IN THE HIGH COURT OF SINDH
BENCH AT SUKKUR

Civil Rev Appl No. S-37/2019

Applicant	:	Muhammad Jan, through Achar Khan Gabole, Advocate.
Respondent No. 1	:	Manthar Ali through Asif Ali Bhatti, Advocate.
Date of hearing	:	13.11.2023.

JUDGMENT

YOUSUF ALI SAYEED, J. - The Applicant has invoked the revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure 1908 so as to impugn the judgment and decree in Civil Appeal No.69 of 2012, whereby the judgment and decree rendered by the learned 1st Civil Judge Kandiaro in Civil Suit No. 18/2010 Re. Muhammad Jam versus Mantghar Ali was set aside by the Additional District Judge, Kandiaro, with the underlying Suit being dismissed.

2. Succinctly stated, the Applicant had filed the aforementioned Suit for pre-emption and perpetual injunction against the Respondent No.1 in connection with certain land situated in Deh Bhagu Dero-1, Taluka Kandiaro, District Naushahro Feroze claiming to have made the first and second demands of Talab-e-Mowasibit and Ishad upon said Respondent in the presence of witnesses during the second the week of October, 2009, upon coming to know of the sale transaction made by his co-sharer when that Respondent came to take physical possession of the land.

3. The Respondent No.1 filed his written statement challenging the maintainability of the Suit while simultaneously refuting the claim on merits, with the trial Court going on to frame the following issues.

1. Whether the suit is not maintainable according to law?
2. Whether plaintiff has right of pre-emption and he made demands as required by law?
3. What should the decree be?

4. The parties then led their evidence, with the Suit culminating in a decree in favour of the present Applicant. However, that decision was reversed on appeal, with the appellate Court coming to the conclusion that the judgment and decree were not sustainable in law. As a result, while accepting the appeal the learned appellate Court was pleased to set aside the judgment and decree and dismiss the Suit, hence this Revision.

5. The relevant excerpt from the impugned appellate Judgment, reflecting the reasoning that prevailed to the mind of the Appellate Court, reads as follows:

> "Respondent/plaintiff claims to have made first demand of Talab-e-Mawasbat immediately after coming to know about the purchase of the land in question by the defendant/appellant in the sum of Rs. 8000/-(Eight thousand) in the second week of October, 2009 at about 10:00 am when he came to take its physical possession while he has also shown to have made second demand of Talab-e-Ishad at the same time in presence of above named witnesses, however, he has also nowhere disclosed the exact date of making such demands. He seems to have done so malafidely in order to avoid possibility of being disclosed conflicting dates by him and his witnesses later on in case of mentioning the same by him. His witnesses Sikander and Kamil have neither

> disclosed about the second week of October, 2009 nor disclosed the time of making such demands in their testimonies but they have disclosed that such demands were made in month of October, 2009 which fact is not sufficient to believe their version when their presence is not proved satisfactorily in the light of their disclosing to have been cultivating the land at that time which is not disclosed by the respondent/plaintiff who therefore, seems to have managed the story of making demands without making it actually. Accordingly, I hold that, the respondent/plaintiff has failed to prove both the demands made in accordance with law. I am therefore, of the view that, the learned trial Court has not properly appreciated the evidence brought on the record in view of ignoring the above aspect of the same, as such the learned trial Court has grossly erred in decreeing the suit. The findings and conclusion arrived at by the trial Court are therefore, liable to be reserved. "

6. When called upon to show the misreading or non-reading of evidence or other error afflicting the finding of the appellate Court, learned counsel for the Applicant remained at a loss to do so. Indeed, in the matter at hand the pleadings and evidence only contain a general assertion as to the making of the Talabs, with no precise date being specified. On that score, it was held in the case reported as Muhammad Shafique and 3 others v. Hamid Ahmed and others 2019 YLR 2415 that:

> 11. The Talb-i-Muwathibat literally means immediate demand, that is commonly known as jumping demand; and foundation of claim of pre-emption rested on making an immediate declaration of intention to assert one's right (Talb-i-Muwathibat) and if the same is not done that would be fatal for whole claim of pre-emption and making of valid demands namely the Talb-i-Muwathibat and Talb-i-Ishhad are the condition precedent to exercise of the right of pre-emption. The first one i.e. Talb-i-Muwathibat is made the moment the pre-emptor comes to know that the land on which he/she wants to assert his/her right of pre-emption has been sold and the second demand i.e. (Talib-i-Ishhad) is made after the first demand namely Talb-i-muwathibat, in presence

of the witnesses with reference to the first one that so and so has sold or purchased, as the case may be, such and such land and that he has already made his first demand (Talb-i-Muwathibat) and he is making the second demand, asking the witnesses, to be the witness to that. It is pertinent to mention here that the right of pre-emption is a feeble right and making of demands is oral process and the evidence in case of exercise of right of pre-emption being oral is required to be a direct as stipulated by Article ***71 of Qanun-e-Shahadat Order, 1984***, which envisages that "***Oral evidence must, in all cases whatever, be direct***;" And it is reiterated that oral evidence is required to be confidence inspiring and that too duly supported by the witnesses to prove such case. The onus to prove lies upon the pre-emptor to establish and prove that two demands. i.e. Talb-i-Muwathibat, and Talb-i-Ishhad were validly made by the pre-emptor. It is well settled that a pre-emptor should come forward with all the details with full particulars i.e. name of informer, date, time and place of performance of Talb-i-Muwathibat as well as date of Talb-i-Ishhad, which are required to be mentioned din the plaint, so that the pre-emptor may prove the same during the trial and so also he/she may not make any departure from the pleadings by improving his/her case during the trial.

7. In view of the foregoing, the Revision Application is found to be devoid of merit and stands dismissed accordingly.

JUDGE