

Stereo.HCJDA-38  
**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT LAHORE**  
**JUDICIAL DEPARTMENT**

***Civil Revision No.3047 of 2014***

**Muhammad Nawaz.....Vs.....Muhammad Yousaf**

**J U D G M E N T**

<b>Date of Hearing</b>	<b>10.12.2018</b>
<b>PETITIONER BY</b>	<b>Ch. Amjad Hussain, Advocate.</b>
<b>RESPONDENT BY</b>	<b>Hafiz Khalil Ahmad, Advocate.</b>

**Rasaal Hasan Syed, J.** This judgment deals with the disposal of civil revision that impugns the judgments and decrees dated 02.5.2012 and 22.5.2014 of the learned Civil Judge and learned Addl. District Judge Gujrat respectively whereby petitioner's suit for pre-emption as well as appeal were dismissed.

2. Land measuring 08 kanals 16 marlas, as described in para 1 of the plaint, was purchased by the respondent from Rashida Begum daughter of Inayatullah through mutation No. 1823 dated 08.6.2004. To pre-empt the sale, the petitioner filed a suit for possession through pre-emption claiming therein that the land was sold for Rs.400,000/- the

amount which was allegedly paid and was also allegedly the market-value and that the amount of Rs.600,000 was notionally fixed. It was further alleged that the factum of sale was allegedly communicated at 5:00 p.m. on 19.9.2004 by Muhammad Rafique son of Muhammad Shafi at the *dera* of petitioners in the presence of Ayyaz Ahmad son of Sultan Ali and Tariq Mehmood son of Muhammad Hussain, in whose presence, the petitioner allegedly made *Tabl-e-Muwathbibt*, which was followed by *Talb-e-Ishhad* vide registered notice dated 20.9.2004. The petitioner claimed superior right of pre-emption on the plea of being *Shafi Sharik* and *Shafi Jar*.

3. The respondent resisted the suit, inter alia claiming that it was not within time, the petitioner had not made the mandatory *Talbs* as required by law, he had no superior right of preemption and that the petitioner was well-aware of the transaction from the very beginning and that a story was invented about the information which was nothing but an afterthought and had no nexus with reality.

4. Issues were framed and evidence was recorded; the learned Civil Judge on consideration

of evidence as also the respective submissions from both sides, concluded that the petitioner could not prove the performance of requisite *Talb-e-Muwathibt* and *Talb-e-Ishhad* in accordance with law and as such had no right to seek relief in the suit; however, the issue of superior right was decided in positive. In so far as the price at which the sale took place, the issue was decided against the petitioner, and it was held that the petitioner could not establish that the price of Rs.600,000/- was fictitiously fixed or that it was not paid. In result of the findings, the suit of petitioner was dismissed vide judgment and decree dated 02.5.2012.

5. Appeal filed by the petitioner ended in dismissal vide judgment dated 22.5.2014 of the learned Addl. District Judge Gujrat which is now assailed in this revision petition.

6. Learned counsel for the petitioner contended that the petitioner had produced sufficient evidence to prove the performance of *Talbs* but the learned courts below dismissed the suit as also appeal only on the basis of minor discrepancies in the statement of PWs. Elaborating his submissions, learned counsel stated that the necessary pre-

requisites i.e. date, time and place of performance of *Talbs* were duly incorporated in the plaint which were also proved by the evidence on record but notwithstanding the same, the relief was declined while taking note of inconsequential contradictions in evidence.

7. In response to the arguments, learned counsel for the respondent submitted that the two courts below had minutely examined the evidence, pinpointed the contradictions, recorded valid reasons to disbelieve the petitioner's stance of alleged *Talbs*; and that in the revisional jurisdiction, re-appreciation of the evidence or formation of a different view of the same evidence on re-appraisal thereof, has never been approved; and further that the petitioner cannot expect the re-consideration of the entire evidence to revisit the findings recorded by courts below.

8. Having heard learned counsel for the parties at length and on in-depth consideration of judgments of the courts below in the light of evidence on record respectively produced by the parties, it is observed that the two courts below examined the entire evidence of the parties in

proper perspective and recorded reasons with sufficient detail in support of their findings.

9. The mutation of sale undeniably was attested on 08.6.2004 while the petitioners claimed knowledge thereof through the alleged informer on 19.9.2004. It was his plea that at 5:00 p.m. on 19.9.2004 Muhammad Rafique came to his *dera* and, in the presence of Ayyaz Ahmad son of Sultan Ali as well as Tariq Mehmood son of Muhammad Hussain who were allegedly present, he informed that the suit property had been disposed of; when the petitioner spontaneously made *Talb-e-Muwathibt* whereafter the notice of *Talb-e-Ishhad* was allegedly sent.

10. Muhammad Rafique the alleged informer appeared in the witness box as PW3 to support the petitioner's plea but the important and notable part of his statement is in cross-examination where on being asked as to when and from whom he got the knowledge of sale, he responded that at 10:30 a.m. on 19.9.2004 he had gone to buy some articles when 2-3 persons of town were talking with each other and from which he gathered the knowledge of sale. On being further asked about the names of

those persons he deposed that he did not recall as to who were those persons that were allegedly talking about the sale. Further deposed that he did not come to know of the date of mutation at the said alleged occasion nor he could recollect the time when he reached the *dera* of petitioner; further added that at 4.30 p.m the plaintiff came at the *dera* and he saw him. In his cross-examination, he admitted that he did not know as to when mutation took place and that he came to know of the date of mutation on 20.9.2004 when he allegedly visited to the office of lawyer for drafting of notice. In cross-examination he also admitted having not seen any copy of mutation with the petitioner nor was he aware about the date of mutation. He further admitted that he did not recollect about the person who told him about the date of mutation nor did he ever see any paper with lawyer.

11. Petitioner himself appeared as PW2 and in cross-examination stated that Muhammad Rafique came to his *dera* at 5:10 p.m. and informed that he had gone to a shop where some persons were talking and where he overheard of sale. On being asked he admitted that he could not disclose the

names of those persons nor he could disclose the name of the shop. Further admitted that Muhammad Rafique did not disclose as to when he came to know about the sale nor he disclosed about the date of mutation. Interestingly he admitted that he did not have any copy of mutation or any other paper when he went to the office of the lawyer for drafting notice and he only told his lawyer that he had verified from *patwari* about the sale but the perusal of the notice allegedly sent reveals that full particulars of sale were given which raises sufficient doubts as to the story which was narrated. The courts below also noted the fact that Muhammad Rafique PW3, the alleged informer, did not know the names of the persons who were talking about the sale at the shop nor he could disclose the date of the mutation or the number of the mutation.

12. It is a settled rule that non-performance of *Talb-e-Muwathibt* results in extinction of right to enforce pre-emption. The petitioners were required to prove that the alleged informer, who was claimed to have conveyed about the sale, did possess such information; there was definite basis to believe his statement and his statement was credible. The

informer in this case did not claim to be present at the time of mutation; he was unaware about the names of the persons from whose overheard conversation he alleged the knowledge of sale; he admits having no knowledge of particulars of sale; he was not a witness to the transaction; he did not claim to have gone to the *patwari* or at site to find out the change of transfer of possession; and it was not claimed that the possession had not taken place at the time of sale.

13. In these circumstances, the alleged informer could not satisfy that his statement should be believed. It was also necessary for the petitioner, in the circumstances, to produce those two persons as witnesses in support of the statement of PW3 and in the absence of such evidence the learned courts below rightly declined to accept the statement of informer or the plea of alleged information on the given date.

14. It was also noteworthy that the sale was made in June 2004, the mutation was attested on 08.6.2004 and the informer claimed knowledge of sale on 19.9.2004 i.e. about three months later and during this time nobody noticed the change of

possession at site nor ever bothered to learn where the previous owner had gone. Be that as it may, the most material evidence has been withheld. PW3 could not establish having actually received information of sale on the given date, therefore, the entire story of the petitioner collapsed.

15. Additionally, there were other material contradictions in the statement of PWs, for instance PW3 i.e. the petitioner claimed that PW3 came to the *dera* at 5.10 p.m. and he was sitting at the *dera* when the witness came. To the contrary Muhammad Rafique stated that he came to the *dera* at 4.30 p.m when Tariq and Ayyaz Ahmad were present and that in his presence, the petitioner reached the *dera* at 4.30 p.m when he saw him. It is also noticed that the second alleged witness of *Talb-e-Muwathibt*, Ayyaz Ahmad was also not produced, which was a material omission. The cumulative effect of these facts noted herein above, leads to the conclusion that the petitioner could not prove *Talb-e-Muwathibt*. The two courts on in-depth scrutiny of evidence on record, noted contradictions and all material factors and omissions in the evidence, concluded that the petitioner was unable to prove

the making of *Talb-e-Muwathibt*, which was one of the necessary pre-conditions for enforcement of alleged right of pre-emption in action. According to Islamic rule of preemption, the right of pre-emption becomes extinct if the requisite *Talbs* are not made. *Talb-e-Muwathibt* having not been proved, the suit was rightly dismissed.

16. For the reasons above, no case is made out for interference, the revision petition lacking merit is accordingly ***dismissed***. Parties to bear their own costs.

**(RASAAL HASAN SYED)  
JUDGE**

**Approved for reporting.**

Announced in open Court on 03.1.2019.

**(RASAAL HASAN SYED)  
JUDGE**