

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

Date of hearing	Order with signature of Judge
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For hearing of main case

Mr. A. M. Mobeen Khan, Advocate for the applicant.

This revision arises from conflicting findings for the claim of pre-emption by the applicant as plaintiff. The learned trial Court was pleased to decree the suit in favour of the plaintiff by framing the following issues and giving findings thereon as present:

2. The learned appellate Court was however pleased to frame following three issues:

- A. *Whether the Respondent's father has made required Talabs (Demands) for exercising the right of pre-emption in consonance of the Islamic Law relating to pre-emption?*
- B. *Whether the Respondent's father was legally competent to exercise the right of pre-emption on behalf of his minor son?*
- C. *What should the judgment be?*

Wherein the finding of issue marked as “A”, the deposition of witnesses of *talabs* was construed differently, and on account of the said witnesses having same version, the said witnesses were not considered credible rather unbelievable, and although the issue marked as “B” was decided in favour of the present applicant, the findings were reversed and the appeal was allowed as to the third issued / point of determination.

3. Learned counsel for the applicant contends that the present applicant being a co-sharer had made the proper *talabs*, which were not properly construed by the learned appellate Court. Learned counsel further contends that only defendant No.1 in the matter, who was one of the purchasers, had contested the same by filing written statement and there was no actual opposition to the claim of the applicant as such the finds of the appellate forum are not liable to sustain.

4. In this matter, the record shows that respondents were served and they had made appearance before this Court also through their counsel as observed on the diary of 02-02-2010, however, thereafter on failure of appearance, as an abandoned caution, repeatedly notices were issued and the service of the same has also been observed on 03-09-2020. No one present for the respondents, as such only the learned counsel for the applicant in the matter has been heard.

5. Having heard the learned counsel present and gone through the record. The learned appellate Court in the matter although having full authority to believe or discredit the witnesses as such reversed the findings, in this case, apparently decided the same on the basis of similarity of the evidence of the two witnesses. The said aspect, however, is not learn from the record as to support an adverse inference. It has not been considered by the learned appellate Court that the version of the

present applicant / plaintiff in the matter was that he took both the witnesses with him, and in such circumstances, adversity of inference by looking at the similarity of the depositions of the witnesses, the conclusions drawn by the learned appellate Court are not found tenable and amount to mis-reading and non-reading of the evidence.

6. This revision, for the forgiven reasons, is allowed; the suit of the applicant / plaintiff stands decreed. However, it must be observed that the right of pre-emption being different than the price liable to be paid for the subject land and where no benefit to any party can be given to use or in other words abuse the process of the Courts especially for financial benefit, the applicant / plaintiff in the matter can exercise the right of pre-emption provided the present market price of the subject land is deposited by him in this regard which can be conveniently ascertained by valuation thereof available from the Revenue authorities.

The revision application stands **allowed** in the above terms with costs of this revision.

J U D G E

Abdul Basit