SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:
Raza Ali Khan, J.
Khalid Yousaf Chaudhary, J.

Civil Appeal No.59 of 2025
(PLA filed on 29.12.2024)

Farooq Ahmed & others

…… APPELLANTS

VERSUS

Nusrat Begum & others

….. RESPONDENTS

[On appeal from the judgment & decree of the High Court dated 29.10.2024 in Civil Appeal No.170 of 2019]

FOR THE APPELLANTS:	Mr. Sarfraz Ahmed, Advocate.
FOR RESPONDENTS No.1-3.	Sardar Muhammad Azam Khan, Advocate.

Date of hearing: 28.01.2026.

JUDGMENT:-

Khalid Yousaf Chaudhary, J.– Through the captioned appeal by leave of the Court, the appellants have called in question the validity and legality of the judgment passed by the learned High Court dated 29.10.2024, whereby the appeal filed by the appellants, herein, has been dismissed.

2. The necessary facts forming the background of the captioned appeal are that the plaintiff, Muhammad Aslam (predecessor of respondents No.1 to 3), herein, instituted a suit for

declaration before the Court of Civil Judge, Mirpur, alleging therein, that he is a resident of village/*mouzia* Kas Kalyal, Mirpur, and that, besides his own land, he is also the owner and in possession of the *Shamlat Deh* land of the said village. It was further alleged that defendants No.1 to 3 without lawful authority and without being in possession, sold the land measuring 26 kanal and 3 marla, comprising old survey No.626/1 min, new survey No.2, Khatooni No.276/356, Khewat No.95/104, situate at village Kas Kalyal, to defendant No.4 against a consideration of Rs.10,00,000/-. It was averred that the vendors had alienated the land in excess of their lawful share, despite the fact that the suit land was under the possession of the plaintiff. It was maintained that during pendency of the suit, the defendant No.4 has transferred the land in dispute to defendant No.5, through a consent decree, hence, a decree for declaration and cancellation of the sale-deed and consent decree was sought. In alternate the possession of the suit land on the basis of right of prior purchase was also sought. Upon service of summons, the defendants entered appearance and filed the written statement, wherein, the claim of the plaintiff was refuted on legal and factual scores. The learned trial Court, on the basis of the pleadings of the parties, framed issues and, after recording evidence and hearing arguments, dismissed the suit for want of proof vide judgment and decree dated 15.08.2011. Being dissatisfied from the said judgment and decree, the plaintiff preferred an appeal before the learned Additional District Judge, Mirpur. After necessary

proceedings, the learned Additional District Judge, accepted the appeal and while setting aside the judgment and decree passed by the learned Civil Judge, Mirpur, granted the decree for possession on the basis of right of prior purchase and also cancelled the consent decree, vide judgment 17.10.2018. The defendants/appellants, herein, challenged the judgment and decree passed by the learned Additional District Judge by filing an appeal before the High Court. Through the impugned judgment the learned High Court has dismissed the appeal, hence, this appeal by leave of the Court.

3. Mr. Sarfraz Ahmed, the learned Advocate while appearing on behalf of the appellants, contended that the impugned judgment rendered by the learned High Court is contrary to law as well as the record and, therefore, not sustainable in the eye of law. He submitted that the trial Court dismissed the suit filed by the plaintiff-respondents for want of proof vide judgment and decree dated 15.08.2011, which was assailed before the learned Additional District Judge, Mirpur. During the pendency of the appeal, the Azad Jammu and Kashmir Right of Prior Purchase Act, 1993 (Bikirmi), *(hereinafter to be referred as Act, 1993),* was repealed and replaced by the Azad Jammu and Kashmir Pre-emption Act, 2016, *(hereinafter to be referred as Act, 2016)*, enforced with effect from 20.07.2015. Section 33 of the Act, 2016 specifically provides that in cases where judgments and decrees had not attained finality prior to the enforcement of the Act of 2016, the proceedings were required to

continue under the new Act, and the mandatory requirements of section 13 of the Act, 2016, relating to the fulfillment of talabs (demands) were applicable. He emphasized that since the decree in the present matter had not become final, the suit/appeal was liable to be dismissed for non-compliance with section 13 of the Act of 2016. He further argued that the learned 1st Appellate Court, while setting aside the judgment and decree of the trial Court, erroneously granted a decree for possession on the basis of the right of prior purchase without adherence to the mandatory statutory requirements regarding demands. He maintained that even otherwise, if for the sake of argument it is presumed that the matter was to be governed by the repealed Act, the essential requirement of depositing one-fifth of the consideration amount had admittedly not been fulfilled, disentitling the plaintiff from any relief. The learned counsel asserted that the learned High Court failed to advert to these material aspects and dismissed the appeal in a cursory manner. In support of his submissions, reliance was placed upon the judgments reported as [2014 SCR 1075], [2016 SCR 544], [2019 SCR 504] and [2024 SCR 146]. Lastly, the learned counsel prayed for acceptance of appeal.

4. Conversely, Sardar Muhammad Azam Khan, the learned Advocate while appearing on behalf of the respondents, supported the impugned judgment in all respects. He submitted that since the trial Court had passed the decree before the enforcement of the Act, 2016, the case was rightly proceeded further under the repealed Act, 1993,

in view of the saving clause contained in section 33 of the Act of 2016. In reply to the objection raised by the learned counsel for the appellants regarding non-deposit of one-fifth of the sale consideration, he contended that the trial Court had issued no direction for such deposit, therefore, the question of depositing the said amount did not arise. He further stated that the respondents had deposited the entire sale consideration after the passing of the judgment and decree by the learned Additional District Judge. He placed reliance upon the judgments reported as [2019 SCR 504] and [2024 SCR 146] and, on that basis, prayed for dismissal of the appeal.

5. We have heard the learned counsel for the parties and perused the record made available along with the impugned judgment. It is revealed from the record that the predecessor of the respondents, herein, filed a suit before the Civil Judge Mirpur, wherein, he prayed for the following relief:-

> ''اندریں حالات استدعا ہے کہ ڈگری استقرار حق نسبت اراضی تعدادی 26 کنال 3 مرلہ نمبر خسرہ سابقہ 626/1 من نمبر خسرہ حال نمبر 2 کھتونی 356/276 کھیوٹ 104/95 من واقع موضع کس کلیال تحصیل و ضلع میر پور کا بیعنامہ مورخہ 10.11.90 حقوق مدعی پر کالعدم غیر موثر اور قابل منسوخی ہے اور تحت قانون void transaction ہے اراضی منتقل نہ ہو سکتی تھی۔ نیز ڈگری اقبالی مورخہ 28.06.92 منجانب مدعاعلیہ نمبر 4 بحق مدعاعلیہ نمبر 5 عدالت جناب سب جج صاحب میر پور سازشی طور پر دوران دعوی مدعی کو نقصان پہنچانے کی غرض سے کی گئی ہے جو حقوق مدعی پر کالعدم، باطل، غیر موثر اور قابل منسوخی ہے۔ بصورت متبادل ڈگری دخلیابی بذریعہ حق خرید فائق نسبت اراضی متدعویہ بوجوعات کہ مدعی شریک راستہ شریک کھاتہ و کھیوٹ، مالک دہیہ و ملحقہ اراضی ملکیتی و مقبوضہ ہے معہ جملہ حقوق بحق مدعی خلاف مدعاعلیہم جاری فرمائی جائے۔ دیگر جو بھی دادرسی قرین انصاف ہو فرمائی جائے۔''

A perusal of the above reveals that the plaintiff sought relief of declaration and cancellation of the sale deed dated 10.11.1990 and the consent decree dated 28.06.1992 as well. In the alternative, he also claimed a decree for possession on the basis of the right of prior purchase. After necessary proceedings, the trial Court dismissed the suit for want of proof vide judgment and decree dated 15.08.2011. The defendants challenged the said judgment and decree before the learned Additional District Judge by filing an appeal. After necessary proceedings, the learned Additional District Judge accepted the appeal, set aside the judgment and decree passed by the trial Court, granted the decree for possession on the basis of the right of prior purchase and also cancelled the consent decree dated 26.08.1992, vide judgment and decree dated 17.10.2018. Through the impugned judgment, the learned High Court while dismissing the appeal filed by the appellants, herein, has upheld the judgment and decree passed by the learned Additional District Judge.

6. Before proceeding further, it may be observed here that keeping in view the multiple reliefs prayed for by the plaintiff, the learned trial Court framed eight issues, out of which issues Nos. 4, 5 and 6 are material for the proper adjudication of the controversy; therefore, the same are reproduced hereunder:—

> ”تنقیح نمبر۴۔ کیا بیعنامہ مصدقہ ۱۹۹۰-۱۱-۱۰ء نسبت اراضی متدعویہ بدوں قبضہ خلاف قانون اور زائد از حصہ ہونے کی بناء پر حقوق مدعی پر باطل وکالعدم ہے؟ بذمہ مدعی تردید مدعا علیہم

تنقیح نمبر۵۔ کیا اقبالی ڈگری مصدرہ ۱۹۹۲-۶-۲۸، دوران دعوٰی خلاف قانون ہونے کی بناء پر
حقوق مدعی پر باطل اور کالعدم اور قابل منسوخی ہے؟ بذمہ مدعی تردید مدعا علیہم
تنقیح نمبر۶- کیا مدعی کو اراضی متدعویہ کی نسبت فائق حق خرید بمقابلہ مشتری حاصل ہے؟ بذمہ مدعی
تردید مدعا علیہم۔"

It is the contention of the learned counsel for the appellants that the suit insofar as it seeks the alternate relief of possession on the basis of the right of prior purchase, instituted under the repealed Act, 1993, was not maintainable after the enforcement of the Act, 2016, due to non-fulfillment of demands and should be dismissed in the light of the provisions of section 33 of Act, 2016. It is an admitted fact that the suit was instituted on 07.11.1991 and was dismissed through judgment and decree dated 15.08.2011, whereafter an appeal was preferred before the learned Additional District Judge. During the pendency of the said appeal, the Act, 1993, stood repealed and the Act, 2016, came into force with effect from 20.07.2015. The pivotal question that arises for determination is the legal effect of the Act, 2016 on the fate of pending suits and appeals instituted under the repealed Act, 1993. This Court, in the case titled *Amjad Hussain v. Mst. Sakeena Bibi* [2024 SCR 146], has comprehensively examined this proposition. For facility of reference, the relevant excerpt from the said judgment is reproduced as under:—

> *"6. The record shows that the appellant, herein, filed a suit for possession on the basis of his right of prior purchase under Act, 1993. During the pendency of suit Act, 2016 was promulgated with effect from 20.07.2015 while repealing Act, 1993. Section 33 of repealing Act speaks that:-*

"33. Repeal and Saving.- (1) The Azad Jammu and Kashmir Right of Prior Purchase Act, 1993 (Bikrimi) is hereby repealed.

(2) Notwithstanding anything contained in this Act, in cases and appeals filed under the Prior Purchase Act, 1993 (Bikrimi) in which judgments and decrees have been passed before the enforcement of this Act and have become final, further proceedings relating to such cases and appeals, if any, shall be governed and continued in accordance with the provisions thereof."

An objection was raised before the trial Court that the suit should be dismissed in the light of the provisions of section 33 of Act, 2016. The learned trial Court disagreed with the objection, however, dismissed the suit for want of proof vide judgment and decree dated 22.05.2018. The appellant and the proforma-respondents filed an appeal before the High Court. The learned High Court dismissed the appeal while relying upon Rozi Khan's case, supra, and held that in view of section 33 of Act, 2016, the suit would be deemed to have been dismissed on the score of extinguishment of right of pre-emption. The relevant portion of Rozi Khan's case is reproduced as under:-

"In view of the foregoing we are inclined to hold that the words "judgments and decrees passed by the Courts have become final" in subsection (2) of section 35 mean "those judgment and decrees wherein the suit of the pre-emptor has been decreed by the Courts rendering it". In so thinking we are fortified by the circumstance that this Court has always understood and consistently expounded the concept of finality in Pre-emption Statutes on this premises. (See, inter alia, Bibi Jan v. R.A. Monny PLD 1961 SC 69 at pages 75/76; Sardar Ali v. Muhammad Ali PLD 1988 SC 287 at page 354).

In the light of the foregoing, the effect of the provisions of section 35 of the new Islamic Law of Pre-emption, in our opinion, is that if at the time of the enforcement of the Islamic Law of Pre-emption (i.e, 1-8-1986 when the principles of

the Islamic Common Law became applicable in the absence of any statutory law or after 28-4-1987 when Act X of 1987 was promulgated) a final decree in the sense explained above (namely a decree in favour of the plaintiff/pre-emptor decreeing the suit for pre-emption) had already been passed and an appeal against it was pending (which is a further proceeding relating to the case in which the decree was passed), the said further proceedings shall be governed and decided under the provisions of the old Act (N.-W.F.P. Pre-emption Act, 1950) and the provisions of Act X of 1987 would not be attracted. Similarly, if a final judgment (decreeing the suit of the plaintiff/pre-emptor) had been passed before the aforesaid dates and the said judgment was being challenged before the revisional Court or the High Court in its writ jurisdiction such proceedings too shall be governed by and decided under the provisions of the old Pre-emption Law enacted in the 1950 Act."

7. It is the contention of the learned counsel for the appellant that the High Court has wrongly relied upon Rozi Khan's case because in that case the dispute was regarding interpretation of section 35 of NWFP Pre-emption Act, 1987 which clearly provided that all pending cases shall stand dismissed except those in which right of pre-emption is claimed under the provisions of newly promulgated Act, whereas, Act, 2016 is silent in respect of the fate of pending cases. We do not agree with the contention of the learned counsel for the appellant. The language of section 33 of Act, 2016 and section 34(2) of the Punjab Pre-emption Act, 1991 is almost same. It is apt to reproduce here section 34(2) of Punjab Pre-emption Act, 1991 which reads as follows:-

"(2) Notwithstanding anything contained in this Act, in the cases and appeals filed under the Punjab Pre-emption Act, 1913 (I of 1913) in which judgments and decrees had been passed before the 1st day of August, 1986, further proceedings if any relating to such cases and appeals shall notwithstanding the repeal of the said Act be governed and continued in accordance with the provisions thereof."

The Supreme Court of Pakistan in the case reported as Babar Shehzad vs. Said Akbar [1999 SCMR 2518] after comparative examination of section 34(2) of the Punjab Pre-emption Act, 1991 and section 35(2) of the NWFP Pre-emption Act, 1987 concluded that the scope and consequence of both the provisions are same which are meant to protect the judgments and decrees passed in cases and appeals before the target date and if a decree in favour of the pre-emptor has not been passed before the target date, pending proceedings could not continue in accordance with the provisions of repealed Act. Babar's case was also subsequently relied on by the Supreme Court in the case reported as Zaheer-ud-Din Babar vs. Allah Lubhaiya [2004 SCMR 1338] in the following manner:-

> *"5. We have heard the learned counsel for the parties and have gone through the record of the case. In case of Babar Shehzad v. Said Akbar 1999 SCMR 2518, this Court on comparative examination of section 34(2) of the Punjab Pre-emption Act, 1991 and section 35(2) of the N.-W.F.P. Pre-emption Act, 1987 and the law laid down by this Court in cases of Government of N.-W.F.P. v. Said Kamal Shah PLD 1986 SC 360, Sardar Ali v. Muhammad Ali PLD 1988 SC 287, Muhammad Shoaib v. Member (Revenue) PLD 1988 SC 355, Ghulam Qadir v. Nawab Din PLD 1988 SC 701. Aiwaz Khan v. Allah Bukhsh PLD 1988 SC 730, Ahmed v. Abdul Aziz PLD 1989 SC 771, Sultan v. Habib Ahmad PLD 1990 SC 897, Aziz Begum v. Federation of Pakistan PLD 1990 SC 899, Muhammad Yasin v. Khan Muhammad PLD 1990 SC 1060, Muhammad Ismail v. Ghulam Haider 1991 SCMR 1443, Rozi Khan v. Karim Shah 1992 SCMR 445, Zafar Ullah Khan v. Muhammad Khan 1993 SCMR 696, Asghar Abbas v. Muhammad Amin 1993 SCMR 2022, Said Amir Khan v. Shahzadi Khatoon 1993 SCMR 2050, Khushal sul Khan v. Rao Nawaz 1994 SCMR 814; Hasan Mahmood v. Bashir Ahmad 1994 SCMR 1624, Muhammad Salam v. Wali Muhammad 1997 SCMR 108 and Muhammad Sarwar v. Muhammad Hussain 1998 SCMR 1938, concluded that the scope and consequence of both the provisions are same*

> *which are meant to protect the judgments and decrees passed in cases and appeals before the target date of 31-7-1986 and if a decree in favour of the pre-emptor has not been passed before the target date, pending proceedings could not continue in accordance with the provisions of the repealed Act."*
>
> *It has become crystal clear from the above discussion that the provisions of section 33 of Act, 2016, section 34(2) of Punjab Pre-emption Act, 1991 and section 35 of the NWFP Pre-emption Act, 1987 have the same effect on the pending cases as explained in Rozi Khan's case, supra. Therefore, the contention of the learned counsel for the appellant that Rozi Khan's case is not applicable to the case in hand is devoid of any force. Admittedly, the suit was filed by the appellant before promulgation of Act, 2016 and no final judgment and decree was passed, hence, the plaintiff's suit is to be governed under Act, 2016. Section 13 of Act, 2016 provides that the right of a person shall be extinguished unless such person makes demands of pre-emption i.e., Talb-i-Muwathibat, Talb-i-Ishhad and Talb-i-Khusumat. As the appellant failed to make the talabs in accordance with the newly promulgated law, hence, his suit has rightly been dismissed by the High Court on this ground."*

In view of the above, it is manifest that section 33(2) of the Act, 2016, preserves only those cases in which judgments and decrees had been passed in favour of the plaintiff and had attained finality prior to the enforcement of the Act, 2016. The mere institution of a suit under the repealed Act, 1993, does not confer any vested or indefeasible right upon the plaintiff unless a final decree had been passed in his favour before the cut-off date i.e 20.07.2015. Consequently, the requirement of making talabs (demands), as mandatorily prescribed under section 13 of the Act, 2016, is applicable to all pending matters in which no final judgment and decree had been rendered before

20.07.2015. In essence, all suits and appeals filed under the Act, 1993, which remained pending without a final adjudication prior to the enforcement of the Act, 2016, are to be governed by the provisions of the latter Act, and non-compliance with the statutory requirements relating to demands renders such proceedings not maintainable under law.

7. In the present matter, it stands admitted that the suit was instituted under the Act, 1993 which was dismissed by the trial Court for want of proof and no final judgment and decree was rendered in favour of the plaintiff/respondents prior to the enforcement of the Act, 2016. The learned Additional District Judge, subsequent to the commencement of the Act, 2016, proceeded to pass a judgment and decree in favour of the plaintiff/respondents without ensuring compliance with the mandatory requirement of fulfilling demands prescribed under the Act, 2016. Consequently, the claim for possession on the basis of the right of prior purchase was not maintainable in law. In these circumstances, we are of the considered view that the learned Additional District Judge, after the promulgation of the Act, 2016, was not justified in granting a decree for possession on the basis of the right of prior purchase. The learned High Court also failed to advert to this crucial legal aspect and, as a result, erroneously upheld the judgment and decree of the learned 1st Appellate Court insofar as it pertained to the grant of possession on the basis of the right of prior purchase.

8. Another important aspect of the matter is that the suit was originally instituted for declaration and cancellation of the sale deed as well as the consent decree, while the relief of possession on the basis of the right of prior purchase was claimed as the alternative relief. Thus, the enforcement of the Act, 2016, does not affect the suit in its entirety; rather, it impacts solely the alternate relief of possession premised on the right of prior purchase. The record further reveals that in the appeal filed before the learned Additional District Judge, the plaintiffs/respondents did not press issue No.4, pertaining to the cancellation of the sale deed. For ready reference we would like to reproduce here the relevant partition of the judgment passed by the learned Additional District Judge which reads as under:-

> "تنقیح نمبر4. کیا بیعنامہ مصدقہ 10-11-1990 نسبت اراضی متدعویہ بدوں قبضہ ، خلاف قانون اور زائد از حصہ ہونے کی بناء پر حقوق مدعی پر باطل وکالعدم ہے؟
>
> تنقیح ہذا کا بار ثبوت بذمہ اپیلانٹ / مدعی تھا۔ تنقیح ہذا کے حوالہ سے فاضل کونسل اپیلانٹ نے دوران بحث اسطور اظہار کیا کہ بیعنامہ متدعویہ کے بدوں قبضہ، خلاف قانون اور زائد از حصہ ہونے کی حد تک موقف کو اب Press نہ کرتے ہیں۔۔"

However, the learned Additional District Judge resolved issue No.5, pertaining to the cancellation of the consent decree in favour of the plaintiff/respondents resulting into the annulment of the said consent decree. Nevertheless, since the challenge to the sale deed was not pursued before the learned 1st Appellate Court, and the relief of possession on the basis of the right of prior purchase has been held to be not maintainable, it follows that the sale deed, on the basis of

which the consent decree was passed, remains intact. Consequently, the cancellation of the consent decree does not serve any practical or legal purpose, and the judgment and decree of the learned Additional District Judge to the extent of cancellation of the said decree is also liable to be set aside.

In view of the above, while accepting this appeal the impugned judgments and decrees passed by the learned High Court as well as the learned Additional District Judge are hereby set aside and the judgment and decree passed by the learned Civil Judge Mirpur is hereby restored. Consequently, the suit filed by the plaintiffs/respondents No.1 to 3, herein, stands dismissed. No order as to costs.

JUDGE **JUDGE**

Muzaffarabad, (J-I)
17.02.2026.