

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
R. A No.S-40 of 2001

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Date	Order with signature of Judge
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For hearing of main case

**03.10.2019**

Mr. Shakeel Ahmed Kalwar Advocate for applicants  
Mr. Parmanand Advocate for the respondents

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**NAZART AKBAR, J.-** This Civil Revision Application was filed in the year 2001 against concurrent findings whereby two courts below have refused the claim of pre-emption raised by the applicants in FCS No.31/1997 by judgment and decree in suit dated **30.8.1999** and **04.9.1999** and appellate judgment and decree dated **25.4.2001** and **30.4.2001** respectively.

2. Brief facts of the case are that the applicants filed suit for pre-emption and permanent injunction stating therein that they are owners and co-sharers in Survey Nos.364, (7-35) acres, 373 (3-14) acres, 378 (1-06) acres 490 (4-20) acres, 492 (3-22) acres, 371 (1-19) acres, situated in Deh New Baiji, Tapo and Taluka Pano Akil, District Sukkr (the suit land), alongwith Respondent No.1. The applicants have common water course to irrigate the said land and have common passage from the land in question and as such the applicants are shafi-ul-fhariq and shafi-ul-jar and other such rights of pre-emption according to Muhammadan Law with Respondent No.1 in the suit land. Respondent No.1 has sold out the shares in the suit land i.e 12 paisa share from Survey No.364 area 0-38 ghunta, 3 paisa share

from Survey No.373, 378, 490, 492, 371, area 0-17 ghunta, total area sold 1-15 acres in favour of Respondent No.2 for the consideration of Rs.200,000/- through registered sale deed dated 29.12.1996. The suit land is a garden of dates. When the applicants came to know about the said sale made by Respondent No.1 in favour of Respondent No.2, they exercised their right of pre-emption and made such talabs i.e talb-e-mawasabat and talb-e-ishahd in presence of witnesses and they were willing and ready to purchase the land sold for the same price which has been fixed and paid in respect of the suit land. The applicants exercised the said right over the suit land as well as by way of approaching the Respondents but the Respondents declined to sale the land in favour of the applicants. The applicants have right of pre-emption superior to any one and when they have exercised the same, the land was to be transferred in their favour for the price which has been fixed. Therefore, the applicants prayed in the suit as under:-

- a) *To decree the suit for pre-emption in favour of the Plaintiffs/ Petitioners directing the defendants/Respondents to execute the sale deed to the extent of 12 paisa share from S.No.364 (0-38) ghuntas, 3 paisa share from S.No.373, 378, 490, 492, 371, an area of 17 ghuntas total area (1-15) acres situated in Deh New Baiji Tapo and Taluka Pano Akil District Sukkur, through registered sale deed for a sum of Rs.2,00,000/- in favour of the plaintiffs/petitioners in default the Nazir of this Honourable Court (trial court) may be directed to execute the same.*
- b) *To restrain the defendants/Respondents from alienating the suit land by themselves or through their agents and servants and should refrain from doing such other acts through permanent injunction.*
- c) *To award the cost of the suit.*
- d) *Any other relief that the court deems fit.*

3. The defendants/Respondents filed their written statement and following issues were framed.

1. *Whether the suit is maintainable under the law?*
2. *Whether Petitioners are co-sharer in the suit land?*
3. *Whether the Petitioners have exercised the right of pre-emption?*
4. *Whether the Petitioner have right of pre-emption superior over the suit land I comparison of the Defendant No.2?*
5. *Whether the Petitioners have got land very adjacent to the Defendants No.1 to 2?*
6. *What should the decree be?*

4. The applicants/plaintiffs examined their general attorney namely Shamsuddin who was also plaintiff No.1 in the suit. The plaintiffs/applicants have also examined PW Mohammad Hashim at Ex:25. Both the defendants examined themselves.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for the applicants after the arguments and going through the impugned order has conceded that no written intimation regarding claim of preemption was sent to the respondents. However, learned counsel for the applicants raised the objection to the reference of **section 13 (3) of Punjab Pre-emption Act**, by two Courts below while declining plaintiffs' right of pre-emption. He contended that it was not applicable in Sindh. Obviously the Punjab Preemption Act is not applicable in Sindh as it pertains to the Province of Punjab. However, it is an

admitted position that no specific and independent statute is available on the issue of preemption in the province of Sindh. When confronted with the point of non-existence of Statutory Law in Sindh to raise claim of preemption in Sindh before he could reply, some of the Senior counsel namely **Mr. Jamshed Faiz**, **Mr. Qalandar Bux Phulpoto** and **Mr. Abdul Naeem** Advocates present in Court graciously assist the court and submitted that in the absence of statutory law in Sindh, provision of Muhammadan Law are applicable in the Sindh for the claim of preemption. They have referred to paragraph 236 of Muhammadan Law by D.F Mulla, which is reproduced below:-

“236..Demands for pre-emption.—No person is entitled to the right of pre-emption unless—

- (1) He has declared his intention to assert the right immediately on receiving information of the sale. This formality is called talab-i-mowasibat(literally, demand of jumping, that is, immediate demand); and unless
- (2) He has with the least practicable delay affirmed the intention, referring expressly to the fact that the talab-i-mowasibat had already been made, and has made a formal demand---
  - a) Either in the presence of the buyer, or the seller, or on the premises which are the subject of sale, and
  - b) In the presence at least to two witnesses. This formality is called talab-i-ishhad (demand with invocation of witnesses)

7. Learned counsel Mr. Jamshed Faiz has further contended that in **paragraph 236** above in the event of the claim of pre-emption the speed of raising claim is very important and it should be done in presence of seller and buyer and if it is not

possible then at least two witnesses are required not only according to Qanun-e-Shadat Order, 1984 but also in terms of **paragraph 2(b) of para 236** of the Mohammadan Law as proof of talb-i-ishhad. The record shows that the applicants have failed to produce two witnesses of the occasion/event when he raised his right of preemption against the Respondents when they came to know that the respondents have sold or they were about to sale their property. However, to appreciate the contentions of the learned counsel for the applicants that the two Courts below have relied on the provision of **Sub-section 3 of Section 13 of the Punjab Preemption Act**, it is appropriate to reproduce the said provision as follows:-

*“13. Demand of pre-emption. (1) The right of pre-emption of a person shall be extinguished unless such person makes demands of pre-emption in the following order, namely*

*(a) -----*

*(b) -----*

*(c) -----*

*Exemption. (1) -----*

*(2). -----*

*(3) Where a pre-emptor has made talb-i-muwathibat under sub-section (2), he shall as soon thereafter as possible but not later than two weeks from the date of knowledge make talb-i-ishhad by sending a notice in writing attested by two truthful witnesses, under registered cover acknowledgment due, to the vendee, confirming his intention to exercise the right of pre-emption:*

*Provided that in areas where owing to lack of post office facilities it is not possible for the pre-emptor to give registered notice, he may make talb-i-ishhad in the presence of two truthful witnesses.*

*(4) -----*

8. The contentions of learned counsel for the applicants that the provisions of Section 13(3) of the Punjab Preemption Act is not applicable in the province of Sindh appears to be justified but unfortunately as discussed above the applicants even in terms of Mohammadan Law were required to produce two witnesses of talb-i-ishad. He conceded that they have not produced two witnesses nor they even mentioned second witness in claim of preemption. However, if we examine the provision of **Section 13(3) of the Punjab Preemption Act**, we find that for a preemptor a requirement of sending a notice in writing attested by two truthful witnesses is made mandatory for presenting the claim of Talb-i-Khusumat in the Court of competent jurisdiction. The requirement of sending registered post letter may be contrary to the provisions of Mohammadan Law but in the case in hand since both the Courts below have dismissed the claim of the applicants for want of the required number of witnesses to prove the claim of preemption, I do not find any justification in interfering in the concurrent findings of the two Courts below.

9. Keeping in view the concept of Preemption discussed in paragraph 236 of the Muhammadan Law by D.F Mulla, the applicants have failed to support their claim of pre-emption both in terms of Mohammadan Law as well as requirement of Qanun-e-Shadat Order, 1984.

10. In view of the above facts and position, the revision application is dismissed with no order as to the costs.

JUDGE