

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Justice Jamal Khan Mandokhail  
Justice Shahid Waheed  
Justice Irfan Saadat Khan

**C.A.No.288-L/2015**

(Against the judgment dated 30.04.2015 passed by the Lahore High Court, Lahore in C.R.No.1899/2005)

Sarfraz Ahmad, etc

...Appellant(s)

**VERSUS**

Ishtiaq Ahmad, etc

...Respondent(s)

For the Appellant(s) : Malik Amjad Pervaiz, ASC

For the Respondent(s) : Mr. Ghulam Farid Sanotra, ASC  
for Respondents No.1, 2 and 5 to 9

Date of Hearing : 13.10.2026

**JUDGMENT**

**Shahid Waheed, J:-** This direct appeal has been filed by the unsuccessful pre-emptors against the judgment dated 30.04.2015, whereby the High Court, in exercise of its revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 (CPC), reversed the concurrent findings of the courts below and dismissed their suit for possession on the basis of pre-emption.

2. At the outset, it is necessary to address a procedural matter. Today, the office had fixed a notice to consider action against the appellants for their failure to furnish complete, correct and updated addresses of respondents No.3 and 4. Mr. Ghulam Farid Sanotra, ASC, has entered appearance on behalf of respondents No.1, 2 and 5 to 9. He submits that respondents No. 3 and 4 are the brothers of his clients and that their interests are common. He, therefore, seeks permission to represent them and advance arguments on their behalf. Learned counsel for the appellants is also ready to proceed with his arguments. In these circumstances, and to avoid further delay in the disposal of the

appeal, the notice is discharged, and we proceed to hear the matter on its merits.

3. The controversy originates from a suit instituted by the appellants' predecessor, Muhammad Din, seeking possession through pre-emption of land measuring 30 kanals and 2 marlas, situated in the revenue estate of Chanderke Rajputan. The land was sold to the respondents through mutation No.590, dated 05.12.1995, for a consideration of Rs.195,000/-. Claiming a superior right of pre-emption, Muhammad Din instituted the suit, asserting that he had performed the requisite Talabs in accordance with law. Respondent No.9, who was arrayed as defendant No.1 in the suit, admitted the claim, whereas the remaining contesting respondents denied that the plaintiff had fulfilled the statutory requirements of pre-emption. Upon the pleadings of the parties, the Trial Court framed issues and recorded evidence. By judgment dated 02.03.2002, it decreed the suit in favour of the plaintiff. The decree was upheld by the First Appellate Court but was subsequently set aside by the High Court in exercise of its revisional jurisdiction, resulting in the dismissal of the suit. Hence, this appeal.

4. The sole question requiring determination is whether the appellants' predecessor established, through legally sufficient evidence, the performance of the Talabs prescribed by the Punjab Pre-emption Act, 1991 **(the Act)**. The High Court concluded that the plaintiff had failed to prove the second Talb, namely, Talb-i-Ishhad, and was, therefore, not entitled to the relief claimed. Since this finding alone furnished a sufficient basis for dismissal of the suit, we consider it appropriate to examine that requirement first before turning to the question of Talb-i-Muwathibat. The appellants' case is that Talb-i-Ishhad was performed by sending notices, produced before the Trial Court as Exh. P-4, Exh. P-5 and Exh. P-6. The notices bear the attestation of two witnesses, Ghulam Nabi and Muhammad Arif. Once the respondents-defendants denied the notices, the burden lay upon the appellants-plaintiffs to establish their execution and dispatch in accordance with law by producing the attesting witnesses. The

evidentiary significance of this requirement was emphasised by this Court in Muhammad Abaidullah and another v. Ijaz Ahmed and another **(2015 SCMR 394)**. The appellants produced only Muhammad Arif (P.W.3) and withheld the other attesting witness, without offering any explanation for his non-production. Nor does the record disclose any attempt to establish his unavailability or to produce legally admissible secondary evidence, should such evidence have been permissible in the circumstances. The notices, having been specifically denied, could not be treated as proved merely because they were placed on the record. In the absence of satisfactory proof of their execution and dispatch in the manner required by law, the appellants failed to discharge the burden resting upon them. We, therefore, find no infirmity in the High Court's conclusion that Talb-i-Ishhad had not been proved.

5. The failure to establish Talb-i-Ishhad is sufficient to defeat the claim. Nevertheless, the record discloses a further and independent deficiency concerning the first Talab, namely, Talb-i-Muwathibat. The sale in favour of the respondents was effected through mutation No. 590, dated 05.12.1995, whereas the appellants' predecessor claimed to have made the first Talab on 10.01.1996 at 10:00 a.m. Thus, according to the plaintiff's own case, the asserted declaration of his intention to pre-empt the sale was made more than four weeks after the date of the sale mutation. Such a delay required examination in the light of the statutory scheme governing the time at which knowledge of the sale is attributed to a pre-emptor. Section 32 of the Act provides the relevant framework concerning public notice of a sale and the consequences flowing from the statutory procedure prescribed therein. The appellants' predecessor pleaded that the competent authority had failed to issue the public notice contemplated by that provision. A pleading, however, is not proof. It was incumbent upon him to establish the factual basis for his assertion that the statutory consequence concerning knowledge of the sale could not operate against him. The record, as presented to us, discloses no satisfactory evidence establishing the alleged non-compliance or otherwise rebutting the

consequence prescribed by law. A pre-emptor cannot indefinitely postpone the commencement of the period for exercising his right merely by asserting a later date of knowledge. Where the statute attributes knowledge of a sale upon fulfilment of the prescribed conditions, a party seeking to avoid that consequence must establish the factual and legal basis for doing so. In the present case, the appellants' predecessor failed to discharge that burden. The essence of Talb-i-Muwathibat is the prompt and unequivocal manifestation of an intention to exercise the right of pre-emption upon acquiring legally relevant knowledge of the sale. It is not an empty formality that may be performed at any time convenient to the claimant. Its purpose is to ensure that the pre-emptor acts with the promptitude demanded by the statute. A belated assertion of the right, unsupported by evidence sufficient to displace the statutory consequence concerning knowledge, cannot extend the period prescribed by law or revive a right that has not been exercised in the manner required by the Act. The principle finds support in Bilal Ahmad and another v. Abdul Majeed (2020 SCMR 445). In the circumstances of the present case, the appellants' predecessor failed to establish a legally sustainable basis for treating the declaration allegedly made on 10.01.1996 as a timely performance of Talb-i-Muwathibat. His claim, therefore, suffers from an additional defect independent of the failure to prove Talb-i-Ishhad.

6. The cumulative effect of the foregoing discussion is that the appellants have failed to establish the performance of either Talb-i-Muwathibat or Talb-i-Ishhad in accordance with the requirements of the Act. These are not dispensable procedural formalities; they are essential statutory conditions for the exercise of the right of pre-emption. Failure to prove the requisite Talbs is fatal to the claim, irrespective of the merits of the asserted superior right of pre-emption.

7. In view of these deficiencies, we find no ground to interfere with the judgment of the High Court. Its conclusion that the appellants' predecessor had failed to establish compliance

with the statutory requirements of pre-emption is consistent with the evidentiary record and the applicable law.

8. For the foregoing reasons, this appeal is dismissed. There shall be no order as to costs.

Judge

Judge

Judge

Lahore  
13.10.2026  
APPROVED FOR REPORTING  
(Irfan Aslam)