 31 of the Act *ibid* and, thus, both the learned trial Judge as well as the first Appellate Court were well within the remit of law to non-suit the plaintiff for his failure to perform *Talab-i-Khasumat* within the prescribed period of time. See Muhammad Nazeef Khan Vs. Gulbat Khan and others (2012 SCMR 235) and Mst. Rooh Afza Vs. Aurangzeb and others (2015 SCMR 92). Appeals are allowed; impugned judgment dated 10.03.2014 is set aside; judgments and decrees passed by the trial court, upheld by the first Appellate Court are restored. No order as to costs.

Judge

Judge

Announced in open Court on 30.12.2021
at Islamabad

Judge