HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Civil Revision Application No.S-20 of 2024

Applicants:	Habibullah & Others. Through Mr. Harish Chander, Advocate.
Respondents:	Muhammad Aslam & others. Through Mr. Abdul Razzaq Laghari, Advocate.
Date of hearing:	23.02.2026
Date of Order:	10.03.2026.

O R D E R.

MIRAN MUHAMMAD SHAH J.- This Civil Revision Application filed by the applicants, whereby they have challenged the judgment dated 16.12.2009 and decree dated 22.12.2009 passed by learned First Additional District Judge, Mirpurkhas in Civil Appeal No.19/2007 whereby same was allowed and judgment and decree dated 24.02.2007 and 28.02.2007 passed by the learned 2nd Senior Civil Judge, Mirpurkhas in F.C Suit No.60/2000 New No.82 of 2006 were set aside, hence this Civil Revision Application.

2. The facts leading to this appeal are that Respondent/applicant Habibullah had filed suit for Pre-Emption stating therein that agricultural land consisting of B.No: 11/1 to 16 area 16-0 acres and B.No: 7/1.2.4.11 to 14 and 20 Ghuntas from B.No: 7/6. B.No: 12/1.2.7 and 20/3 to 6. 10 area 15-20 acres in deh 149 Taluka Digri, referred as suit land was the property of defendant and real brother of the plaintiff. Just adjoining the suit land the plaintiff is owing the agricultural land consisting of area 31-20 acres in deh 149 Taluka Digri. It further averred in the plaint that on: 14-1-2000 the defendant No: 1 sold the suit land area 16-0 acres in the name of defendant No: 2 and an area of 15-20 acres in the name of defendant No: 3 through their father/guardian by way of registered sale deed. In the evening of the same date i.e. 14-1-2000 the plaintiff through his son/attorney came to know of the above shown sale through the haries of defendant No: 1. The plaintiff though his son/attorney declared his intention to assert the right of pre-emption immediately on getting the said information of the sale in the capacity of Shafi-e-Jar and participator in the immunities and appendages, the land of the plaintiff being adjoining to the suit land thus completing the Talab-i-Mowasibat. It is averred in the plaint that the plaintiff through his son/attorney then with the least practicable delay called two witnesses and took them to the suit land where the plaintiff through his son/attorney

affirmed his intention referring expressly to the fact that the Talab-i-Mowasibat was already made, made formal demand in presence of the witnesses on the suit land, asserting his right of pre-emption on same terms and conditions and thus completed Talab-i-Ishhad thus plaintiff having made the required demands through his son/attorney became entitled to claim the right of pre-emption in respect of suit land. Thereafter plaintiff through his son ascertained that the defendant No, I had sold the suit land to the defendants No: 2 & 3 for Rs: 472.000/- and approached the father of the defendants No: 2 & 3 at Digri that as the plaintiff being owner of the adjoining land had asserted his right of pre-emption by making the required demands, therefore the father of the defendants No: 2 & 3 should re-convey the suit land to the plaintiff on same terms and conditions. The father of defendants No: 2 & 3 realizing the right of the plaintiff promised to re-convey the suit land to the plaintiff on same terms and conditions and kept the plaintiff on false assurances for about six months and ultimately declined to do so. The plaintiff on seeing the delaying tactics of father of defendants No: 2 & 3 obtained certified true copy of sale and requisite stamp but then the father of the defendant No.2&3 had not clearly refused to re-convey the suit land and about a week ago the father of defendants No: 2 & 3 refused to do so, hence the plaintiff had filed suit with the following prayers.

a) Decree for pre-empting the same made by the defendant No: I in favour of the defendants No: 2 & 3 on same terms and conditions in view of the facts stated above and directing the defendants No: 2 & 3 through father to re-convey the suit land to the plaintiff by executing such deed as per law. In case of failure of the defendants, this Honourable court may be pleased to get the same done through its Nazir according to law.
b) Costs of the suit be borne by the defendants.
c) Any other equitable relief in the light of the facts stated above.

3. After service of notice defendants/appellants contested the matter filed written statement, mostly denied the assertions of plaint and contended that the plaintiff is not entitled for any relief claimed and suit is fit to be dismissed with cost.

4. Out of pleading of the parties the trial court framed following issues;-

ISSUES.

1. Whether the plaintiff owns his land adjoining the suit land and is entitled to claim right of pre-emption under law?
2. Whether the plaintiff having made legal demands in respect of suit sale, became entitled to right of pre-emption in respect of suit land. If so, what is the effect?
3. Whether the plaintiff is entitled to the relief prayed for?
4. What should the decree be?

5. Both the parties adduced their evidence and the learned trial court after hearing the arguments of both parties, the learned Trial Court decreed the suit of the plaintiffs/ applicants vide Judgment dated 27-02-2007 and Decree dated 28-02-2007. The respondents preferred Appeal against the said judgment and decree of trial Court, which was allowed and judgment and decree of trial court were set aside.

6. Learned counsel for the applicants submits that the impugned judgment and decree passed by the learned Appellate Court are illegal, contrary to law, and based upon misreading and non-reading of the evidence available on record. He submits that the learned Appellate Court set aside the well-reasoned judgment and decree of the learned Trial Court without pointing out any material illegality or infirmity therein. Learned counsel for the applicant submits that the learned appellate court has erred in its observations regarding the first demand (Talab-i-Muwasibat) made in the present suit. The appellate court stated that “Para No.6 of the plaint reveals that the first Talab-i-Muwasibat was not made by the plaintiff/respondent himself but was made by his son,” and further held that no name of the son/attorney was disclosed and no authority was mentioned to make such demand. Learned counsel submits that this conclusion is erroneous in law. A perusal of the plaint and the record clearly shows that the plaintiff, Habibullah, was alive at the time of sale and at the time of recording evidence, and had duly authorized his son and attorney, Zia Habib, by a special power of attorney dated 05.01.2000, to perform all necessary acts to claim the right of pre-emption, including making Talab-i-Muwasibat. The power of attorney was filed with the plaint and the original was produced during evidence as Ex.39. Therefore, there was no necessity to mention the name of the son/attorney in Para No.6 of the plaint, and the

appellate court erred in holding otherwise. Learned counsel further submits that the appellate court ignored the provisions of Muhammadan Law, which clearly allow that the demand for pre-emption may be made by a person previously authorized by the pre-emptor. Consequently, the finding that the first demand was not made by the applicant/plaintiff himself is legally untenable. With regard to the second demand (Talab-i-Ishhad), the appellate court erroneously held that the names of witnesses not being disclosed in the plaint rendered the demand unproved. Learned counsel submits that under established law, as held in Rehmat Ali v. Muhammad Nazir (1997 MLD 1017 Karachi), it is not necessary to disclose the actual names of witnesses in the plaint; it is sufficient that it is stated that the demand was made in the presence of witnesses so that evidence could be led to prove it. In the present case, the names of witnesses were duly disclosed during evidence, and therefore, there is no legal infirmity. Learned counsel respectfully submits that the appellate court failed to consider the title of the plaint, the provisions of Muhammadan Law regarding pre-emption, and the evidence on record. By dismissing the suit, the appellate court has committed a serious illegality, including a violation of Order 41, Rule 31 CPC. In support of these submissions, reliance is placed on the following case law: 1987 CLC P-2281, 1989 PLD (SC) P-568, 2000 CLC P-1838, 1999 CLC P-2372, and 1993 PLD (Kar.) P-296. Lastly learned counsel submits that the learned trial court rightly decreed the suit, and the appellate court’s judgment is liable to be set aside.

7. Conversely, learned counsel for the respondents and learned and learned A.A.G supports the impugned judgment and decree passed by learned appellate Court. Learned counsel for the respondents respectfully submits that the learned appellate court has rightly dismissed the suit and that the impugned judgment dated 16-12-2009 is fully in accordance with law and evidence on record. It is submitted that the source of knowledge for the applicant/plaintiff Habibullah was the haris of Defendant No.1, and the suit was filed almost six months after obtaining knowledge of the alleged sale. The plaint fails to disclose the names of the haris and the witnesses of both the first demand (Talab-i-Muwasibat) and the second demand (Talab-i-Ishhad), which is fatal to the claim of pre-emption, as held in *Sardar Muhammad Nawaz v. Mst. Firdous Begum (2008 SCMR 404)*. Learned counsel further submits that the evidence of witnesses produced by the plaintiff, including Zia Habib, Wajahat Habib, and Ghulam Muhammad, is inconsistent and untrustworthy on material points, including the timing and

circumstances of the alleged demands. For instance, the timings stated by the witnesses regarding reaching the suit land on 14-01-2000 contradict natural facts, such as the sunset time, and their statements are mutually inconsistent, undermining the credibility of the alleged demands. Moreover, Mehboob Alam, father of Defendants No.2 and 3, testified that neither Habibullah nor his sons contacted him to purchase the land, contrary to the plaintiff's claims. It is also submitted that the plaintiff Habibullah and Defendant No.1 Muhammad Aslam are real brothers, and Mahboob Alam is their nephew, thereby excluding the element of "stranger," which is required to claim pre-emption. Further, Habibullah and his sons were already landowners of adjoining property, which negates the requirement of "need," as discussed in *PLD 1988 SC 144 (Placitum C)*, *PLD 2008 SC 559*, and *PLD 1986 SC 360 (Saeed Kamal case)*. Lastly, learned counsel submits that the appellate court correctly applied the law, considered the deficiencies in the plaint and the contradictions in the evidence, and rightly dismissed the suit. Therefore, the instant revision application is not maintainable under law and is liable to be dismissed.

8. I have heard learned counsel for the parties and have gone through the material available on record.

9. Upon careful examination of the entire record, including the pleadings of the parties, the evidence produced before the trial Court, and the relevant principles governing the right of pre-emption under Muhammadan Law, it becomes evident that the requirements of law regarding the assertion of the right of pre-emption were substantially complied with by the plaintiff. One of the essential conditions for enforcement of the right of pre-emption is the making of the first demand known as Talab-i-Muwasibat, which requires the pre-emptor to immediately declare his intention to assert the right upon acquiring knowledge of the sale. In the present case, the record clearly indicates that such demand was made by Zia Habib, who was not acting in his personal capacity but as a duly authorized representative of the plaintiff, Habibullah. The authority of Zia Habib was derived from a Power of Attorney dated 05-01-2000, through which Habibullah had lawfully empowered him to undertake all necessary acts in relation to the enforcement of the right of pre-emption.

10. Although the plaint does not explicitly repeat the name of the attorney in the particular paragraph discussing the demand, the overall

reading of the plaint and accompanying documents sufficiently discloses that the proceedings were instituted through the attorney and that the acts performed by him were within the scope of the authority granted. The omission to restate the attorney's name in a specific portion of the pleading cannot invalidate the demand when the authority itself stands duly proved on record. The appellate Court, while reversing the decree of the trial Court, appears to have taken a hyper-technical view of the matter and failed to appreciate the legal principle embodied in Section 236 of Muhammadan Law, which expressly provides that the demands of pre-emption need not necessarily be made by the pre-emptor personally; rather, they may validly be made by a manager, agent, or any person previously authorized by the pre-emptor. In this regard explanation II of section 236 of Muhammadan Law is reproduced as under;

> **Explanation II.** ***It is not necessary that the talab-i-muwathibat or talab-i-ishhad should be made by the pre-emptor in person. It is sufficient if it is made by a manager or a person previously authorized by the pre-emptor to make the demand. When the pre-emptor is à minor, his de facto guardian may make a demand on his behalf. A demand made by the father or brother of the pre-emptor is not sufficient, even if he has a right to pre-empt, unless he had been previously authorized to make the demand. When the pre-emptor is at a distance, the demand may be made by means of a letter.***

11. Therefore, once the authority of Zia Habib as attorney stood established through the Power of Attorney, the demand made by him legally fulfilled the requirement of Talab-i-Muwasibat. Furthermore, the evidence brought on record through the testimonies of Wajahat Habib, Ghulam Muhammad, and Zia Habib supports the plaintiff's case that both the essential formalities of pre-emption, namely Talab-i-Muwasibat (immediate demand) and Talab-i-Ishhad (demand with invocation of witnesses), were duly performed. These witnesses consistently stated that the demands were made in the presence of witnesses and on the relevant dates soon after the knowledge of the sale transaction. Their depositions demonstrate that the plaintiff's side had acted in conformity with the statutory requirements governing the exercise of the right of pre-emption. It is a settled principle of law that minor discrepancies or variations regarding the precise time, sequence, or peripheral details in witness statements are natural and do not undermine the substance of the evidence, particularly when the core facts remain consistent and corroborated by multiple witnesses.

12. The appellate Court, however, appears to have overlooked these material aspects of the evidence and instead focused on insignificant inconsistencies, thereby misdirecting itself in the appreciation of evidence. Such an approach runs contrary to the settled principles governing civil adjudication, where the Court is required to consider the evidence as a whole rather than isolating minor contradictions to discard an otherwise credible case.

13. Another significant factor which the appellate Court failed to properly consider is the relationship between the parties. The record shows that Habibullah and Muhammad Aslam are real brothers, while Mahboob Alam, the father of respondents No.2 and 3, is their nephew. This close familial relationship provides important context to the dispute and supports the plaintiff's position regarding the enforcement of the right of pre-emption. In pre-emption law, the concepts of "stranger" and "need" are often considered when determining the legitimacy of the claim. In the present matter, the circumstances demonstrate that the plaintiff had a legitimate and lawful interest in asserting his right of pre-emption in respect of the property sold, and the evidence on record sufficiently establishes the fulfillment of the necessary legal conditions.

14. In view of the foregoing discussion, it becomes clear that the trial Court had correctly appreciated the evidence and the applicable legal principles, and had rightly decreed the suit in favor of Habibullah. The appellate Court, on the other hand, appears to have misread the record, overlooked material evidence, and applied the law incorrectly. Consequently, the findings recorded by the appellate Court cannot be sustained in law and are liable to be termed perverse and legally unsustainable. Therefore, the judgment and decree passed by the appellate Court dismissing the suit cannot stand the test of legal scrutiny. The same is accordingly set aside, and the judgment and decree of the trial Court, which had rightly decreed the suit in favor of the plaintiff Habibullah after due compliance with the requirements of Muhammadan Law and procedural law, are hereby restored. As a result, the revision application stands allowed.

Judge

"Adnan Ashraf Nizamani"