

Judgment Sheet

**IN THE LAHORE HIGH COURT
RAWALPNIDI BENCH, RAWALPINDI**

JUDICIAL DEPARTMENT

JUDGMENT

Case No. C.R. No.393-D/2011

Muhammad Khan @ Momin Khan

Vs.

Said Alam (deceased thorough LR's etc.

Date of hearing: 07.09.2016.

Petitioner (s) by: Sh. Zameer Hussain, Advocate.

Respondents (s) by: Sh. Ahsan ud Din, Advocate.

Muhammad Ameer Bhatti, J. This revision petition is directed against the judgment and decree dated 09.02.2011 passed by the learned Additional District Judge, Attock whereby it while accepting appeal of respondents set aside the judgment and decree dated 09.10.2009 rendered by the learned Civil Judge resulting into dismissal of suit of petitioner.

2. The record of the case has been examined with the assistance of learned counsel for the parties. From perusal of record it reveals that date of notice of Talb-i-Ishhad has neither been incorporated in the plaint nor copy of the same was attached with the plaint at the time of its submission before the Court, which was mandatory in view of law laid down by the Hon'ble Supreme Court in judgments reported as **Mian Pir Muhammad and another v. Faqir Muhammad through**

L.Rs. and others (PLD 2007 SC 302) and **Daud Shah v. Waris Shah and others** (2014 SCMR 852). Since the deficiency in the plaint was floating on the surface of record, therefore, the same was liable to be rejected under Order VII Rule 11 CPC, as the same fact was determinable from bare reading of plaint.

3. In the case of Mian Pir Muhammad (PLD 2007 SC 302), the Hon'ble Supreme Court has held that date, time and place of notice of Talb-i-Ishhad must have been incorporated in the plaint and departure thereof will be fatal, entailing the consequences of dismissal of the suit. However, in a case reported as **Daud Shah v. Waris Shah and others** (2014 SCMR 852), the Hon'ble Supreme court provided the edge to the plaintiff/pre-emptor regarding the omission to mention date of notice of Talb-i-Ishhad in the plaint for the reason that the date has been mentioned in the notice, which was attached with the plaint at the time of filing of the suit in the Court and this omission in that particular feature was condoned and considered to be sufficient compliance of judgment of the Hon'ble Supreme Court. Whereas, in the present case, as stated in preceding paragraph, neither the date of issuance of notice of Talb-i-Ishhad was mentioned in the plaint nor the notice was attached with the plaint at the time of filing of the suit, so the ratio laid down by the Hon'ble Supreme Court in **Mian Pir Muhammad and another v. Faqir Muhammad through L.Rs. and others** (PLD 2007 SC 302) has been grossly violated, which is not curable as also held by the Hon'ble Supreme Court in case **Daud Shah v. Waris Shah and others** (2014 SCMR 852).

3. Confronted with the above, learned counsel for the petitioner tried to wriggle out from the situation by asserting that notice dispatched

to the defendants although does not reflect the date of notice of Talb-i-Ishhad, however, it was dispatched on 07.11.2003 and on account of non-delivery of that notice to defendants, it was received by the petitioner showing the date of dispatch as 07.11.2003, therefore, the requirement of law has been fulfilled, hence the petitioner cannot be non-suited on this technical ground. At the cost of repetition, since the Hon'ble Supreme Court of Pakistan held in the above referred judgments that the deficiency qua mentioning of date of notice of Talb-i-Ishhad and ingredients of Talb-i-Muthawabit are fatal entailing the consequences of dismissal of suit, therefore, it is held that alleged superior right of pre-emption stood extinguished as the pre-emptor failed to fulfill the requirement of law, as set-out by the apex Court. Hence, this petition has no merit and stands ***dismissed***. No order as to costs.

(MUHAMMAD AMEER BHATTI)
JUDGE

*Nadeem**