

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
R. A. No. S – 105 of 2011

Date of hearing	Order with signature of Judge
-----------------	-------------------------------

Hearing of case (priority)

1. For orders on CMA No.1056/2020 (151 CPC)
2. For hearing of main case
3. For hearing of CMA No.512/2011

14-12-2020

Applicant Abdul Ghafoor Bhutto in person.
Mr. Ashok Kumar K. Jamba, Advocate for the private respondents.

.-.....-.

This is the matter arises from conflicting findings wherein the learned trial Court on farming the following issues and findings was pleased to decree the same, however, the learned appellate Court was pleased to set aside the same on re-discussion of the same issues, referring to the evidence.

1. *Whether defendants No.1 to 7 purchased the suit land secretly, fraudulently without knowledge of co-owners? (In affirmative)*
2. *Whether plaintiff made talabs in accordance with law and the plaintiff is entitled for the right of pre-emption? (In affirmative)*
3. *Whether no cause of action accrued to the plaintiff for filing the present suit and is suit is not maintainable under the law? (In negative)*
4. *What should the decree be? (Suit of the plaintiffs is decree with no order as to costs)*

2. Applicant in the matter was heard on the earlier date of 02-11-2020 whereafter he has also filed written synopsis comprising of his contentions.

3. Learned counsel for the private respondents, however, has contended that Muhammad Ishaq, one of the sellers, had deposed

(deposition at page 189 of the file along with the cross-examination), whereby the said seller had established that the subject land was offered to the present applicant, however, on his failure, the same was sold to the present purchasers, and as such the claim of pre-emption is not made out. Learned counsel for the respondents has also made reference to the witnesses of the applicant, who according to him, were interested witnesses and their depositions had failed to acquire the status of trustworthy witnesses accordingly.

4. Applicant present states that his written synopsis be considered in rebuttal to the arguments of the learned counsel for the respondents.

5. Having heard the learned counsel and the applicant and gone through the record, it may be observed that the seller in the matter had clearly deposed the offering of the subject land to the present applicant, and on his failure to come up in the sale consideration, having sold the land to the private respondents. No cross-examination to this element was made to the seller. As such the said element stands admitted and proved according to the law of evidence, wherein a portion not cross-examined is not challenged acquires the said status. As to the element of property being of joint nature and legally never affected partition therein, learned counsel for the respondents has contended that the private separate partition was present and the applicant himself has failed to produce the copy of the sale deed along with certificate of sale and the revenue record showing the separate entitlement. Irrespectively, the said elements of failure to address the deposition above referred orally or in the written synopsis which is based upon questions raised in respect of the case of the respondents but failing to address the basis requirements of claiming pre-emption that is the actual readiness and willingness / ability to

purchase the subject land along with the ascertainment of such right by way of the required calls which are mandated in law is found missing.

In the present circumstances, this revision application fails and is accordingly dismissed as nothing has been pointed out which would disturb the impugned orders. Matter stands **disposed of** accordingly.

J U D G E

Abdul Basit