

MUHAMMAD YOUSAF---Petitioner

Versus

RAZA MUHAMMAD and another---Respondents

Civil Revision No.1926 of 2003, decided on 23rd November, 2010.

NASIR SAEED SHEIKH, J.---This civil revision is directed against the judgments and decrees passed by the two courts below in a pre-emption matter dismissing the suit of the petitioner.

2. Briefly stating the facts of the case are that the petitioner instituted a suit for possession through exercise of right of pre-emption in respect of land measuring 3 kanals, 11 marlas situated in village Rokhari Kacha, Tehsil and District, Mianwali, described in the title of the plaint, which land was purchased by the respondents through Mutation No.649, dated 30-9-1998. It was contended by the petitioner that he came to know of the mutation/sale in question on 18-10-1998 at 12-00 in the noon, when he was sitting in his drawing room. He made a jumping demand performing Talb-i-Muwathibat. It is next alleged that he obtained a certified copy of the transaction/mutation in question on 19-10-1998 from the area Patwari and sent a notice of Talb-i-Ishhad dated 27-10-1998 to the respondents. The petitioner claimed the right of pre-emption on the ground of being a co-sharer in and also of the contiguous land of the subject property. The sale price of Rs.11,000 mentioned in the mutation/ transaction was also disputed in the plaint.

3. This suit was contested by the respondents, who submitted their written-statement. It was contended that the petitioner was in the knowledge of the sale transaction right from the beginning. The right of pre-emption of the petitioner was denied by the respondents and the making of Talbs by the petitioner was also denied in their written-statement.

4. The learned Civil Judge, who tried the suit framed the following issues:--

ISSUES.

- (1) Whether the plaintiff has superior right of pre-emption against the defendants? OPP.
- (2) Whether the plaintiff made the demands of pre-emption in accordance with law? OPP.
- (3) Whether the ostensible sale price of Rs.11000 was fixed in good faith or actually paid? OPP.
- (4) If not what was the market value? O.P. Parties.
- (5) Whether the suit is not maintainable in its present form? OPD.
- (6) Whether the suit is time-barred? OPD.
- (7) Whether the plaintiff is estopped to sue by his conduct? OPD.
- (8) Whether the defendants improved the status of suit-land, if so how much and when? OPD.
- (9) Whether the defendants paid expenses of the sale? OPD.
- (10) Whether the suit is frivolous and the defendants are entitled to special cost?

OPD.

(11). Relief.

5. The parties produced their respective evidence. The learned Civil Judge while recording finding on Issue No.2 held that the petitioner failed to prove the making of Talb-i-Ishhad. The learned Civil Judge further recorded a finding that in the instant case, there were two defendants and the service of the notice of Talb-i-Ishhad upon the said defendants was not proved by the petitioner. The learned Civil Judge further held that the sale price of Rs.11,000 was the actual price, which was fixed as the consideration of the transaction in question and the same was paid by the respondents to the vendors. The suit of the petitioner was dismissed by the learned Civil Judge vide judgment and decree dated 1-11-2001 although the petitioner was held to be possessed with the superior right of pre-emption.

6. The petitioner preferred an appeal against the judgment and decree of the trial Court, which came up for hearing before a learned Additional District Judge, who dismissed the same vide judgment and decree dated 4-7-2003. Hence, this civil revision.

7. It is contended by the learned counsel for the petitioner that the two courts below have not correctly appreciated the evidence on the record with respect to the performance of **Talbs** and the finding was incorrectly and illegally recorded against the petitioner that he has not performed **Talb-i-Ishhad** in accordance with law. The learned counsel prayed for the acceptance of the instant civil revision by setting aside the impugned judgments and decrees passed by the two courts below.

8. Conversely, the learned counsel for the respondents has contended that the petitioner has failed to prove the service upon the respondents of the notice of Talb-i-Ishhad. It was contended that the respondents denied of having received any notice of Talb-i-Ishhad, therefore, the petitioner should have produced the postman to prove the service of notice of Talb-i-Ishhad upon the respondents.

9. I have considered the arguments of the learned counsel for the parties and have perused the record.

10. A short point on which the instant civil revision can be decided is that the petitioner claimed to have sent only one notice of Talb-i-Ishhad to the two respondents through postal service and this notice is Mark-A. The receiving of the notice by the respondents was denied.

11. The Honourable Supreme Court of Pakistan in a judgment reported as Muhammad Bashir and others v. Abbas Ali Shah (2007 SCMR 1105) laid down in paragraph-E at page-1116 that where the addressee of a notice of **Talb-i-Ishhad** denies the receiving of the notice claimed to have been sent through postal service by the plaintiff of a pre-emption suit, it was for the plaintiff to prove its service by producing the postman in the court and of the endorsement of its acceptance or refusal as the case may be of the said registered postal notice.

12. The plaintiff/petitioner failed to fulfil the above mentioned requirement in the instant case as the Postman, who went to effect the service of notice of Talb-i-Ishhad (Marik-A) upon the respondents was never produced before the trial Court.

13. In view of the above circumstances, the instant civil revision has no merits, which is **DISMISSED** with no orders as to costs.

A.R.K./M-177/L

Revision dismissed.

