

R.S.A. No.164 of 2012

ISLAM DIN      VERSUS      MUHAMMAD YOUNAS etc

19.09.2012      Sh. Irfan Akram Advocate for Appellant

The appellant instituted a suit for possession through the exercise of his right of pre-emption against the respondents in the court of learned Civil Judge Chunian District Kasur. This suit was contested by the respondents. In paragraph No.5 of the plaint the appellant alleged the performance of Talb-e-Muwathibat whereas in Paragraph No.6 of the plaint he alleged performance of Talb-e-Ishhad by sending a notice dated 8-11-2004 through registered postal service to defendants Nos.1 to 7 of the suit.

2.      The learned Civil Judge framed the following issues:--

***ISSUES***

- (1)      *Whether the plaintiff has superior right of pre-emption qua the defendants? OPP*
- (2)      *Whether the plaintiff has fulfilled the requirements of Talbs according to law? OPP*
- (3)      *Whether the plaintiff is entitled to the decree prayed for? OPP*
- (4)      *Whether this court has no jurisdiction to entertain this suit? OPD*
- (5)      *Whether suit is barred by time? OPD*
- (6)      *Whether the suit is not maintainable in the present form? OPD*

- (7) *Whether the plaintiff has estopped by his words and conduct to file this suit? OPD*
- (8) *Whether the plaintiff has filed this suit just to harass the defendants and the defendants are entitled to special costs? OPD*
- (9) *Whether ostensible sale price of Rs.7,91,500 was actually paid, if not, then what was the market value of the suit property? O.P. Parties.*
- (10) *Whether the incident charges has been paid by the defendants on the disputed property? OPD*
- (11) *Relief.*

3. The respective evidence of the parties was recorded. The crucial finding was recorded by the learned Civil Judge on issue No.2 for non-performance of Talbs by the appellant and suit was dismissed vide judgment and decree dated 14-10-2011 by the learned Civil Judge. An appeal was preferred by the appellant against the judgment and decree of the learned Civil Judge which appeal came up for hearing before a learned Additional District Judge and the same was also dismissed vide judgment and decree dated 21-6-2012.

4. Through the instant R.S.A. the judgments and decrees passed by the two courts below have been assailed by the appellant/plaintiff.

5. The instant R.S.A. came up for preliminary hearing on 17-9-2012 and on the basis of available record the learned counsel for the appellant was called upon to address the arguments that in the instant case the appellant alleged the performance of Talb-e-Ishhad by sending the notice through registered postal service to the respondents Nos.1 to 7 and as

the respondents Nos.1 to 7 had denied the contents of Paragraphs Nos.5 and 6 of the plaint in their written statement therefore without production of the postman in his evidence by the appellant to prove the due performance of Talb-e-Ishhad in the light of the judgments reported as Muhammad Bashir and others v. Abbas Ali Shah (2007 SCMR 1105) and Bashir Ahmad v. Ghulam Rasool (2011 SCMR 762), how the appellant is entitled to the grant of pre-emption decree in the matter. The case was fixed for today.

6. The learned counsel for the appellant has relied upon the judgment reported as "Hayat Muhammad and others v. Mazhar Hussain" (2006 SCMR 1410) to contend that there was no requirement of producing the postman as per the law laid down by the honourable Supreme Court of Pakistan cited by the learned counsel. The learned counsel for the appellant next argued that in judgment reported as "Muhammad Yousaf v. (1) The Chief Settlement and Rehabilitation Commissioner, Pakistan, Lahore and (2) Haji Ahmad Din, Sh. Muhammad Ismail v. The Chief Settlement and Rehabilitation Commissioner, Pakistan, Lahore and (2) Haji Ahmad Din, Hamida Khanum v. Sufi Fazal Muhammad Khan and (2) Sh. Muhammad Rafique, Settlement Commissioner, Lahore) (PLD 1968 SC 101) it is laid down that the law pronounced by the honourable Supreme Court of Pakistan is to take effect prospectively. The learned counsel for the appellant could not cite any latest law contrary to the law pronounced by the honourable Supreme Court of

Pakistan as laid down in the reported judgments "Muhammad Bashir and others v. Abbas Ali Shah (2007 SCMR 1105) and Bashir Ahmad v. Ghulam Rasool (2011 SCMR 762).

7. I have heard the arguments of the learned counsel for the appellant and perused the record.

8. The lis continues from the institution of the suit till its final decision upto the last court. The R.S.A. which was continuation of the proceedings as instituted by the appellant has to be decided in accordance with latest law as pronounced by the honourable Supreme Court of Pakistan. I am not persuaded by the contention raised by the learned counsel for the appellant that the law announced in the judgment reported as "Hayat Muhammad and others v. Mazhar Hussain" (2006 SCMR 1410) is to take precedence on the direct latest case-law on the subject as reported in judgments "Muhammad Bashir and others v. Abbas Ali Shah (2007 SCMR 1105) and Bashir Ahmad v. Ghulam Rasool (2011 SCMR 762). It is also pointed out that the judgment reported as "Hayat Muhammad and others v. Mazhar Hussain" (2006 SCMR 1410) has been pronounced by honourable Division Bench of the honourable Supreme Court whereas the latest Supreme Court pronouncement in 2007 SCMR 1105 has been announced by the honourable Full Bench and in the subsequent judgment reported as Bashir Ahmad v. Ghulam Rasool (2011 SCMR 762), the Full Bench judgment of the honourable Supreme Court of Pakistan has

been relied upon and followed. It is laid down in the reported judgment "Babar Shehzad v. Said Akbar and another" (1999 SCMR 2518) that a judgment announced by an honourable larger Bench is to prevail as against the judgment announced by a Bench comprising two honourable Judges of the Supreme Court.

9. On the basis of available record it is established that the appellant did not produce the postman to prove the due performance of Talb-e-Ishhad therefore he has not proved due performance of Talb-e-Ishhad as per the case-law laid down by the honourable Supreme Court of Pakistan and he is not entitled to a pre-emption decree. The instant R.S.A. being without any merits is dismissed in limine.

**(NASIR SAEED SHEIK)**  
**Judge**