

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE MANZOOR AHMAD MALIK

CIVIL APPEAL NO.540-L OF 2009

(Against the judgment dated 8.9.2004 of the Lahore High Court, Lahore passed in C.R.No.727/2003)

Meraj Din and another

...Appellant(s)

VERSUS

Muhammad Sharif and another

...Respondent(s)

For the appellant(s): Ch. Mushtaq Ahmed Khan, Sr. ASC

For the respondent(s): Mr. Abdul Wahid Chaudhry, ASC

Date of hearing: 06.12.2016

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JUDGMENT

MIAN SAQIB NISAR, J.- The sole legal question involved in this appeal, with the leave of the Court, is whether the period of limitation for filing a suit for pre-emption under the Punjab Pre-emption Act, 1913 (*the Pre-emption Act*) is one year from the date of **execution** of the sale deed or from the date of its **registration**?

2. The relevant facts in this regard are that the respondents purchased the suit property *vide* sale deed executed in their favour on 8.5.1975 **but** registered on 26.5.1975. The appellants brought a suit for pre-emption on 25.5.1976 which was resisted by the respondents, *inter alia*, on the ground that it was barred by time and therefore issue No.4 was framed to decide if it was so. The learned Trial Court decreed the suit on merits and also resolved the issue of limitation in favour of the pre-emptors which judgment was upheld in

appeal. However, the learned High Court in its revisional jurisdiction overturned the findings on the issue of limitation and concluded that the suit was barred by time, holding that the period of limitation started from 8.5.1975, the date of execution and not from 26.5.1975, the date of registration. In this regard the provisions of Section 47 of the Registration Act, 1908 (*Registration Act*) and the judgment of this Court reported as **Naseer Ahmed and another Vs. Asghar Ali (1992 SCMR 2300)** were relied upon. The learned High Court did not dilate upon any other issue.

Leave was granted on 29.6.2009 to consider the proposition *ibid* by making reference to Section 47 of the Registration Act and Section 30 of the Pre-emption Act.

3. Learned counsel for the appellants argued that with regard to pre-emption suits, two provisions of law are relevant for the purposes of limitation. The first is Article 10 of the Limitation Act, 1908 (*Limitation Act*) which clearly prescribes a limitation period of one year for a pre-emption suit in cases where the sale is effected through a registered deed, from the date of its registration. The second is Section 30 of the Pre-emption Act which is a residual provision for suits that do not fall within the purview of the Article *ibid*. He argued that following the procedure set out in Sections 59 and 60 of the Registration Act an instrument is registered when the competent authority certifies and endorses the same: and it is only then that the document takes effect and serves as a notice to those who have a right to pre-empt. Further, Section 47 of the Registration Act is not relevant for the purposes of Article 10 of the Limitation Act, because it (*Section 47*) only applies to the parties to the transaction itself (*or any person claiming through them or any other person who has some right or interest in the*

property which is effected on account of the registered document) and it (Section 47) would not abridge the period of limitation of a pre-emptor, which would only commence from the date he is put to notice of the sale. In this regard he highlighted the object and purpose of a registered sale deed which, according to him, is to put the prospective pre-emptor to notice that the sale has taken place in order that the pre-emptor may exercise his right(s) under the law. The putative pre-emptor would be deemed to have been put to notice only once the document had been registered even though such documents may be registered a week, month or more (*but less than four months*) after the date of execution (*note:- a document has to be presented for registration within four months of its execution according to Section 23 of the Registration Act*). In support of his arguments, learned counsel relied upon the judgments reported as **Ghulam Mustafa Vs. Dilawar and others (1984 CLC 401)**, **Ch. Shafaat Mahmood Vs. Member (Revenue), Board of Revenue, Punjab, Lahore and 2 others (2001 CLC 751)** and **Fazal Din Vs. Abdul Hamid and another (PLD 1967 Lahore 378)**. Whilst relying upon the judgment reported as **Qazi Muhammad Daud and another Vs. Muhammad Ayub and others (1985 SCMR 1966)**, learned counsel argued that even though it was not the case of the respondents, yet mere reference in the sale deed that possession of the pre-empted property had been delivered would have no relevance, rather it had to be proved independently that possession was so delivered. Reliance was also placed on **Muhammad Sarwar Vs. Feroze Khan and another (PLD 1951 Lahore 169)**.

4. Controverting the above, learned counsel for the respondents stated that in paragraph No.2 of the plaint, the appellants (*plaintiffs*) mentioned in categorical terms that the sale was

effected on 8.5.1975 and thus their cause of action would be based on the said date, therefore the period of limitation would commence from the date of execution of the sale deed; it was never the case of the appellants that the period of limitation would commence from the date of registration i.e. 26.5.1975, therefore the appellants cannot go beyond the scope of their own pleadings. He also argued that possession of the property was delivered to the respondents even prior to the date of execution and this is so mentioned in the sale deed, thus the period of limitation would begin from the date of delivery of possession and not from either execution of the sale deed (*Article 10 of the Limitation Act*) or registration thereof. He strenuously relied upon Section 47 of the Pre-emption Act to submit that the operation of a registered document (*such as a sale deed*) would take effect from the date of execution and not the date of registration, and the latter would have no nexus to the starting point of limitation for a pre-emption suit. He relied upon the judgments reported as **Muhammad Ali Vs. Muhammad Irshad etc.** (PLJ 2002 Lahore 743), **Naseer Ahmed's case (supra)** (1992 SCMR 2300), **Muhammad Hayat Vs. Mst. Surraya Begum and another** (1981 CLC 293), **Muhammad Sharif Vs. Muhammad Safdar etc.** (NLR 1994 Civil 688), **Sher Muhammad Vs. Rajada and another** (1981 Law Notes (S.C.) 859), **Allah Yar and another Vs. Raja and another** (1989 SCMR 802) and **Hakim Muhammad Buta and another Vs. Habib Ahmad and others** (PLD 1985 SC 153).

5. Heard. To resolve the proposition at hand, it is expedient to reproduce the relevant provisions of law. Article 10 of the Limitation Act reads as under:-

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period beings to run</i>
<i>10. To enforce a right of pre-emption whether the right is founded on law, or general usage, or on special contract</i>	<i>One year</i>	<i>When the purchaser tah2skes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered. [emphasis supplied]</i>

Section 30 of the Pre-emption Act reads as under:-

“30. Limitation.—In any case not provided for by Article 10 of the Second Schedule of the Limitation Act, 1908, the period of limitation in a suit to enforce a right of pre-emption under the provisions of this Act shall, notwithstanding anything in the Article 120 of the said Schedule, be one year--

(1) in the case of a sale of agricultural land or of village immovable property;

from the date of the attestation (if any) of the sale by a Revenue Officer having jurisdiction in the register of mutations maintained under the Punjab Land Revenue Act, 1887; or

from the date on which the vendee takes under the sale physical possession of any part of such land or property;

whichever date shall be the earlier;

(2) *in the case of a foreclosure of the right to redeem village immovable property or urban immovable property;*

from the date on which the title of the mortgagee to the property becomes absolute;

(3) *in the case of a sale of urban immovable property;*

from the date on which the vendee takes under the sale physical possession of any part of the property.”

Sections 47, 59 and 60 of the Registration Act are as follows:-

“47. Time from which registered document operates.— A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

59. Endorsements to be dated and signed by registering officer. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

60. Certificate of registration.-(1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word “registered”, together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been

duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.”

The use of the word “or” in the 3rd column of Article 10 of the Limitation Act is significant. It essentially bifurcates the said article into two parts: (i) where the purchaser takes physical possession of the property or (ii) where the instrument of sale has been registered. We would like to mention that this bifurcation of Article 10 of the Limitation Act has been recognized by the learned High Courts in **Muhammad Sarwar**'s case (*supra*) and **Fazal Din**'s case (*supra*) which, in our opinion, is the correct view. The object of **either** delivery of possession to the vendee **or** registration of the sale deed is to put the prospective pre-emptor to notice of the sale in order for him to exercise his right within the prescribed period of limitation. The first part of Article 10 of the Limitation Act deals with cases where the sale has taken place and possession of the sold property has been delivered to the vendee pursuant thereto. No doubt in such a situation the period of limitation would start from the date of delivery of physical possession; but in order to successfully defend a suit for pre-emption falling in this category on the point of limitation (*if it is beyond one year from the date of delivery of possession*) the defendant-vendee would be obliged to prove that physical possession was delivered prior to the date of execution of the registered sale deed. Why is it so? The obvious object behind this is that the prospective pre-emptor must have notice that the sale has taken place and possession of the property has been delivered or that there is a change of possession. This factum of possession, in the wisdom of the law, is thus

considered to be adequate notice of sale of the property, enabling the pre-emptor to file a suit. Positive evidence has to be led by the vendee where the date of delivery of physical possession is different from the date of registration of the sale deed. Mere mention of delivery of possession in the sale instrument will not be a positive proof of the fact, which has to be independently established by the vendee when his defence of limitation is founded upon this fact. In the judgments reported as **Qazi Muhammad Daud**'s case (*supra*) and the judgments reported as **Khushi Muhammad Vs. Abdul Shakoor (1987 SCMR 1473)** and **Muhammad Abid and 2 others Vs. Nisar Ahmed (2000 SCMR 780)** this Court has held that a mere recital in the sale deed of delivery of possession is not by itself effective proof of such delivery.

In those cases where possession has not been delivered and/or the sale deed has been executed but not registered as yet, obviously a pre-emptor would have no notice that sale had taken place, thereby enabling him to exercise his right. In those cases the first part of Article 10 of the Limitation Act would have no application, rather the case(s) would fall within the second part thereof beginning from the word **OR** "*where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.*" It is instructive to remember that a document required to be registered can be presented to the registrar within four months from the date of its execution as per Section 23 of the Registration Act. Thus for example, if a document is executed on 1.1.2000 and is presented for registration on the last date of the four months allowed for the presentation thereof and it takes a further one month to be registered according to the law, in this manner about five months may be lost and yet the pre-emptor would have no notice of the sale; the right of the prospective pre-

emptor to file a suit within a period of one year cannot thus be curtailed by excluding this whole period from the calculation which is what would happen if we took the date of execution of the sale deed to be the starting point for purposes of limitation; further the provisions of Section 47 of the Registration Act cannot be read into the clear language of Article 10 of the Limitation Act which specifically mandates “*when the instrument of sale is registered*” meaning thereby that limitation begins to run from the date of the registration.

6. Before expressing our opinion on the true import, meaning and effect of the afore-quoted expression of Article 10 of the Limitation Act, we would like to briefly deal with Section 30 of the Pre-emption Act. The Limitation Act has provided a period of limitation for every suit and if the limitation is not prescribed by any particular provision, then the residuary Article 120 is applicable. However, a special law can also prescribe the period of limitation for particular types of suits which could be instituted under such law. A bare reading of Section 30 of the Pre-emption Act, particularly the phrase “*In any case not provided for by Article 10 of the Second Schedule of the Limitation Act, 1908*”, makes it clear that this section acknowledges the application of the period of limitation for the class of cases falling within Article 10 of the Limitation Act, meaning thereby that for all those suits which fall within the purview of Article 10 *ibid*, Section 30 *supra* would not apply. In this regard a three member bench of this Court has held in the judgment reported as **Chaudhry Khan Vs. Major Khan Alam (PLD 2009 SC 399)** that:-

“Article 10 of the First Schedule of Limitation Act, 1908 provides for a limitation period of one year to

enforce a right of pre-emption commencing from the date when the purchaser takes, under the sale, sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit to physical possession, when the instrument of sale is registered. Section 30 of the Punjab Pre-emption Act, 1913 also takes care of limitation period in a case not provided for by Article 10 of the Limitation Act. It provides a period of limitation of one year for instituting a suit for pre-emption from the date on which a vendee takes under the sale physical possession of any part of such land or property whichever is earlier. Now the question arises as to terminus a quo for a limitation period. In the present case, the registered sale-deed was executed and registered on 21-2-1978 as required by section 54 of the Transfer of Property Act, 1882. Therefore, the period of limitation would be computed from the date of registration of the sale-deed as the physical possession of the suit property under the sale could not take place earlier thereto. The delivery of possession even if earlier made pursuant to an agreement to sell would not serve the purpose for non-suiting a pre-emptor on that ground.”

In any case, there is no discord between the parties that the present case squarely falls within ambit of Article 10 of the Limitation Act and that Section 30 of the Pre-emption Act is not attracted thereto. Regardless of the fact that the counsel for the parties have not raised such issue, our candid opinion is that Section 30 *ibid* is not applicable to the present case.

7. Reverting to the proposition in hand, in the context of Article 10 of the Limitation Act, a plain reading of the said article

establishes that the period of limitation for the cases falling in the second part of the said article will be one year from when the sale instrument is registered and not the date of execution. This was also the view of the learned High Courts in **Ch. Shafaat Mahmood**'s case (*supra*) and the judgment reported as **Chaudhry Muhammad Yusuf Vs. Ghulam Muhammad and 3 others (2000 YLR 2178)**. For the purposes of this second part of Article 10 of the Limitation Act, delivery of possession is not relevant. It may be pertinent to mention here that in the present case it is not even the defence of the vendees/respondents that they had taken over possession of the suit property either prior to the date of the execution of the sale deed or on the date of execution of the sale deed or even during the period between the date of execution and registration. Their defence primarily has been that because the sale deed was executed on 8.5.1975, resultantly, registration of the deed on 26.5.1975 is not relevant. Seemingly this was on the basis of the provisions of Section 47 of the Registration Act, which stipulate that a registered sale deed shall take effect from the date of execution. This is also the view which has prevailed with the learned High Court in its impugned judgment whilst relying upon **Naseer Ahmed**'s case (*supra*). The question of limitation was not in issue in the said case, rather the vendee in that case built up his defence on the basis of a purchase made *vide* document executed on 8.9.1974 and registered on 10.9.1974 in his favour, thus he claimed that being an owner in the estate w.e.f. 8.9.1974, the sale having been made in his favour on such date could not be pre-empted. It is in this context that this Court held as under:-

“There is no controversy that the sale-deed in respect of this land was executed in appellants' favour on 8-9-1974 i.e. a day before the institution of the suit. It was presented for registration on 9-9-1974, but registered on 10-9-1974. In the opinion of the High Court, as the document was registered after the institution of the suit, the transaction was of no avail to the appellants. The view taken by the High Court is untenable. Section 47 of the Registration Act seemingly escaped notice of the learned Judges of the High Court, which provides that a document registered on a date subsequent to the date of its execution operates from the date of the execution. Obviously, therefore, the title to the land had passed on to the appellants on 8-9-1974, and they could justifiably bank on it to oppose the suit filed by the respondent.”

Section 47 of the Registration Act, which provides that a document registered on a date subsequent to the date of its execution would operate from the date of execution and not registration, was referred to in the context of passing of title of the property unto the vendee for the purposes of resisting the suit for pre-emption, having become the owner of the property prior to the institution of the suit. Hence, reliance upon such case by the learned counsel for the respondents and by the learned High Court in its impugned judgment is misplaced.

Besides, Section 47 of the Registration Act applies *inter se* the parties to a transaction, anyone claiming through them or anyone who has some right or interest in the property on account of the registered document. The said section has no relevance to the rights of persons who are not a party to such document therefore it would not operate to curtail the period of limitation available to a pre-

emptor under Article 10 of the Limitation Act, for the purposes of which limitation would begin from the date he is put to the notice of the sale. This was also the view of the learned High Court in **Ch. Shafaat Mahmood**'s case (*supra*) which to our mind is correct.

8. In light of the above, the instant appeal is allowed and the impugned judgment is set aside.

JUDGE

JUDGE

Announced in open Court

on **5.1.2017** at **Islamabad**

Approved For Reporting

Waqas Naseer/*