

# **IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

## **Civil Revision No. S – 42 of 2010**

(Gul Bahar & others V/S Shah Baig & others)

Date of Hearing: **11-04-2022**  
Date of Judgment: **29-04-2022**

Mr. Abdul Qadir Shaikh, Advocate for the Applicants.

Mr. Muhammad Yakoob Soomro, Advocate for the Respondents No.1(a) to 1(e).

## **J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicants have impugned Judgment dated 14.12.2009, passed by Additional District Judge-II, Khairpur in Civil Appeal No.116 of 2009 (**Gul Bahar & others v. Shah Baig & others**), whereby, the Civil Appeal has been dismissed and Judgment dated 22.10.2009, passed by Senior Civil Judge-II, Khairpur in F.C Suit No.84 of 2009 (Old No.12 of 2007) (**Gul Bahar & others v. Shah Baig & others**) through which the Applicants' Suit was dismissed, has been maintained.

**2.** Both the learned Counsel have filed their written arguments, which have been perused including the record placed before the Court.

**3.** It appears that the Applicants filed a Suit for pre-emption and permanent injunction and sought the following prayer:

“(a). That by a decree of the court it may be declared that the plaintiffs are pre-emptor of the land in suit and in exercise of their right of pre-emption a directions be issued to the defendants for the re-conveyance of the land to the plaintiffs on the same terms and conditions as they are entitled to purchase the same on the basis of preferential rights. On the failure of the defendants, any officer of the court may be directed to get a sale deed registered in favour of the plaintiff after receiving the sale consideration which is finally determined after adjudication.

(b). That a permanent injunction be issued against the defendants restraining them from making any alienation of the land in question till the decision of the present suit.

(c) That cost of the suit and any other relief deemed fit and consistent in the circumstances of the case may also be granted to the plaintiffs.”

**4.** Learned Trial Court after recoding the evidence came to the conclusion that the Applicants have failed to make out a case and therefore Suit was dismissed. In Civil Appeal, the said Judgment has been maintained, hence this Civil Revision.

**5.** From perusal of record, it appears that though the Applicants had claimed in their memo of Plaint that the property, which was sold to Defendant No.1 by Defendants No.2 to 5 was an adjacent property; hence a right of pre-emption had accrued in their favor; however, in the evidence they could not establish that the property in question, which was sold, was adjacent to their property and right of pre-emption, if any, was created in their favour. Both the Courts below have examined this aspect of the matter including the sketch of the area and have come to a definite conclusion that the applicants have miserably failed to establish this factual aspect of the matter. It was claimed in the plaint that Survey No.577 is in Muhag of Survey No.1092 which belongs to the Applicant; however, sketch / map of the area does not show existence of Survey No.1092 as adjacent to Survey No.577.

**6.** Insofar as merits of their claim of pre-emption is concerned, notwithstanding that the property was not adjacent, even otherwise it has come on record that at least to the extent of second demand (Talab-e-Ishhad) the Applicants have failed to establish and prove the same in evidence. Not only this, it has come on record that the evidence led by the Applicants through their witnesses is contradictory, hence neither it is confidence inspiring nor credible so as to grant relief so claimed in the Suit, which otherwise is not to be granted as a matter of right until and unless the same is proved with cogent evidence. The Applicants are seeking right of pre-emption and for that onus was upon them to prove that they had any right as such. As per record, they have not been able to establish such right; nor through written arguments any convincing material has been referred to. Lastly, it is a case wherein the two Courts below have recorded concurrent findings against the Applicants and in absence

of any exception which is not available in this case, ordinarily same are not to be interfered with.

**Z.** In view of such position, no case for indulgence is made out; whereas, the Courts below have arrived at a just and fair conclusion in accordance with the facts and law; hence, this Civil Revision does not merit any consideration. Accordingly, it is hereby **dismissed**.

**Dated: 29.04.2022**

**J U D G E**

Ahmad