

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE QAZI FAEZ ISA

MR. JUSTICE YAHYA AFRIDI

Civil Appeal No. 183 of 2015

*(Against the order dated 04.12.2014 passed by the
Lahore High Court, Rawalpindi Bench, Rawalpindi in
Civil Revision No. 47 of 2007)*

Hamza Sheraz and another.

... *Appellants*

Versus

Riaz Mehmood (deceased) through L.Rs.

... *Respondents*

For the Appellants:

Raja Muhammad Farooq, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondents:

Mr. Muhammad Akram Gondal, ASC
Mr. Ahmed Nawaz Chaudhary, AOR

Date of hearing:

28.10.2021

JUDGMENT

Qazi Faez Isa, J. This appeal has been preferred as of right under Article 185(2) of the Constitution as the learned Single Judge of the High Court in exercise of revision powers under section 115 of the Code of Civil Procedure, 1908 (**'the Code'**) set aside two concurrent judgments of the Subordinate Courts which had dismissed the pre-emption suit filed by the respondents' predecessor on the ground that his non-compliance with the order of the Trial Court, dated 18 May 2005, whereby he was directed to deposit in court the stipulated one-third of the sale price within thirty days, could be varied, and having come to this conclusion permitted him to deposit the shortfall.

2. Learned counsel for the appellants states that as per record the sale price of the property purchased by the appellants was one million and six hundred thousand rupees, such amount was mentioned in the sale mutation (at page 56) and the plaintiff/pre-emptor had also mentioned it in his plaint however, he had contended that an exaggerated amount was shown and that the actual sale price was six hundred thousand rupees. He submits that since the sale mutation had

specifically mentioned the sale price and as the court had directed deposit of one-third of such amount, which came to five hundred and thirty-three thousand, three hundred and thirty-four rupees and thirty-five paisas this amount should have been deposited. However, the plaintiff/pre-emptor deposited an amount of five hundred and thirty-three thousand rupees only and, thus, there was a shortfall of three hundred and thirty-three rupees and thirty-five paisas. Therefore, the suit was rightly dismissed by the Trial Court and the decision of the Trial Court Judge was upheld in appeal. Learned counsel has also referred to the judgments of *Muhammad Talha v Muhammad Lutfi* (2005 SCMR 720) and *Tariq Mehmood v Ghulam Ahmed* (PLD 2017 SC 674) and stated that the learned Judge erred in observing that the second proviso to section 24 of the Punjab Pre-emption Act, 1991 ('the Act') required '*to deposit the probable value of the property*', which learned counsel submits was incorrect. He further submits that on the basis of this error reliance was placed on certain judgments of the High Court but the principle laid out in such judgments were not attracted to the facts of the instant case. The learned counsel states that when the Act had stipulated that something be done in a particular manner and further provided a penalty that of dismissal of suit, then the Court had no discretion in the matter. Concluding his submissions, he states that one-third of the sale consideration had to be deposited even if the plaintiff-pre-emptor disputed such sale consideration, which dispute would be subsequently attended to after framing of an issue in this regard and recording of evidence and if the pre-emptor succeeded in establishing that a lesser amount was paid as sale consideration he would then be entitled to withdraw the excess amount deposited by him.

3. The learned counsel for the respondents submits that the shortfall of a small portion of sale consideration was a genuine mistake on the part of the plaintiff/pre-emptor and he had moved an application seeking permission of the court to deposit the balance amount but the same was not allowed. Learned counsel states that it does not stand to reason that a person prepared to deposit a substantial portion of the stated one-third amount would non-suit himself by not depositing a very small portion thereof. Concluding his submissions, he submits that the learned Judge of the High Court had correctly exercised his discretion and the judgments of the High Courts cited in the impugned judgment are fully attracted to the facts and circumstances of this case.

4. We have heard the learned counsel for the parties and with their assistance have examined the documents available on the record as well as the precedents mentioned in the impugned judgment and those referred to by the learned counsel for the appellants. To appreciate the controversy and determine if the applicable section 24 of the Act is reproduced hereunder:

24. Plaintiff to deposit sale price of the property. (1) In every suit for pre-emption, the court shall require the plaintiff to deposit in such court one-third of the sale price of the property in cash within such period as the Court may fix:

Provided that such period shall not extend beyond thirty days of the filing of the suit;

Provided further that if no sale price is mentioned in the sale deed or in the mutation, or the price so mentioned appears to be inflated, the Court shall require deposit of one-third of the probable value of the property.

(2) Where the plaintiff fails to make a deposit under sub-section (1) within the period fixed by the Court, or withdraws the sum so deposited by him, his suit shall be dismissed.

(3) Every sum deposited under sub-section (1) shall be available for the discharge of costs.

(4) The probable value fixed under sub-section (1) shall not affect the final determination of the price payable by the pre-emptor.

5. It appears that the shortfall in depositing of the one-third amount of the sale consideration was a mistake because the plaintiff who was prepared, and did deposit, a substantial portion of the one-third amount will not non-suit himself by failing to deposit a small portion thereof. However, the question before us is, whether the court has discretion to proceed in a manner not stipulated in section 24 of the Act. The provision is self-contained and clear. It also mentions the consequences for the plaintiff in failing to deposit the one-third amount of sale consideration within the time prescribed by the court's orders, which cannot extend beyond thirty days. The consequence is the dismissal of the suit. While one can sympathize with the plaintiff-pre-emptor for miscalculating the amount but the law is clear and permits no discretion of the sort as exercised in the impugned judgment.

6. Section 115 of the Code enables a court to exercise revisional power, the contours of which are proscribed. The learned Judge of the

High Court assumed jurisdiction which was not vested in him by section 115 of the Code, the relevant portion whereof is reproduced hereunder:

115. Revision. (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it think fit.

Therefore, the suit was correctly dismissed, and in accordance with the law. Moreover, clauses (a), (b) and (c) of sub-section (1) of section 115 were not attracted therefore jurisdiction thereunder could not be exercised by the High Court. This is also not a case where the Court had itself calculated the one-third amount and made a mistake which required correction. In this case the plaintiff/pre-emptor himself committed the mistake, the consequences whereof he had to suffer. The quantum of the mistaken amount was inconsequential. The plaintiff/pre-emptor did not deposit the stipulated one-third of the sale consideration amount within the prescribed period, as provided for in section 24 of the Act, and thus attracted the consequences thereof, which was the dismissal of the suit.

7. Therefore, for the reasons mentioned above the impugned judgment is not sustainable, which is set aside, this appeal is allowed and the pre-emption suit filed against the appellant is dismissed, but with no order as to costs.

Judge

Judge

Bench-II
Islamabad
28.10.2021
Approved for Reporting
Arif