

HIGH COURT OF AZAD JAMMU & KASHMIR

*Civil Appeal No.237/2021;  
Date of Institution 28.12.2021;  
Date of Decision 06.06.2022.*

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Saleema Begum wife of Fazal Malik D/o  
Abdul Hameed R/o Rara Tehsil & District  
Muzaffarabad.

*Appellant*

*VERSUS*

1. Sher Ali Khan S/o Ali Khan R/o  
Dehki District Neelum R/o Rara  
Tehsil & District Muzaffarabad;
2. Muhammad Ashfaq Khan S/o Abdul  
Rouf R/o Ambore Raro Tehsil &  
District Muzaffarabad;
3. Sub Registrar, Registration,  
Muzaffarabad;
4. Tehsildar Muzaffarabad;
5. Patwari constituency Mozia Raro  
Ambore Tehsil & District  
Muzaffarabad.

*Respondents*

APPEAL AGAINST THE JUDGMENT AND DECREE OF  
DISTRICT JUDGE, MUZAFFARABAD, DATED 14.12.2021

**Before:- Justice Sardar Muhammad Ejaz Khan, J.**

PRESENT:

Mr. Babir Yaqoob Khan Mughal, Advocate for  
the appellant.

Raja Ayyaz Ahmed, Advocate for respondents  
No.1 & 2.

JUDGMENT:

The captioned appeal has been directed against the judgment and decree passed by the learned District Judge, Muzaffarabad, on 14.12.2021 whereby judgment & decree dated 12.07.2021 passed by the learned Civil Judge Court No.IV, Muzaffarabad, was maintained.

2. Synthesized facts of the instant appeal are that the plaintiff, predecessor-in-interest of respondents, herein, filed a suit for possession on the basis of right of prior purchase and cancellation of sale-deed dated 23.12.2020 along-with mutation No.2018 against the defendants/respondents, herein, pertaining to land Khewait No.185 Survey No.1034 measuring 04 Marlas on 18.05.2021. It has been stated therein that the plaintiff-appellant is owner in possession of land survey No.1225 measuring 3 Kanal & 2 Marlas, survey

No.1224 measuring 15 Marlas total measuring 3 Kanal 17 Marlas situated in Mozia Raro Tehsil & District Muzaffarabad while the disputed land survey No.1034 measuring 4 Marlas is adjacent to his owned land and easement rights of the plaintiff-appellant belong to the land survey No.1034 measuring 4 Marlas, which was alienated by respondent No.2 in favour of respondent No.1 in lieu of Rs.4,00,000/- in clandestine manner just to deprive off the plaintiff-appellant from her prior right of purchase. It has further been stated that due to construction of house and shops the easement rights of plaintiff-appellant is badly affected. It has been averred that the plaintiff-appellant came to know on 10.05.2021 regarding selling of the land when respondent No.1 started construction over the land in question while all the proceedings were kept secret just to defeat the prior rights of the

plaintiff-appellant, hence, the impugned sale-deed dated 23.12.2020 along-with mutation No.2018 may be cancelled and while setting-aside the impugned judgments & decrees. On filing of the suit, the defendants were summoned who appeared before the Court and filed an application for rejection of the plaint under Order VII Rule 11 of Civil Procedure Code, which after hearing was allowed and in consequence of that plaint filed the plaintiff-appellant was rejected under Order VII Rule 11 of Civil Procedure Code vide judgment & decree dated 12.07.2021 against which an appeal before the learned District Judge, Muzaffarabad, met the same fate vide impugned judgment & decree dated 14.12.2021, hence, this second appeal.

3. The learned counsel for the appellant, more or less, reiterated grounds of appeal and argued that learned Courts below fell in error

while passing the impugned judgments and decrees and suit of appellant was maintainable but both learned Courts below did not consider the pivotal point that limitation is not pure question of law rather it is mixed question of law and facts, hence, the matter requires evidence. The learned counsel maintained that the limitation started from the day when the appellant came to know that the land in question was sold out by respondent No.1 to respondent No.2. The learned counsel emphasized that husband of appellant is old age man and is unable to walk then he was hospitalized on 23.12.2020 at BACH Christian Qalandarabad where she along-with their children lived there for a month and thereafter, her sugar level became unbearable then was admitted to the emergency ward of Ayub Medical Complex, Abbottabad, due to suffering from heart disease. The learned counsel craved

that due to suffering from fatal diseases, appellant along-with her family could not come to Muzaffarabad for a period three months for which all the documents were appended along-with the suit and she came to know regarding sale-deed 23.12.2020 on their arrival to Muzaffarabad while the limitation would commence from the date of knowledge. The learned counsel emphasized that delay is not fatal in such like cases rather limitation is mixed question of facts and law, hence, the matter can only be determined after recording evidence but both the Courts below have not taken into consideration this vital aspect of the case, hence, the impugned judgments & decrees may be set-aside while accepting the appeal. The learned counsel in support of his contention referred to and relied upon the following case law:-

a) *Muhammad Khan vs. Muhammad Hussain and 2 others* [2002 YLR (Lahore) 1353].

4. On contrary, the learned counsel for respondents No.1 & 2 while controverting the arguments of the learned counsel for the appellant vehemently argued that the appellant has no *locus-standi* to file the appeal against the impugned judgments and decrees passed by the learned Courts below while attending the relevant provision as defined by Civil Procedure Code. The learned counsel added that the matter regarding transfer of the land through sale-deed dated 23.12.2020 was well in knowledge of the appellant while the learned trial Court rightly accepted the application for rejection of plaint filed under Order VII Rule 11 of Civil Procedure Code, which was rightly concurred by learned District Judge, Muzaffarabad, through its judgment & decree dated 14.12.2021. The learned counsel craved

that while dismissing the appeal, the impugned judgments & decrees may be upheld who also defended the same on all counts.

5. Having heard the respective arguments advanced by the learned counsel for the parties at bar, I have given my anxious thought towards the impugned judgments & decrees as well as the available record with my utmost care and caution.

6. The proposition is yet to be determined that whether the judgments & decrees passed by the learned Courts below have rightly been recorded in view of Order VII Rule 11 of Civil Procedure Code or not? For having true assistance, Order VII Rule 11 of Civil Procedure Code is reproduced as under:-

***“11. Rejection of plaint-- The plaint shall be rejected in the following cases:—***

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to*

*correct the valuation within a time to be fixed by the Court, fails to do so;*

*(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*

*(d) where the suit appears from the statement in the plaint to be barred by any law.”*

7. The plaint can be rejected under Order VII Rule 11, Civil Procedure Code where the same itself indicates any infirmity mentioned in clause “(a) to (d)”. Apparently, the contents of plaint show that plaint is barred by law in view of The Azad Jammu & Kashmir Pre-Emption Act, 2016, which is a special law in which Section 29 of Act, Ibid, is self-explanatory, hence, the same is usefully reproduced as under:-

**“Limitation:-** *Notwithstanding anything contained in the Limitation Act, 1908 (Act IX of 1908), the period of limitation for a suit to*

*enforce a right of pre-emption under this Act, shall be 120 days from the date.*

- (a) of the registration of the sale-deed; or*
- (b) of the attestation of the mutation, if the sale is made otherwise than through the registered sale deed; or*
- (c) on which the vendee takes physical possession of the property, if the sale is made otherwise than through the registered sale-deed or the mutation; or*
- (d) of knowledge by the pre-emptor, if the sale is not covered under the Clause (a) or Clause (b) or Clause (c).*

8. So far as the contention of the learned counsel for the plaintiff-appellant that the limitation is not pure question of law but is mixed question of law and facts, hence, the trial Court as well as the 1<sup>st</sup> appellate Court did not consider this vital aspect of the matter and without recording evidence of the parties rejected the plaint on the application of the defendants-respondents No.1 & 2 under Order VII Rule 11 of Civil Procedure Code is

concerned. A contemplate perusal of record reveals that the sale-deed 23.12.2020 was executed on 23.12.2020 and on the basis of which a mutation No.2018 was attested in favour of defendant-respondent No.1 while the suit was filed on 18.05.2021 after elapsing more than 120 days. The arguments to that extent are hereby repelled, hence, the limitation is not always a mixed question of facts and law, which is vary case to case but in presence of a special law where the limitation is provided as 120 days, the same cannot be condoned particularly when the case of the appellant is not that the requisite requirements of Section 30 of the Act, *Ibid*, pertaining to issuance of notice, registration of sale-deed dated 23.12.2020, have not been complied with and on account of which it can safely be concluded that registration of sale-deed dated 23.12.2020 is itself a proclamation for which the case of

the appellant falls within the ambit of 29 (a) of the Act, *supra*,.

9. As per Section 29 of The Azad Jammu & Kashmir Pre-Emption Act, 2016, the period of limitation for filing a suit to enforce right of pre-emption has been defined as 120 days from the date of registration of sale-deed. In addition to that in pre-emption cases, the limitation provided in Article 10 of First Schedule of the Limitation Act, 1908 for filing suit is also 120 days. The contention of the learned counsel for the appellant that the sale-deed dated 23.12.2020 was registered in clandestine manner just to defeat her prior right of purchase has no substance particularly when sale-deed dated 23.12.2020 is a registered document, which contains certificate of registration from Sub-Registrar, hence, the same cannot be said to have been concealed by the defendants-respondents because the

registration is a notice to the General Public-at-large, hence, the learned trial Court rightly exercised its powers enshrined under Order VII Rule 11 clause (d) of Civil Procedure Code. Similar proposition came under consideration before the Hon'ble Supreme Court in a case titled *Ishtiaq Ahmed Khan & others vs. Gul Taj Khan* decided in civil appeal No.351 of 2015. The relevant portion of this unreported judgment, supra, is reproduced as under:-

*“After going through the above reproduced provisions of section 29 of the AJ&K Right of Prior Purchase Act, 1993 Bk. And Article 10 of First Schedule of the Limitation Act, 1908, it is clear that to enforce a right of pre-emption the limitation for filing suit is 120 days. Admittedly, in the case in hand, the sale-deed was registered by the Sub-Registrar on 26.12.2011, whereas, the plaintiff-respondent filed the suit on 01.12.2012, much beyond the prescribed period of limitation. We agree with the argument of the learned counsel for the defendant-appellants that the Azad Jammu & Kashmir Right of Prior Purchase Act, 1993 Bk. is a special law in which the period for*

*filing suit to enforce a right of prior purchase is fixed as 120 days, therefore, the question of knowledge does not arise.*

8. *So far as the argument of the learned counsel for the plaintiff-respondent that the counsel for the defendant-appellants has concealed the facts, is concerned, it may be stated that admittedly, in the case in hand, the sale-deed was registered by the Sub-Registrar, therefore, any document which contains certificate of registration from Sub-Registrar that cannot be said to have been concealed by a party, because the registration is a notice to the General Public-at-large.”*

My this view finds support from a case reported as *Rahim Dad and 3 others vs. Abdul Kareem & 3 others* [1992 MLD 2111], in which it has been opined that:-

*“Even otherwise, the sale-deed has never been concealed by the respondent-defendant because the sale-deed was registered by the Sub-Registrar. Any document which contains certificate of registration from Sub-Registrar cannot be said to have been concealed by a party, because registration is a notice to the General Public-at-large. The copy of any registered document can be*

*obtained from the office of the Sub-Registrar.”*

10. It is apt to state here that the plaintiff-appellant has challenged the sale-deed dated 23.12.2020 but only a copy of mutation has been appended along-with the suit at page 18 but no copy either attested or unattested sale-deed dated 23.12.2020 has been brought on record for which the cause shown in para 5 is not justified, hence, under the relevant provisions of Civil Procedure Code, the documents, under challenge, must be accompanied with the suit. Although the Azad Jammu & Kashmir Pre-Emption Act, 2016 is a special law yet all the enabling provisions of Civil Procedure Code and Qanoon-e-Shahadat Order, 1984 shall, *mutatis-mutandis*, apply to the provisions of this Act under Section 32 of Act, *Ibid*, hence, the suit was not maintainable from this angle. The case law, *supra*, referred to and relied upon by the learned counsel for

the appellant has nothing to do with the case in hand, hence, there is no need to discuss here in black and white.

11. In view of the matter, I am not inclined with the assertions made by the learned counsel for the appellant, hence, the judgments & decrees arrived at by the trial Court as well as the learned 1<sup>st</sup> appellate Court dated 12.07.2021 and 14.12.2021 respectively do not call for any legal interference by this Court in appellate jurisdiction, hence, the instant appeal, finding no force, is hereby dismissed with no order as to costs.

Muzaffarabad.  
06.06.2022(ZEB)

-Sd-  
**JUDGE**

APPROVED FOR REPORTING

-Sd-  
**JUDGE**