JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CIVIL REVISION NO. 82 OF 2015

Wing Commander Naubahar Abbasi
Vs.
Mahmood ul Haque Alvi

Petitioner by	**:**	**Raja Nasir Mehfooz Satti, Advocate.**
Respondent by	**:**	**Syed Asghar Hussain Sabzwari, Advocate.**
Date of hearing	**:**	**16.02.2022.**

SAMAN RAFAT IMTIAZ, J. Through the instant Civil Revision, the Petitioner has assailed Judgments and Decrees dated 31.05.2013 and 19.07.2010 ("**Impugned Judgments & Decrees**") passed by learned Additional District Judge, West-Islamabad and learned Civil Judge-1st Class, Islamabad, respectively whereby the suit filed by the Petitioner was dismissed by both the lower Courts.

2. Facts in brief as per the Memo of the Petition are that the Petitioner filed a suit for possession through pre-emption wherein it was submitted that the Petitioner is owner and in possession of land measuring 1150 Kanal, 18 Marla in Khata No.630 / 1232 which also includes Khasra No. 2551 situated in Mouza Phulgran, Tehsil & District Islamabad. The Petitioner alleged that the Respondent has purchased land measuring 310 Kanal, 17 Marlas bearing Khasra No.2551 Khata No.630, Khatooni No.1232 vide mutation No.6063 for the sum of Rs.400,000/- but mentioned a fictitious amount of Rs.10,000,000/- *(hereinafter referred to as the '**Suit Property**')*. That the Petitioner came to know about the sale on 27.02.1999 at 02:00 p.m. through Raja Pervaiz at which time the Petitioner declared his superior right of pre-emption in the presence of the said Raja Pervaiz, Raja Muhammad Ashraf, Amaduddin Shoukat and Waheed Akhtar, thereby fulfilling the requirements of Talb-i-Muwathibat. Thereafter, the Petitioner along with the above mentioned witnesses went to the suit property on the same day at 03:00 p.m. wherein he again made announcement about his intention to pre-empt the sale. The Petitioner along with above named witnesses also went to the office of the Respondent where he asked to transfer the Suit Property in his name after receipt of Rs.400,000/- while accepting superior right of pre-emption of the Petitioner but he refused to do so. On 28.02.1999 at 08:00 p.m. the Petitioner through his counsel vide registered post A.D. sent a notice, duly signed by

witnesses namely Raja Pervaiz, Raja Ashraf, Amaduddin and Waheed Akhtar, claiming superior right over the Suit Property as being Shafi-e-Sharik, Shafi-e-Khalit and Shafi-e-Jar and also claimed Zaroorat and Zarar, and thereafter filed the suit on 02.04.1999. This suit was contested by the Respondent by filing written statement. Out of the divergent pleadings, the following issues were framed:

ISSUES

1. *Whether the plaintiff has got superior right of Pre-emption? OPP*
2. *Whether the plaintiff has fulfilled the requirement of Talabs as enunciated in Islamic Law? OPP*
3. *Whether the right of Pre-emption is exercised only on the basis of Zarorat to avoid the Zarrer? OPP*
4. *Whether the ostensible sale price worth Rs.1,00,00,000/- was bonafidely fixed and actual paid by the defendant/vendor? OPD*
5. *If issue No.1 is not proved, then what was the market value of the suit land at the time of sale? OPD*
6. *Whether the defendant has incurred incidental charges over the completion of the transaction, if so, to what quantum and to what effect? OPD*
7. *Whether the suit has not been property valued for the purposes of court fee and jurisdiction? OPD*
8. *Whether the suit property has not been correctly described? OPD*
9. *Whether the suit is time barred? OPD*
10. *Whether plaint is liable to be rejected under Order 7 Rule 11 CPC? OPD*
11. *Whether the defendant is entitled to special costs under Section 35-A of CPC? OPD*
12. *Relief.*

3. The suit was dismissed vide Judgment & Decree dated 19.07.2010. The Petitioner challenged the same in appeal and the learned Additional District Judge, West-Islamabad vide Judgment & Decree dated 31.05.2013 dismissed the appeal. Being dissatisfied with the said Judgments & Decrees of both the courts below, the Petitioner preferred the instant civil revision under Section 115, CPC. During pendency of the instant civil revision, the Respondent expired and his legal heirs were impleaded.

4. Learned counsel for the Petitioner, *inter alia*, contended that both the Impugned Judgments & Decrees are against law and facts of the case and are non-speaking and devoid of reasoning; that issue pertaining to superior right has been

decided in favour of the Petitioner but issues pertaining to Talb and Zarar have been decided against the Petitioner yet learned Appellate Court has not given findings on issue of Zarar and similarly no findings has been given on any other issue whereas the learned Appellate Court was bound to decide all the issues; that Zarar has in any event been declared un-Islamic; that both the courts below have wrongly held that Hakas is a private limited company when in fact Mahmood ul Haque Alvi is the owner and proprietor of the said company and therefore, the said notice was rightly sent to the owner which is categorically mentioned in the notice as well as in the plaint; that no such objection was raised by the Respondent in the written statement and according to law the parties cannot go beyond the scope of pleadings; that the Respondent did not challenge the findings of the learned Trial Court regarding issues decided against the Respondent, thus it has attained finality; that both the Judgments & Decrees are the result of misreading and non-reading of material available on record, are suffering from illegalities and irregularities which resulted in grave miscarriage of justice. Learned counsel for the Petitioner prayed for setting aside of both the Judgments & Decrees dated 31.05.2013 and 19.07.2010. He relied on cases reported as *Mian Pir Muhammad Vs. Faqir Muhammad*, PLD 2007 SC 302, *Bhagwandas Chawala Vs. Kishanchand Parwani*,1997 CLC 605, *National Bank of Pakistan Vs. Messrs M.M. Agencies*, 1991 CLC 1763, *Basharat Ali Vs. Muhammad Anwar*, 2010 SCMR 1210, *Abdul Malik Vs. Muhammad Latif*, 1999 SCMR 717 and 2008 YLR 296.

5. On the other hand, learned counsel for the Respondent submitted that the mutation clearly shows that the property is in the name of Hakas Promoters (Private) Limited through its Managing Director i.e., the Respondent therefore, Talb was sent to Respondent and not the vendee of the Suit Property; that it was specifically averred in para 1 of the Written Statement that the details of the Talbs are not correct and in paragraph 5 that the Talb is not as per law, hence the conclusion reached in the Impugned Judgments & Decrees that Talb has been sent to the wrong entity is as per pleadings.

6. Heard arguments and perused record.

7. The learned Trial Court has decided Issue No. 1 in favor of the Petitioner i.e., that he has a superior right of preemption, which decision has not been challenged by the Respondent. As far as Issue No. 3 is concerned, it has already

been declared by the Honorable Supreme Court in the case of *Haji Rana Muhammad Shabbir Ahmad Khan Vs. Government of Punjab Province Lahore*, PLD 1994 SC 1 that the requirement of having to prove "Zaroorat" or to avoid "Zarar" is against the injunctions of Islam. Issue No. 9 pertaining to limitation has also been decided in favor of the Petitioner which has not been challenged by the Respondent.

8. Therefore the issue boils down to whether or not the vendee of the Suit Property is the Respondent or a third party. This is crucial because the notice of Talb-i-Ishhad is to be sent to the vendee. If the vendee is not sent the notice of Talb-i-Ishhad, the plaintiff would not be entitled to a decree of preemption. In the instant case, the notice was addressed to *"Mahmood-ul-Haq Alvi s/o Haji Abdullah Khan, (MD) Proprietor Hakas & Co Private Limited"* and was sent to M.D. Hakas & Co. Private Limited, Al-Malik Centre, 70-D, West Blue Area, Islamabad. The concurrent Judgments of the lower courts have concluded that since the Suit Property was purchased by Hakas Promoters (Private) Limited the notice of Talb-i-Ishhad as aforesaid does not fulfill the requirements of talb as per law. It is to be seen whether such conclusion is indeed correct.

9. It is noted that the Petitioner in paragraph 2 of his plaint specifically alleged that the Respondent has purchased the Suit Property. In response to paragraph 2 of the plaint, the Respondent in paragraph 2 of his Written Statement categorically admitted that he had purchased the Suit Property. The Respondent's special attorney who appeared on behalf of the Respondent for evidence also admitted that the Suit Property had been purchased by the Respondent. He further stated that the mutation was approved in the Respondent's name on 25-10-1998 and produced the attested copy of mutation as Exhibit 'D-2'. Nowhere has it been mentioned in the Written Statement or the examination-in-chief or the cross examination that the Suit Property was purchased by Hakas Promoters (Private) Limited. No issue was framed as to whether or not vendee is the Respondent or Hakas Promoters (Private) Limited.

10. Yet the learned Trial Court as well as the learned Additional District Court have concluded in the Impugned Judgments & Decrees that the Respondent is not the purchaser of the Suit Property rather it was purchased by Hakas Promoters (Private) Limited. Such conclusion appears to be based on the Revenue Record

produced into evidence as Exhibit D-2. According to the learned counsel for the Respondent, the entry in the Revenue Record is in the name of *"Hakas Promoters (Private) Limited through MD Mahmood ul Haq Alavi s/o Haji Abdullah Khan"*. However, according to my own reading the entry is in the name of "*Hakas* ***Proposed*** *(Private) Limited MD Mahmood ul Haq Alavi s/o Haji Abdullah Khan"* [Emphasis added].

11. Both the Impugned Judgments & Decrees have concluded that Hakas Promoters (Private) Limited is a legal/juristic person and that therefore notice/talb ought to have been served upon Hakas Promoters (Private) Limited and since it was sent to the Respondent instead, the Petitioner did not fulfill the requirements of Talbs as per law. If the entry is in fact in the name of "*Hakas* ***Proposed*** *(Private) Limited"* that indicates that the company was under incorporation. Even otherwise, there is nothing on the record to establish whether Hakas Promoters (Private) Limited was indeed a legal/juristic person or not. Neither the purported Hakas Promoters (Private) Limited was impleaded as a party to the suit nor was any certificate of incorporation, memorandum and articles of association or any other documentation produced into evidence to prove that Hakas Promoters (Private) Limited was a legal entity capable of owning property in its own name.

12. It cannot be assumed that Hakas Promoters (Private) Limited was legal entity merely because of inclusion of the words "Private Limited" as part of its name. In case, it was not a registered company then simply having the words "Private Limited" as part of its name would not accord it the status of an incorporated company that is capable of owning property in its own name. In such case, it would just be a business name and as such it would have no independent legal status, separate and apart from its owner/proprietor. Therefore, if the entry in the revenue record is in the business name, the owner/vendee shall be the proprietor of the business. It is also noteworthy that the Respondent has relied on the said mutation to aver that he is the vendee. In such circumstances, the Petitioner's plea that Respondent was the owner and proprietor and therefore, the notice/talb was rightly sent in the name of the Respondent may be correct in which case the outcome of the suit could be altogether different.

13. On the other hand, if it is established that Hakas Promoters (Private) Limited is indeed a company duly incorporated and registered under the relevant corporate

laws then the Petitioner's submission that the Respondent is the owner and proprietor of the said company is not correct as a private limited company is an independent entity, separate and apart from its owners.

14. To sum it up, the Petitioner alleged that the Suit Property has been purchased by the Respondent whereas the Respondent admitted having purchased the Suit Property however, the entry in the Revenue Records may be in the name of a third party, the legal status of which party is unclear. In view of the foregoing discussion, it is apparent that the matter cannot be effectually and completely adjudicated upon without the presence of the said Hakas Promoters (Private) Limited. Given that Hakas Promoters (Private) Limited is a necessary and proper party, the matter is hereby remanded to the learned Trial Court with direction to implead Hakas Promoters (Private) Limited as party to the proceedings. Hakas Promoters (Private) Limited shall have the right to file its Written Statement and the learned Trial Court shall frame the following issue and record evidence to the extent of such issue and decide the matter in light thereof:

> Whether or not Hakas Promoters (Private) Limited is a registered/incorporated company or otherwise a legal/juristic person, capable of owning property in its own name? To what effect?

15. The instant Civil Revision Petition is **allowed** in the above terms. However, nothing herein contained shall have any bearing on the decision of the learned Trial Court in respect of the effect of the evidence that is submitted.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on 9th of March, 2022.

JUDGE

JUNAID