

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Civil Revision Application No.S-225 of 2024
(*Kamal Din vs. Abdul Haleem and others*)

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

Date of hearing and order 24-09-2024.

Mr. Farhan Ahmed Bozdar, advocate for the applicant.
Mr. Nawab Ali Kaka, advocate for respondents No.6 to 8.
Mr. Muhammad Sharif Solangi, Assistant A.G.
=

ORDER

Adnan-ul-Karim Memon, J. The applicant Kamal Din has assailed the legality of the judgment and decree dated 27.04.2024 passed by learned Additional District Judge, Khipro in Civil Appeal No.11/2024 (*Re-Ghulam Fareed and others Vs. Abdul Haleem and others*), whereby, the learned Additional District Judge set aside order and decree dated 23.01.2024 passed by the learned Senior Civil Judge, Khipro, in F.C Suit No.100/2023 whereby the plaint of the private respondents was rejected under Order VII Rule 11 CPC.

2. The applicant's counsel argues that the property in question has already been sold and possession given to a third party, rendering further proceedings in the trial court futile. He claims the trial court erred in ordering evidence recording without considering this aspect. It is highlighted that the respondents have failed to comply with pre-emption law requirements by not issuing the necessary Talab notices. Additionally, the suit was/is barred under the Specific Relief Act. The counsel requests that the appellate court's judgment and decree be set aside.

3. The crux of the matter is that the subject property has already been sold to a third party. The respondents are asserting their right to pre-emption based on certain "Talabs" (conditions or terms). While it is true that the third party is not a direct party to the suit, their existence, and the sale transaction are crucial to the case. The respondents will likely need to provide evidence to prove the sale and the validity of the Talabs. When confronted with this legal position of the case to the learned counsel for the respondents, the parties agreed to the disposal of this revision application with the narration that the respondents will file a new fresh suit because the sale deed has already been

executed and possession of the property has been given to a third party and remanding the case to the trial court would not be productive. However, the respondents still have the right to file a pre-emption suit if their claim is valid.

4. Without touching the merits of the case, the instant Civil Revision Application is disposed of leaving the respondents to file proper proceedings before the proper forum under the law and the same shall be decided if filed without being influenced by the observation of this court.

5. Resultantly, the judgment and decree dated 27.04.2024 passed by learned Additional District Judge, Khipro is ineffective and will not come in the way of the parties.

JUDGE

Ali Sher