

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH

(Judicial Department)

Civil Revision No.13-D/2015


Masroor Anwar Vs. Allah Wasaya etc

For petitioner Muhammad Waheed Anjum, Advocate

For respondent Mr. Zain-ul-Abideen Afridi Advocate

Date of hearing 25.04.2022

JUDGMENT

 **MUHAMMAD FAHEEM WALI, J.-** The petitioner, Masroor Anwar, through this Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 has called in question the vires of Judgment and Decree dated 13.10.2014 passed by the learned Additional District Judge-I, D.I.Khan, whereby, the appeal of respondents against Judgment & Decree dated 29.02.2012 of learned trial Court was allowed, the pre-emption decree awarded by learned trial court was set aside and thereby the pre-emption suit of petitioner stood dismissed.

2. Concise facts of the case are that the suit property sold in favour of the respondents vide mutation No. 257 dated 27.05.2009 was pre-empted by the petitioner being *Shafi-Sharik, Shafi-Khalit and Shafi-Jar* with the assertion that he had performed the requisite Talabs in accordance with law. The suit was contested by the respondents, inter alia, on the ground that the petitioner had no preferential right nor performed Talabs in accordance with law. The learned trial Court on divergent pleadings settled issues and called upon the parties to adduce evidence in support of their respective claims. After trial, the suit of the petitioner/plaintiff was decreed to the extent of Khata No.27 vide judgment dated 29.02.2012. However, in appeal by respondents/ defendants the said decree stood set aside and the pre-emption suit was thereby dismissed vide Judgment and Decree dated 13.10.2014 on the ground of non-performance of the Talb-e-Ishhad. Dissatisfied from the judgment and decree of appeal Court, the petitioner has impugned the same before this Court through this Revision Petition.



3. Arguments of the learned counsel for parties heard and record gone through with their valuable assistance but for the sake of brevity, without reproducing the arguments

of the counsels, same will be adequately dealt with at appropriate stages in this judgment.

4. Perusal of the record reveals that learned appellate court below dismissed the suit of petitioner on the basis of failure of petitioner/pre-emptor in performing Talb-i-Ishhad. Thus, the only question before this Court is to see, as to whether petitioner was able to perform his said talab as required by the law. In this regard, I deem it appropriate to re-produce Section 13(3) of the Khyber Pakhtunkhwa Pre-emption Act, 1987 and then to determine as to whether pre-emptor had succeeded in discharging his statutory duty.



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 orders, namely:--

(i) Talb-i-Muwathibat

(ii) Talb-i-Ishhad and

(iii) Talb-i-Khusumat

Explanation I. Talb-i-Muwathibat means immediate demand by a pre-emptor in the sitting or meeting in which he has come to know of the

sale, declaring his intention to exercise the right of pre-emption.

Note. Any word indicative of intention to exercise the right of pre-emption are sufficient.

II. Talb-i-Ishhad means demand by establishing evidence.

III. Talb-i-Khusumat means demand by filing suit.

(2) ---

(3) Subject to his ability to do so, where a pre-emptor has made talb-e-muwathibat under sub-section (2), he shall as soon thereafter as possible but not later than two weeks from the date of notice under section 32, or knowledge, whichever may be earlier make talb-i-ishhad by sending a notice in writing attested by two truthful witnesses, under registered cover acknowledgement due to the vendee, **confessing his intention to exercise the right of pre-emption.**

Provided that in areas where owing to lack of post office facilities it is not possible for the pre-emptor to give registered notice, he may make



Talb-I-Ishhad in the presence of two truthful witnesses.

(bold & underlined are my emphasise)

5. The right of pre-emption *strictissimi juris* and failure to perform all or any of demands in accordance with the requirements of the ibid provision of law would defeat the plaintiff's claim. From the above quoted provision of law, the pre-emptor has to prove the performance of Talb-i-Ishhad besides Talb-i-Muwathibat. Admittedly and undeniably, the petitioner has proved the performance of first talab i.e. Talb-i-Muwathibat and he has been non-suited only on the basis of non-performance of second talab i.e. Talb-i-Ishhad in accordance with law; therefore, only question for determination by this Court is the issue of performance of Talb-i-Ishhad.



6. According to above extracted provision of K.P. Pre-emption Act, 1987, after making Talb-i-Muwathibat the pre-emptor shall as soon thereafter as possible but not later than two weeks from the date of knowledge make Talb-i-Ishhad by sending a notice in writing attested by two truthful witnesses, under registered cover acknowledgement due, to the vendee, confirming his intention to exercise the right of pre-emption. The

intention to exercise the right of pre-emption can be express or implied by conduct, use of words or any other sort of body language as referred in the note under subsection (1) of Section 13 of the Act, 1987.

7. But the perusal of notice Talb-i-Ishhad reveals that it was a pre-printed paper where intention of pre-emptor while making first Talab was already noted in a stereotype manner "فوراً اعلان کیا کہ من مظہر دعویٰ شفع کرے گا". This does not portray the exact mode & manner of the intention of a pre-emptor as explained by the pre-emptor and witness of Talb-e-Muwathibat during the course of their evidence while appearing as PW-5 & PW-6. The relevant excerpt from the statements of both the said witnesses is as under:

PW-5 ----- میں نے فوراً اعلان شفع کیا کہ میں اراضی پر شفع کروں گا کیونکہ میرے اس اراضی کے ساتھ مفاد و اوسط ہے۔

PW-6 ----- تو مسرور نے فوراً اعلان شفع کیا کہ میرے مفادات و اوسط ہیں اور میں اراضی پر شفع کروں گا۔

8. The intention was inclusive of the words مفاد و اوسطہ but same could not be included in the notice of pre-emption for the reason that it was pre-printed and does not fulfil the legal requirements regarding confirmation of Talb-i-Muwathibat through the making of Talb-i-Ishhad.

Reliance in this regard is placed on the reported judgment of this Court in the case of "*Ghulam Muhammad Vs. Abdullah*" (2014 MLD 141) wherein it was held:

10. The above referred provision clearly indicates that after making Talb-e-Muwathibat, the plaintiff shall make Talb-e-Ishhad by sending a notice in writing attested by two truthful witnesses within two weeks under registered cover to the vendee for conformation of his intention to exercise the right of pre-emption. The already typed notice does not fall within the ambit of notice in writing nor does it fulfil the requirement of section 13(3) of the Act *ibid*. The perusal of the typed notices reveals that the wordings mentioned in it also amount to departure from the above referred provision and as such the notices issued in the instant case do not come within the ambit of notice Talb-e-Ishhad in writing, attested by two truthful witnesses.



9. Moreover, during evidence petitioner/pre-emptor did not state any words about the confirmation of his intention to exercise the right of pre-emption while sending the notice of pre-emption.

10. In view of the above, this Court finds no illegality or irregularity in the impugned judgment of the learned appellate court below which is based on proper appraisal of the facts available on record, requiring no interference in the revisional jurisdiction by this Court. Consequently, instant revision petition is hereby dismissed with no order as to cost.

Announced.
25.04.2022
(*M/Subhan)



JUDGE

Office
Fa
11/5

(S.B) Hon'ble Mr. Justice Muhammad Faheem Wali