

**IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN.**

C.R. No. _____/2002

Malik Ahmad Bakhsh

Vs

Abdul Ghafoor etc.

INDEX

S. No.	DESCRIPTION OF DOCUMENTS	ANNEXES	PAGES
1	Opening Sheet		1
2	Revision Petition.		3-19
3	Affidavit		21
4	Copy of plaint dated 23.7.96	A	23-24
5	Copy of list of documents dated 23.7.96	A/1	25
6	Copy of written statement dated 21.10.96	B	27-28
7	Copy of reliance dated 21.10.96	B/1	29
8	Copy of issues dated 28.5.98	C	33-35
9	Copy of statement of P.W.1 dated 16.10.99	E	37-39
10	Copy of statement of P.W.2 dated 16.10.99	F	39-42
11	Copy of statement of P.W.3 dated 16.10.99	G	42-44
12	Copy of statement of P.W.4 dated 16.10.99	H	44
13	Better copy of statement of P.W.1. E		45-50
14	Better copy of statement of P.W.2. F		51-52
15	Better copy of statement of P.W.3. G		53-54
16	Better copy of statement of P.W.4. H		55
17	Copy of P.W.1's rebuttal dated 22.6.2001	H/1	59
18	Better copy of statement of P.W.1. H/1		61
19	Copy of notice to respondents dtd. 25.4.96	I-7	63-75
20	Copy of receipts dated 25.4.96	J	77-81
21	Copy of register Haqdaran Zamin for the year 1991-92 dated 2.9.96	K	83-116
22	Copy of Mutation No. 1732 dated 18.4.96	L	117
23	Copy of Goshwara Ausat Bay dtd. 30.4.01	M	119-123
24	Copy of mutation No. 1749 dated 25.4.96	N	125-129
25	Copy of statement of D.W.1 dated 16.3.01	O	131-132
26	Copy of statement of D.W.2 dated 16.3.01	P	132-134
27	Better copy of statement of D.W.1.		135
28	Better copy of statement of D.W.2.		137-139
29	Copy of documentary evidence dtd. 16.3.01	Q	141-171
30	Better copy.		151
31	Copy of judgment & decree dated 15.12.01	R	181-190
32	Copy of decree 15.12.2001	S	191-192
33	Better copy of judgment.		193-205
34	Copy of memo of appeal.	T	207-209
35	Copy of judgment dated 10.4.2002	U	211-219

36	Copy of decree dated 10.4.2002	V	221
37	Power of attorney.		222

PETITIONER

Dated: _____

Through: -

Syed Muhammad Afaq Shah,
Advocate High Court,
93-District Courts, Multan.

**IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN.**

CIVIL REVISION No. _____/2002

Malik Ahmad Bakhsh S/o Malik Ghulam Rasool, caste Daha, R/o
Mauza Basti Rindan, Tehsil Jampur, District Rajan Pur.

.....PETITIONER

VERSUS

1. Abdul Ghafoor
2. Ashraf
3. Muhammad Saleem S/o Muhammad Idrees, caste Arain.
4. Muhammad Zafar Ullah S/o Aman Ullah.
5. Aman Ullah S/o Abdullah, caste Lund Baloch
6. Muhammad Iqbal
7. Abid Husain S/o Ghulam Haider, caste Jat Daya

All residents of Town & Tehsil Jampur District Rajan Pur.

...RESPONDENTS/DEFENDANTS

**REVISION under section 115 C.P.C.
against the judgment & decreed dated
10.4.2002, passed by the court of Mian
Khadim Hussain, Additional District
Judge, Jampur District Rajanpur,
through which the learned District Judge
dismissed the appeal of the petitioner and
upheld the judgment and decree dated
15.12.2001 passed by the court of Majid
Kareem Farooq Civil Judge Jampur by
which the learned Civil Judge dismissed
the suit for possession through pre-
emption filed by the petitioner/plaintiff.**

CLAIM IN APPEAL: -

To set aside the impugned judgment & decree of the appellate as well as civil court and decree of the suit of the petitioner/plaintiff.

Respectfully Sheweth: -

1. That the names and addresses of the parties have correctly been given for the purpose of their summons and citations.
2. That the petitioner filed a suit for possession through pre-emption regarding the land situated in Khata No. 504, comprising of 2 Kanals & 18 Marlas, Mauza Basti Rindan, Tehsil Jampur, District Rajanpur. In the plaint, the petitioner alleged that the respondents/defendants purchased the disputed land through mutation No. 1732 dated 18.4.96 for a consideration of Rs. 200,000/- but to frustrate his right of pre-emption, he got endorsed Rs. 460,000/- as sale price of the suit land in the impugned mutation. He contended that he obtained knowledge of the sale on 25.4.96 at Mauza Basti Rinadan at 10:00 a.m. through one Muhammad Ayyub and he, in the same sitting and session, claimed his Talab-e-Mawathebat and then sent notices of the Talab-e-Ishhad to respondents according to law and procedure. He claimed his superior right of pre-emption qua the respondents of his having been co-sharer of the suit land and also having common course of irrigation. The attested copy of the plaint is attached as Annex "A".
3. That the respondents/defendants contested the suit by raising preliminary objections that the ostensible sale price of the suit land was Rs. 460,000/-, which was fixed in good faith and was actually paid at the time of the sale. It is also contended that the petitioner was present when the contract of sale took place, hence he has waived his right of pre-emption and is estopped by his words and conduct to bring the present suit; that the suit is incorrectly valued for the purpose of court fee and jurisdiction;

and that the respondents are entitled to special costs under section 35-A C.P.C. In case of dismissal of the suit. Denying all other averments in the plaint, the respondents prayed for the dismissal of the suit. The certified copy of the written statement is attached as Annex “B”.

4. That the learned trial court framed the issues on 12.11.1996, but thereafter another suit was filed by the rival pre-emptor, hence, the issues were again framed by consolidating both the suits on 28.5.1998. But later on, the rival pre-emptor has not contested the suit, hence, issues No. 5, 6, 7, 8, 14, 15 & 16 were deleted and the findings were given on other issues by the learned trial court. The issues are as follows: -

- i) Whether the plaintiff has fulfilled the pre-requisite of the Talabs for the success of suit for pre-emption? OPP
- ii) Whether the plaintiff has superior right of pre-emption qua the vendee/defendants? OPP
- iii) Whether the plaintiff is entitled to the decree for possession through pre-emption as prayed for? OPP
- iv) Whether the plaintiff is in need of the property just to avoid Zarrar? OPP
- v) Whether the rival pre-emptor has fulfilled the pre-requisite Talabs for the success of suit for pre-emption? OPP. Rival pre-emptor (deleted).
- vi) Whether the rival pre-emptor has superior right of pre-emption? OPP Rival pre-emptor (deleted).
- vii) Whether the rival pre-emptor is entitled to the decree for possession through pre-emption as prayed for? OPP Rival pre-emptor (deleted).
- viii) Whether the rival pre-emptor is in need of the property just to avoid Zarrar? OPP Rival pre-emptor (deleted).

- ix) Whether the defendants No. 1 to 7 have incurred expenses upon the improvement of the land? If so to what extent and whether they are entitled to recover the same? OPP 1—7
- x) Whether the defendants No. 1 to 7 have incurred expenses upon the completion of sale to the tune of Rs. 75,000/- and are entitled to recover the same in case the suit is decreed? OPD 1—7.
- xi) Whether the plaintiff has himself participated in the sale and is estopped to suit by his own words and conduct? OPP 1—7.
- xii) Whether the suit is bad and not maintainable as the proper court fee has not been fixed for the purpose of court fee and jurisdiction? OPD 1—7.
- xiii) Whether the suit is malafide and the defendants are entitled to special costs? OPD 1—7.
- xiv) Whether the suit of the plaintiff against the defendants No. 1 to 7 is collusive? OPD—8 (deleted).
- xv) Whether the defendant No. 8 has superior right of pre-emption qua the plaintiff? OPD—8 (deleted).
- xvi) Whether the suit is vexatious and liable to be dismissed? OPD—8 (deleted).
- xvi-a) Whether ostensible sale price of Rs. 460,000/- was actually fixed and paid in good faith? OPD
- xvi-b) If issue No. xvi-a is not proved, then what was the market values of the suit land at the time of its sale? OP parties.
- xvii) Relief.

Copy of issues is attached as Annex “C”.

5. That the petitioner/plaintiff produced Ahmad Bakhsh (plaintiff) P.W.1, Muhammad Ayyub P.W.2, Mazhar P.W.3 and Israr Ahmad (Wasika Navees) P.W.4. In documentary evidence Notices Ex.P.1 to P.7, post receipt Ex.P.8 to P.14, Register Haqdaran for the year 1991-92 Ex.P.15, Register Haqdaran for the year 1996-97 Ex.P.16, copy of impugned mutation Ex.P.17, Goshwara Ex.P.18, Goshwara 95-96 Ex.P.19, mutation No. 1749 Ex.P.20, mutation No. 1740 Ex.P.21, mutation No. 2602 Ex.P.22. The copy of statement of P.W.1 is Annex "E", P.W. 2 Annex "F", P.W.3 Annex "G", P.W.4 Annex "H", notices Annex "I", Receipt Annex "J", Register Haqdaran Annex "K", impugned mutation No. 1732 Annex "L", Goshwara Annex "M", Mutation Annex "N".
6. That the respondent/defendant in his oral evidence, produced Khadim Hussain Patwari D.W.1, Muhammad Ashraf D.W.2 and in his documentary evidence Roznamcha dated 22.4.96 Ex.D.1, Sale deed No. 162 D.2, Kahsra Girdawari D.3, Khasra Girdawari D.4, Sale Deed No. 421 D.5, Sale Deed No. 422 D.6, Sale deed No. 416 D.7, Sale deed D.8, map of Rehman Colony D.9. Copy of statement D.W.1 Annex "O", D.W.2 Annex "P", documentary evidence Annex "Q".
7. That the learned trial court dismissed the suit of the petitioner vide his judgment and decree dated 15.12.2001, the copy of judgment is Annex "R", decree Annex "S".
8. That the trial court ordered the petitioner to fix court fee amounting to Rs. 35,500/- within one month. The learned Appellate Court vide its order dated 15.3.2002 set aside this portion of judgment.
9. That the petitioner assailed the judgment and decree before the Additional District Judge Jampur. The learned court of Mian Khadim Hussain Additional District Judge Jampur dismissed the appeal of the petitioner vide his decision dated 10.4.2002. Copy of memo of appeal judgment & decree are Annexes "T, U & V".
10. That the impugned judgment and decree of the learned Additional District Judge dated 10.4.2002, through which the court has

dismissed the appeal of the petitioner and upheld the judgment and decree of learned trial court dated 15.2.2001 vide which the learned trial court dismissed the suit of the petitioner/plaintiff are illegal ultra vires, without jurisdiction against law based on misreading of evidence, non-reading of evidence, exercise of jurisdiction not vested in him, not properly exercised jurisdiction as per law, miscarriage of justice, having no effect qua the rights of the petitioner and hence, liable to be set aside on the following amongst other

GROUNDS

- a) That the learned court below has not decided the issues in accordance with law as such the judgment and decree are not maintainable and liable to be set aside.
- b) That the learned court has erred in deciding the issue No. 1. The issue No. 1 is about Talabs. The appellant has proved beyond reasonable doubt that he has fulfilled the requirement of Talabs as required by law. In his plaint, the petitioner has categorically stated that he came to know about the sale of the suit property on 25.4.96 at about 10.00 a.m. and he at once in the same sitting announced that he had superior right and he would exercise his right of pre-emption. Thereafter, the petitioner after obtaining the copy of the impugned mutation from Patwari contended the learned counsel and sent notices to the respondents. The respondents have not specifically denied this fact in his written statement. Thereafter, at the time of evidence, the petitioner and witnesses have categorically proved that the petitioners had fulfilled the requirements of Talab-e-Mawathebat at the relevant time i.e. on 25.4.96 when he came to know about the sale transaction. The respondent had not put any suggestion that the petitioner had come to know about the sale on 22.4.96 and not on 25.4.96. When the respondents found that

the petitioner had proved his Talab-e-Mawathebat by law, they approached the Patwari and got prepared a fictitious Roznamcha Waqiatee dated 22.4.96. Thereafter, the respondents changed the date written on the copy of mutation, which the petitioner had annexed with the plaint and as such made the date fictitious one. After completing their forgery, the respondents moved application for the production of Patwari as their witness. The petitioner vehemently resisted the application but the learned lower court allowed the respondents to produce the Patwari. Mr. Khadim Hussain Patwari appeared as D.W.1. He in his statement produced the copy of Roznamcha dated 22.4.96 and tried to prove that the petitioner had got the copy of the Mutation on 22.4.96 and not on 25.4.96. Because, the Patwari had prepared the fictitious document of Roznamcha, therefore, he did not utter any word about the copy of Mutation, which was on the file. He did not say that that was the mutation which he had issued to the petitioner on 22.4.96.

Moreover, the Register Roznamcha is kept and prepared by the Patwari. There is no signature of petitioner for the receipt of copy of mutation on the said Roznamch, therefore, it is not an authentic document.

The D.W.1 in his cross-examination has said

Thereafter, he at once, became conscious and himself changed his statement. In this way, the D.W.1. had said the truth that he had given Ahmad Bakhsh the copy on 25.4.96. Because in league with the respondent he had committed forgery, therefore, he had to change his statement to safeguard the rights of the respondents.

So far as the petitioner is concerned, he had said the truth by saying that he came to know about the sale on 25.4.96, he obtained the copy from the Patwari and then

contacted the learned Advocate. The mutation was sanctioned on 18.4.96, the petitioner could have said that he came to know about the sale on 22.4.96 and he had announced on the same meeting on 22.4.96 and then contacted the learned Advocate on 25.4.96. Because the case was not becoming time barred and that statement was not debarring the petitioner from filing the suit.

Moreover, the Patwari had not produced the Register from which he had prepared the so-called Rapat Roznamcha. The learned Appellate Court and the trial court have not appreciated this aspect of the case. They have given reliance upon the statement of the Patwari which he had made in connivance with the respondent. They have disbelieved the petitioner and his witnesses who have stated the correct situation.

In this way, the learned lower courts have misread the evidence.

- c) That the learned lower courts while deciding the issues have exercised jurisdiction which does not vest in them.
- d) That the learned courts have failed to exercise a jurisdiction so vested.
- e) That the learned courts have acted in the exercise of jurisdiction illegally and with material irregularity.

In view of the above submissions, it is respectfully prayed that by accepting the revision petition, the impugned judgments and decrees passed by courts below may very graciously be set aside and the case of the petitioner may very graciously be decreed with costs throughout.

Any other relief, which this Hon'ble Court deems fit may graciously be awarded in the interest of justice and equity.

Humble Petitioner,

Dated: _____

Through: -

Syed Muhammad Afaq Shah,
Advocate High Court,
93-District Courts, Multan.

CERTIFICATE: -

Certified as per instructions of the petitioner,
this is the first petition on the subject matter.
No such petition has earlier been filed
before this Hon'ble Court.

Advocate

**IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN.**

C.R. No. _____/2002

Malik Ahmad Bakhsh

Vs

Abdul Ghafoor etc.

AFFIDAVIT of: -

Malik Ahmad Bakhsh S/o Malik Ghulam Rasool, caste Daha, R/o Mauza Basti Rindan, Tehsil Jampur, District Rajan Pur.

I, the above named deponent do hereby solemnly affirm and declare that the contents of the above-titled revision petition are true and correct to the best of my knowledge and belief and nothing has been kept concealed thereto.

DEPONENT

Verification: -

Verified on oath at Multan, this _____ day of July 2002 that the contents of this affidavit are true & correct to the best of my knowledge and belief.

DEPONENT

**IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN.**

In re: C.M. No. _____/2002

In

C.R. No. _____/2002

Malik Ahmad Bakhsh

Vs

Abdul Ghafoor etc.

**APPLICATION FOR DISPENSING WITH THE
FILING OF CERTIFIED COPIES OF ANNEXURES.**

Respectfully Sheweth: -

1. That the above-titled application is being filed before this Hon'ble Court, the contents of which should be considered as part & parcel of the main petition.
2. That certified copies of Annexes "_____" are not readily available. However, uncertified/photo state copies of the same have been annexed with the petition, which are true copies of the original documents.

It is, therefore, respectfully prayed that this Hon'ble court may please dispense with the filing of aforesaid copies of documents.

APPLICANT,

Dated: _____

Through: -

Syed Muhammad Afaq Shah,
Advocate High Court,
93-District Courts, Multan.

**IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN.**

In re: C.M. No. _____/2002
In
C.R. No. _____/2002

Malik Ahmad Bakhsh Vs Abdul Ghafoor etc.

DISPENSATION APPLICATION

AFFIDAVIT of: -

Malik Ahmad Bakhsh S/o Malik Ghulam Rasool, caste
Daha, R/o Mauza Basti Rindan, Tehsil Jampur, District
Rajan Pur.

I, the above named deponent do hereby
solemnly affirm and declare that the contents of
the above application are true and correct to the
best of my knowledge and belief and nothing has
been kept concealed thereto.

DEPONENT

Verification: -

Verified on oath at Multan, this _____ day
of July 2002 that the contents of this affidavit are
true & correct to the best of my knowledge and
belief.

DEPONENT