

Civil Revision No.1480 of 2003

MUHAMMAD EHSAN VERSUS GHAZI KHAN

26.11.2010 Hafiz Khalil Ahmad Advocate for Petitioner.
Nemo for Respondent

Muhammad Ehsan petitioner instituted a suit on 29-10-1997 for possession through exercise of right of pre-emption in respect of land measuring 8 kanals 11, marlas described in the title of the plaint, which was tried by the learned Civil Judge Khushab. It was contended by the petitioner that the subject land has been purchased by the respondent through Mutation No.505 dated 14-10-1997 for a sum of Rs.10,000 but an artificial sale price of Rs.40,000 was reflected in the mutation proceedings. It was contended in the plaint, that witnesses Mubashir Ahmad son of Muhammad Shafi, Noor Muhammad son of Ali Muhammad and Ghulam Hussain son of Ghulam Muhammad were sitting in his house when he made a jumping demand for exercise of his right of pre-emption, thus the plaintiff claimed to have performed Talb-e-Muwathibat. The petitioner then contended that vide notice dated 22-10-1997 the Talb-e-Ishhad was performed by the petitioner which notice has been exhibited as Exh.P2. The petitioner ultimately instituted a suit for possession through exercise of right of pre-emption on 29-10-1997 before the learned Civil Judge Khushab.

2. The petitioner claimed his superior right of pre-emption

on the ground of being a co-owner, co-sharer, in the subject land having contiguous land and common watercourse in the subject land which qualification the respondent did not possess according to the petitioner.

3. This suit was contested by the respondent who submitted his written statement dated 4-5-1998. The respondent specifically denied the due performance of talbs by the petitioner and also his claim of superior right of pre-emption. The learned Civil Judge Khushab framed the following issues:--

ISSUES

- (1) *Whether the plaintiff has preferential right of pre-emption? OPP*
- (2) *Whether the plaintiff has made talbs as laid down in the law? OPP*
- (3) *Whether the plaintiff has no cause of action? OPD*
- (4) *Whether the suit is barred under Order VII Rule 11 of C.P.C.? OPD*
- (5) *Whether the plaintiff is estopped to bring this suit? OPD*
- (6) *Whether the suit is time-barred? OPD*
- (7) *Whether the suit has been valued incorrectly, if so what is correct valuation? OPD*
- (8) *Whether the ostensible sale price of Rs.40,000 was fixed in good faith and actually paid by the defendant? OPD*
- (9) *If the above issue is answered in negative, then what was the market value of the suit-land at the time of sale? OP-Parties*
- (10) *Whether the suit is frivolous and the defendant is entitled to recover special costs under section 35-A, C.P.C.? OPD*
- (11) *Relief.*

4. The parties produced their respective evidence. The learned Civil Judge dismissed the suit of the petitioner vide judgment dated 29-3-2002, while recording his findings to the effect that the petitioner failed to prove the making of Talb-e-Muwatibat in accordance with law although the learned Civil Judge held that the petitioner has proved his preferential right of pre-emption on the ground of being co-owner in the subject land.

5. The petitioner preferred an appeal against the judgment and decree dated 29-3-2002 of the learned Civil Judge which appeal came up for hearing before the learned Additional District Judge who dismissed the same vide judgment and decree dated 2-7-2003 upholding the findings of the learned Trial Court recorded on vital issue No.2 requiring proof of talbs. This Civil Revision is directed against the concurrent findings recorded by the two courts below and the judgments passed against the petitioner.

6. It is contended by the learned counsel for the petitioner that he has successfully proved the making of both the talbs and the learned Civil Judge misread the evidence produced by the petitioner whereas the learned Additional District Judge in mechanical manner confirmed the findings recorded by the learned Civil Judge on the issue of talbs. It is prayed by the learned counsel for the petitioner that the judgments and decrees passed by the two courts below be set aside and the suit be decreed as prayed for.

7. I have considered the arguments of the learned counsel for the petitioner and have perused the record with his assistance.

8. Although the petitioner has claimed making of Talb-e-Muwathibat in the plaint on 17-10-1997 but in the plaint as well as in the notice of Talb-e-Ishhad Exh.P2 he does not specify the time when he received the information of the sale in question and the name of the informer. The petitioner alleged in para 2 of the plaint that he came to know of the transaction in question on 17-10-1997 in the presence of Mubashir Ahmad, Noor Muhammad and Ghulam Hussain witnesses. The same version was put by the petitioner in his notice of Talb-e-Ishhad Exh.P2. The petitioner while appearing in his evidence as P.W.1 stated that he came to know of the transaction after two days of the mutation and in his evidence as P.W.1 he does not specify the time nor the name of the person who conveyed this information to him. The witnesses produced by the petitioner P.W.3 Noor Muhammad posed himself in his statement before the court as an informer but he does not specify as to when, where on which date and at what time he informed the petitioner of the transaction in question. Similarly the other witnesses produced by the petitioner as P.W.4 Mubashir Ahmad he also does not specify the date and the time when the petitioner was informed of the transaction in question and he performed the Talb-e-Muwathibat. Both these witnesses P.W.3 and

P.W.4 only stated in the examination-in-chief that the petitioner has declared that he is co-sharer in the KHATA but none of those witnesses alleged that the petitioner asserted that he would exercise his right of pre-emption with respect to the sale in question. Therefore the plaintiff/petitioner himself contradicted his date of knowledge as alleged in the plaint of the sale in question, which he claimed to be on 17-10-1997 whereas the sale in question took place on 14-10-1997. The learned Civil Judge has further observed that the plaintiff in his statement has contended that when he came to know of the sale in question he raised hue and cry that let us go to the respondent and ask him to return the land in question after receiving the amount from him and that accordingly they went to him and when the respondent did not comply with the request it is only then the plaintiff/petitioner alleged that he made the jumping demand that he would exercise his right of pre-emption. This finding recorded by the learned Civil Judge and upheld by the learned Additional District Judge is in accordance with the evidence. The reading of the statements of P.W.3 P.W.4 point out that they have not even alleged that the plaintiff/petitioner would exercise his right of pre-emption and thus the making of Talb-e-Muwathibat has not been proved by the two witnesses at all in their statements.

9. In addition to the above facts noted by the learned Civil Judge, it is also a matter of record that the petitioner did not produce the postal receipts of sending the notice of Talb-e-

Ishhad to the respondent, although he has produced the receipt of acknowledgment as Exh.P1. The two courts below have recorded the concurrent findings against the petitioner and the judgments and decrees passed are in accordance with law. The petitioner has failed to perform and prove the making of the Talbs in accordance with law, therefore there is no merit in this Civil Revision, which is dismissed.

(NASIR SAEED SHEIK)
Judge