

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE SARDAR TARIQ MASOOD  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**CIVIL PETITION No. 2222 OF 2019**

(Against the judgment dated 21.03.2019  
Lahore High Court, Lahore, in Civil Revision  
No.997/2017)

Ijaz Ahmed

...Petitioner

**VERSUS**

Noor ul Ameen

...Respondent

For the Petitioner: Maulvi Anwar ul Haque, ASC  
Syed Rafaqat Hussain Shah, AOR

For the Respondent: Mr. Subah Sadiq Klasson, ASC  
(via video link from Lahore)

Date of Hearing: 04.04.2022

**JUDGMENT**

**MUHAMMAD ALI MAZHAR, J.** This Civil Petition for leave to Appeal is directed against the judgment passed by learned Lahore High Court in Civil Revision No.997/2017 on 21.03.2019, whereby the Civil Revision was dismissed.

2. The transient facts of the case are that subject land measuring 387 kanals 12 marlas comprising square Nos.114,115 and 117 situated in Village Muhar Bakar, Tehsil Depalpur, District Okara was sold out by Kamal Khan and Mst Shaheen (vendors) to the respondent vide Mutation No.202, attested on 03.06.2009. The petitioner filed a suit on 28.09.2009 to lodge the claim of his superior right of pre-emption on the basis of joint approach and water source being owner of adjacent land. The respondent filed the written statement and denied sharing of any common passage or water source. He insisted that he had actually paid Rs.60,00,000/- as sale price of the suit land. He further denied the performance of *Talbs* as well as the receipt of notice. The learned Trial Court vide judgment and decree dated 24.02.2016, dismissed the suit, thereafter, the petitioner filed an appeal before the Appellate Court which was dismissed on 03.12.2016 and

ultimately, the petitioner preferred a Revision Application in the Lahore High Court which was also dismissed on 21.03.2019.

3. The learned counsel for the petitioner argued that the learned High Court failed to consider that pre-emption right of the petitioner was based on the manifestation of 'Shafi-Jar' being owner of land adjacent to the suit land as per Aks Shajra Parcha (map/site plan) which was exhibited as Ex.D-6. It was further contended that the High Court misread the plaint and the evidence led in the Trial Court. He further argued that the Trial Court and Appellate Court both failed to properly answer the issues with regard to the performance of *Talbs* and also the evidence with regard to prevailing market price of the suit land.

4. The learned counsel for the respondent forcefully supported the judgments passed by the lower fora and argued that the petitioner has failed to prove his alleged superior right of preemption in the Trial Court. All the three Courts have concurrently recorded findings against the petitioner and no misreading or non-reading of evidence and/or any material illegality or irregularity has been pointed out in any judgment passed by the courts below.

5. We have cautiously scanned the evidence available on record. The Trial Court as well as Appellate Court both have comprehensively discussed and scrutinized the evidence and after minute farsightedness and appreciation of evidence and the relevant law, nonsuited the petitioner. According to the gist of evidence led in the Trial Court, the petitioner deposed that the pre-empted land is adjacent to his land with common source of irrigation but during cross-examination he stated that there is no official canal/irrigation rather the lands are irrigated from river. His witness (PW-2) also showed ignorance to khasra numbers of passage and source of common irrigation. He further admitted that there is no *Warabandi* and neither the petitioner is co-sharer in the Khata, nor there is any sanctioned khal. The Patwari Consolidation has also deposed that there is no joint khata between the parties and, as per Ex.P-3, there is no passage or common source of irrigation nor any sanctioned water. The petitioner in his evidence deposed that he made *Talb-i-Muwathibat* on 27.08.2009 but in his

cross-examination he admitted that in the last week of August 2009 he was at Karachi. The PW-3 in his cross-examination stated that at the time of reducing the notice of *Talb-i-Ishhad*, no person was present except petitioner but to make some improvement, voluntarily stated that PW-2 Aftab Ahmad was also present. The PW-6 in his examination-in-chief has stated that notice of *Talb-i-Ishhad* through registered post could not be delivered to the respondent as there was no person by the name of Noor-ul-Amin at Mouza Mohaar Baqir and he returned the notice of *Talb-i-Ishhad*. The PWs-2 & 3, attesting witnesses of the notice of *Talb-i-Ishhad* did not depose to have the knowledge of contents of the notice of *Talb-i-Ishhad*. In nutshell all the courts below concurrently reached to the conclusion that the petitioner has miserably failed to fulfill the legal requirements of *Talb-i-Muwathibat* and *Talb-i-Ishhad* in accordance with the law. In the case of Mir Muhammad Khan and 2 others. Vs. Haider and others (PLD 2020 SC 233), it was held that the notice of *Talb-i-Ishhad* must be served on the vendor through Registered Post with Acknowledgment Due. Moreover, nothing in the record proves the assertion of the pre-emptor that the notice was ever served on the Respondent in the case, who in his written statement before the Lahore High Court as well as before the Lower Courts categorically denied service of the notice in question. Therefore, it fell upon the Appellant/pre-emptor in the case to prove that the notice had been delivered. The Court further held if *Talb-i-Muwathibat* is not proved to have been made then the performance of *Talb-i-Ishhad* and all other requirements for a successful demand of pre-emption cannot be proven. Similarly, even if *Talb-i-Muwathibat* has been made in accordance with the law if any of the requirements for the performance of *Talb-i-Ishhad* are not fulfilled the suit for possession through pre-emption is bound to fail.

6. The language used under Section 115 of C.P.C. unequivocally visualizes that the revisional court has to analyze the allegations of jurisdictional error such as exercise of jurisdiction not vested in the court below or a jurisdiction vested in it by law was failed to exercise and/or the court has acted in exercise of its jurisdiction illegally or with material irregularity or committed some error of procedure in the course of the trial which is material in that it may

have affected the ultimate decision but it is also ground reality that while exercising the revisional jurisdiction under Section 115, C.P.C., the powers of the court are limited. In the case of Ahmad Nawaz Khan Vs. Muhammad Jaffar Khan and others (2010 SCMR 984), this Court expressed that that High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under section 115, C.P.C. whereas in the case of Cantonment Board through Executive Officer, Cantt. Board, Rawalpindi. Vs. Ikhlaq Ahmed and others. (2014 SCMR 161), this Court held that the provisions of Section 115, C.P.C under which a High Court exercises its revisional jurisdiction, confer an exceptional and necessary power intended to secure effective exercise of its superintendence and visitorial powers of correction unhindered by technicalities. The revisional jurisdiction of the High Court cannot be invoked against conclusion of law or fact, which do not, in any way, affect the jurisdiction of the court. In the case of Sultan Muhammad and another. Vs. Muhammad Qasim and others. (2010 SCMR 1630) this Court has held that the concurrent findings of three courts below on a question of fact, if not based on misreading or non-reading of evidence and not suffering from any illegality or material irregularity affecting the merits of the case are not open to question at the revisional stage.

7. As a result of above discussion, we are of the firm view that findings recorded by the all the courts below are in consonance with the law and evidence led by the parties, hence we do not find any legal infirmity in the impugned judgments which could warrant interference by this Court. The petition is dismissed and leave to appeal is refused.

Judge

Judge

Islamabad the

4<sup>th</sup> April, 2022

Khalid

Not approved for reporting.