

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Shahid Waheed
Mr. Justice Naeem Akhter Afghan
Mr. Justice Ishtiaq Ibrahim

C.A.No.915 OF 2020

[On appeal against the order/judgment dated 13.12.2017 passed by the Peshawar High Court, Abbottabad Bench in C.R.No.141-A of 2017]

Muhammad Niaz ...Appellant(s)

Versus

Raja Khush Dil Abbasi ...Respondent(s)

For the Appellant(s) : Syed Hammad Hussain Shah, ASC

For the Respondent(s) : Mr. Muhammad Ayub, ASC

Date of Hearing : 17.09.2026

JUDGMENT

Shahid Waheed, J.- This appeal, by leave of the Court, arises out of a suit instituted by the respondent seeking possession of the land by way of pre-emption of the sale made in favour of the present appellant. The trial Court decreed the suit, and the decree remained intact until the High Court passed its judgment dated 13.12.2017.

2. The matter concerns the right of pre-emption and is, therefore, governed by the Khyber Pakhtunkhwa Pre-emption Act, 1987 (**“the Act”**). The appellant is the vendee, and the respondent is the pre-emptor. Leave to appeal was granted primarily to examine whether the respondent-pre-emptor had established, in accordance with law, the performance of the requisite Talbs. We shall, accordingly, confine our examination to that question.

3. A person claiming a right of pre-emption must first establish that he performed Talb-e-Muwathibat in accordance with Section 13 of the Act. In the present case, the sale in favour of the appellant was effected on 20.10.2009 through Mutation No.7389, whereas the respondent claims to have made the first Talb on 16.01.2010. Thus, on his own showing, the respondent asserted his intention to pre-empt the

sale more than eight weeks after the sale mutation was sanctioned. Such an unexplained interval immediately raises the question whether the respondent pleaded and proved any circumstance which could legally account for his alleged delayed knowledge of the sale. We have, therefore, examined the plaint with particular attention to the statutory scheme contained in Section 32 of the Act. Significantly, the respondent did not plead that the authority concerned had failed to issue the public notice contemplated by that provision. There is no such assertion either in the plaint or in his statement before the Court. Nor did he lead any evidence to establish that the requisite public notice had not been issued. In the absence of such a plea and proof, there was no factual or legal basis for the respondent to displace the statutory consequence flowing from compliance with Section 32. The law attributes knowledge of the sale to the pre-emptor after the expiry of the period prescribed therein. The respondent, therefore, could not, merely by asserting a subsequent date of knowledge, postpone the commencement of the period within which Talb-e-Muwathibat was required to be made. The declaration allegedly made on 16.01.2010, being made more than eight weeks after the sanction of the sale mutation, consequently cannot, in the circumstances of the present case, be treated as a prompt assertion of the right of pre-emption or as the requisite Talb-e-Muwathibat within the meaning of Section 13 of the Act. The very object of Talb-e-Muwathibat is that, upon acquiring knowledge of the sale, the pre-emptor must manifest his intention to exercise the right of pre-emption without undue delay. A subsequent assertion of a later date of knowledge, unsupported by a corresponding plea and proof showing why the statutory presumption of knowledge should not operate, cannot extend the period prescribed by law or revive a right that has not been exercised with the promptitude required by the statute.¹

4. The respondent's case also fails on the second Talb, namely, Talb-e-Ishhad. The appellant-vendee specifically denied having been served with the notice. The respondent-pre-emptor was, therefore, required to establish not only the making and dispatch of the notice but also its due service upon the vendee. The law in this regard is settled. Where Talb-e-Ishhad is required to be made through a written notice, attested by two truthful witnesses and sent under registered cover with acknowledgement due, the pre-emptor must prove the service of that

¹ Bilal Ahmed and another v. Abdul Hameed (2020 SCMR 445)

notice upon the vendee in accordance with law. Where service is sought to be established through postal delivery, the evidence of the person who actually delivered the notice assumes particular significance. We specifically asked learned counsel for the respondent whether the postman who had allegedly delivered the notice of Talb-e-Ishhad to the appellant-vendee had been produced. Learned counsel referred to the statement of PW-2, Zahid Mehmood, a postman of Katchehri Post Office. His evidence, however, does not establish service of the notice. He merely produced the relevant counter-file record and Registry No.1190. He was not the postman who had allegedly taken the notice to the residence of the appellant-vendee and delivered it to him. His testimony, therefore, could establish, at best, the existence or dispatch of the postal article; it did not prove its actual delivery to, or receipt by, the vendee. In these circumstances, the respondent failed to discharge the burden of proving the making and service of Talb-e-Ishhad in the manner required by law. The mere production of the postal record, in the absence of the evidence of the person who actually effected delivery, could not, particularly in the face of the vendee's specific denial, be treated as sufficient proof of service.²

5. The cumulative effect of the foregoing discussion is that the respondent-pre-emptor failed to establish, through reliable and legally sufficient evidence, the performance of either Talb-e-Muwathibat or Talb-e-Ishhad in accordance with the requirements of the Act. These are not mere procedural formalities; they constitute essential conditions for the exercise and preservation of the statutory right of pre-emption. Failure to establish either of them is fatal to the suit.

6. In these circumstances, we are unable to sustain the concurrent findings recorded by the Courts below. Those findings have resulted from misreading and non-reading of the evidence and from an erroneous application of the relevant provisions of the Act. The concurrent nature of the findings, therefore, does not preclude interference by this Court where the findings suffer from such legal and evidentiary infirmities.

7. For the foregoing reasons, this appeal is allowed. The judgments and decrees passed by the Courts below are set aside, and the

² Bashir Ahmed (2011 SCMR 762), Allah Ditta thr. LRs and others v. Muhammad Anar (2013 SCMR 866) and Khan Afsar v. Afsar Khan and others (2015 SCMR 311)

suit instituted by the respondent-pre-emptor is dismissed. There shall be no order as to costs.

JUDGE

JUDGE

JUDGE

Islamabad
17.09.2026
'APPROVED FOR REPORTING'
*Irfan Aslam / **