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IN THE COURT OF SAMI ULLAH, CIVIL JUDGE-I,  
ORAKZAI (AT BABER MELA).

Original Civil suit No.....8/1 of 2023

Date of institution .....23.01.2023

Date of decision .....31.10.2023

1. Mustajab Khan S/O Said Nazeer

Resident of Qoam Ali khel Tappa Meerwas Khel, Sara Khawa Gaal, PO Ghiljo,  
Tehsil Upper District Orakzai.

..... (Plaintiff)

Versus

1. Sajawal Khan S/O Gul Makhan

Resident of Qoam Ali khel Tappa Meerwas Khel, Sara Khawa Gaal, PO Ghiljo,  
Tehsil Upper District Orakzai.

.....(Defendant)

**SUIT FOR RECOVERY OF POSSESSION THROUGH PRE-EMPTION**

**JUDGMENT:**

1. Plaintiff is seeking decree for recovery of possession through pre-emption in respect of the property measuring one jareeb situated within the limits of Sarra Khwa Gal, Tehsil Ghiljo, District Orakzai, sold out to the defendant on the basis of agreement deed dated 07-12-2022 in lieu of amount of Rs 20,000/- (Twenty Thousand) but mentioned the inflated rate of rupees 300,000/- (three lacs) in order to defeat the plaintiff's right.

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2. Plaintiff has contended the suit property was owned by Rehman Khan who sold the same to the defendant on terms mentioned above. That plaintiff came to know about the factum of sale on 08-01-2023 at 09:00 am from one Noor Moeen s/o Khiyal Moeen in the shop of Noor Moeen. He there and then declared his intention to preempt the suit sale as such fulfilled the requirements of jumping demand. That in confirmation of jumping demand, notice in writing dated 17.01.2023 attested by two witnesses namely Noor Moeen s/o Khiyal Moeen and Naeem Khan s/o Shah Wazir was sent to vendee/defendant through registered post and as such plaintiff fulfilled the requirements of talab-e-ishad. That, plaintiff is owner of property adjacent to the suit property, whereas defendant is alien in the vicinity and as such plaintiff has got superior rights of preemption. That, vendee/ defendant was asked to accept the preferential right of plaintiff and transfer the suit property in favour of plaintiff but of no use, hence the present suit.

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3. After due process of summons the defendant appeared in person and contested the suit by submitting written statement in which contention of the plaintiff was resisted on many legal as well as factual grounds.
4. The divergent pleadings of the parties were reduced into the following issues.

**ISSUES.**

1. *Whether the plaintiff has got cause of action?*
2. *Whether the suit of the plaintiff is within time?*
3. *Whether the plaintiff is estopped to sue?*

4. *Whether the plaintiff fulfilled the requirements of Talabs according to Khyber Pakhtunkhwa Pre-emption Act, 1987?*
5. *Whether the plaintiff has got superior right of pre-emption?*
6. *Whether amount of Rupees of twenty thousands (Rs. 20,000) was actually paid by the vendee to the vendor?*
7. *What is the market value of the suit property?*
8. *Whether the defendant has purchased the suit property twenty-six years ago from the vendor?*
9. *Whether the plaintiff is entitled to the decree as prayed for?*
10. *Relief.*

5. Parties were afforded with ample opportunity to adduce evidence. Detail of the plaintiff's witnesses and exhibited documents are as under;

	WITNESSES	EXHIBITIS
PW-1	Mustajab Khan S/O Said Nazeer Qoam Ali khel Tappa Meerwas Khel, PO Ghiljo, Tehsil Upper District Orakzai.	Copy of CNIC is Ex.PW-1/1. Map Sketch is Ex.PW-1/2.
PW-2	Noor Maeen S/O Khayal Meen Shah Qoam Ali khel, Tappa Almil Khel District Orakzai.	Copy of CNIC is Ex.PW-2/1.
PW-3	Minhaj S/O Shah Wazir Qoam Ali khel Tappa Meerwas Khel, District Orakzai	Copy of CNIC is Ex.PW-3/1.
PW-4	Muhammad Munir, Record Keeper/ post man, Post Office, District Hangu.	Copy of Token No.955 is Ex.PW-4/1. Copy of page of receiving is Ex.PW-4/2.

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PW-5	Arshad Khan Record Keeper Post Office Zargari District Hangu.	Copy of Register is Ex.PW-5/1
PW-6	Malak Muhammad Rehman S/O Abd-Ur- Rehman, Record Keeper of PO Ghiljo, District Orakzai.	Record of Registration is Ex.PW-6/1.

Detail of defendant's witnesses and exhibited documents are as under;

WITNESSES		EXHIBITIONS
DW-1	Sajawal Khan S/O Gul Makhan Qoam Ali khel Tappa Meerwas Khel, PO Ghiljo, Tehsil Upper District Orakzai	Copy of Tahreer Nama is Ex. DW-1/1.

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6. Arguments by learned Counsel for the parties heard.
7. Learned Counsel for the Plaintiffs, Mr. Noor Mer Jan Advocate, argued that the plaintiff has proved his case by producing reliable evidence. That the notice was sent to the defendant and the plaintiff has superior right of pre-emption over the suit property.
8. Learned Counsel for the defendants Mr. Zahur Ur Rehman Advocate, argued that the plaintiff has badly failed to prove his case. That the Talbs ware not performed properly and accordance with law. That the suit property was purchased by the defendant some 20 years ago. That the suit of the plaintiff is liable to dismissal.
9. After hearing arguments and after gone through the record of the case with valuable assistance of learned Counsels for both the parties, my

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issue-wise findings are as under:

**ISSUE NO.2:**

*Whether the suit of the plaintiff is within time?*

- 9. Though the defendants have taken the defense that the suit is not within time but they neither produced any evidence nor the point was agitated before the court at the time of arguments. Even otherwise, there is nothing available on record which suggests the fact that the suit is time barred.
- 10. Hence, the issue is decided in negative.

**ISSUE NO.3:**

*Whether the plaintiffs are estopped to sue?*

- 11. Burden of proof regarding this issue was on defendants. Estoppel needs cogent, convincing and reliable evidence which is lacking on the part of defendants, therefore issue is decided in negative and against the defendants.

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**ISSUE NO.04.**

*Whether the plaintiff fulfilled the requirements of Talabs according to Khyber Pakhtunkhwa Pre-emption Act, 1987?*

- 12. Performance of talabs being sine-qua-non for the enforcement of right of preemption and without talabs there is no concept of preemption. Plaintiff was under obligation to prove that he has performed the talabs

according to section 13 of Khyber Pakhtunkhwa Pre-emption Act, 1987.

13. Burden of proof regarding the issue was on plaintiff. Plaintiff in order to discharge this duty, produced six witnesses. The essence of their statements which helped in deciding the issue are as under.

14. Mustajab Khan, who is plaintiff in the instant case and recorded his statement on oath as PW-01. While supporting his claim, he stated in his examination in chief that the suit property is adjacent property to his property. That when he came to know about the sale agreement regarding the disputed property then he alongwith Noor Maeen and Minhaj went to the defendant and informed him about his right on the suit property. After that he had sent a notice to the defendants but of no avail and hence, he filed the instant preemption suit. The said PW admitted in his cross examination that defendant had previously filed a civil suit against the plaintiff regarding the same suit property and further stated that it was another property. The said PW also recorded that he has not gone to see the plaintiff rather they went to Gula Nabi and Rehman Khan in connection with his preemption right. It is pertinent to mention here that the said statement is inconsistent with the statement of the same PW in his examination in chief. The said PW also admitted that he had filed the instant case and sent the notice to the defendant on the same date. Later on, he stated in his cross examination that after 9/10 days of sending notice, I had filed the instant suit. The said PW stated at one place that he came to know

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about the sale agreement in Dabori and later in his statement he recorded that he came to know about the same when he was in Speen Thall.

15. Noor Moeen and Minhaj recorded their statements as PW-2 and PW-3 respectively. Both the PWs narrated the story that they alongwith plaintiff went to Nabi Mula and Rahman and told them that the plaintiff has right of preemption on the suit property. It is pertinent to mention here that PW-2 stated in his statement that the plaintiff came to his shop and told him that the defendant has purchased the suit property. However, plaintiff in the plaint stated that he came to know about the purchase in the shop of PW-2.

16. Record Keeper PO, Hangu appeared as PW-4 and recorded in his statement that registry No.955 on the name of Sajawal has been made by the plaintiff on 17.11.2022. Similarly, Record Keeper PO, Zargari Hangu appeared as PW-5 and recorded in his statement that registry No. 105272357 has been handed over to the officials of PO Ghiljo. Record keeper P.O Ghiljo, appeared and recorded his statement as PW-6 and recorded in his statement that the said registry was not delivered and was then returned to the PO, Zargari Hangu.

17. The statements of the plaintiffs' witnesses brought the facts before the court, mentioned here in after, which provided reason for deciding the issues against their favor. Firstly, the statement of the plaintiff is inconsistent with his own statement in the examination in chief and with the pliant, as discussed above. Secondly, the delivery of the notice

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was not proved despite summoning of three official witnesses from three post offices and PW-06 stated that the notice was returned to the post office Zargari. Thirdly, the date on which the notice was sent was not proved in the evidence and PW 04 stated another date in his statement. Fourthly, the notice don't have any marginal witness on it. And lastly, it has not been established that the plaintiff has adjacent property.

18. Keeping in view the above discussion, it is held that plaintiff has failed to produced cogent, convincing and reliable evidence in support of his claim and has failed to prove the performance of talabs in accordance with law. Therefore, issue No.05 is decided negative and against the plaintiffs.

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**ISSUE NO. 5:**

*Whether the plaintiff has got superior right of pre-emption?*

19. Plaintiff has contended that he is having property adjacent to the suit property as well as is participating in special rights attached to the suit property whereas vendee/defendant is alien in the vicinity and as such plaintiff has got superior right of preemption. Defendant has denied the version of the plaintiff.
20. The said fact has not been addressed in the evidence and is not proved. Hence, the issue is decided in negative and against the plaintiff.



ISSUE NO. 6 and 7:

*Whether amount of Rupees of twenty thousands (Rs. 20,000) was actually paid by the vendee to the vendor?*

*What is the market value of the suit property?*

21. Defendants in their written statement have contended that the suit property was sold out to the defendant on the basis of agreement deed dated 07-12-2022 in lieu of amount of Rs 20,000/- (Twenty Thousand) but mentioned the inflated rate of rupees 300,000/- (three lacs) in order to defeat the plaintiff's right.
22. The said fact has also not been addressed in the evidence and is not proved. Hence, the issue is decided in negative and against the plaintiff.

Issue No. 8

*Whether the defendant has purchased the suit property twenty-six years ago from the vendor?*

23. Defendant has contended in his written statement that the suit property was purchased by the defendant 20 years ago from the then owners in lieu of three lac rupees and the defendant has made improvement in the property in the said period. The burden of proof regarding the issue was on defendant. Defendant in order to prove his stance, appeared himself as a witness, and no other witness was produced before the court.

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24. The defendant appeared as DW-01 and recorded in his statement that he had purchased the disputed land in the year 1997 from persons mentioned in his statement in lieu of rupees three lacs. That he has improved the suit property and has made it cultivable and the current market price of the property is fifty lac rupees. Further stated that at that time he didn't need any agreement deed and has verbally made the agreement but now he has scribed a document which is Ex.DW 1/1 from the previous owner of the suit property and they have signed/thumb impressed the same and has accepted his ownership. He also stated that plaintiff don't have an adjacent property to the suit property and he has never received any notice of the Talb. Nothing relevant to the instant case was recorded in his examination in chief.

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25. The defendant has also failed to prove his stance regarding which the instant issue was framed. The defendant has not produced a single witness in support of the instant issue.

26. Keeping in view the above discussion, it is held that defendant has failed to produced cogent, convincing and reliable oral and documentary evidence in support of his claim, therefore, issue No.08 is decided in negative and against the defendants.

**ISSUE NO. 1 & 9:**

*Whether the plaintiffs have got cause of action?*

*Whether the plaintiffs are entitled to the decree as prayed for?*

27. The discussions on the above referred issues show that plaintiff has


failed to prove their case by fulfilling the requirements of law and by producing cogent and confidence inspiring evidence; therefore, he has got no cause of action. Therefore, the plaintiff is not entitled to the decree as prayed for.

The issues No.01 and 09 are decided in negative and against the plaintiffs.

**RELIEF:**


28. The detailed discussion on issues mentioned above transpires that the plaintiff has failed to prove his case against the defendant by proceedings cogent and confidence inspiring oral or documentary evidence. Hence, suit of the plaintiff is **Dismissed**.
29. Costs to follow the events.
30. File be consigned to record room after its necessary completion and compilation.

**Announced**  
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**CERTIFICATE: -**

Certified that this judgment consists of eleven (11) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

  
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