



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 18TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M.G.S.KAMAL

REGULAR SECOND APPEAL NO.200418 OF 2015

(DEC/INJ)

BETWEEN:

1. KESHAVARAO
S/O. NARASINGRAO TALGHATKAR,
AGED ABOUT 63 YEARS, OCC: AGRICULTURE,
R/O. HALLIKHED (B), TQ. HUMANABAD,
DIST. BIDAR-585414.
2. MEHERUN BEE
W/O. LATE GHUDUSAB MIYAN BHAI,
AGED ABOUT 55 YEARS, OCC: AGRICULTURE,
R/O. HALLIKHED (B), TQ. HUMANABAD,
DIST. BIDAR-585414.

...APPELLANTS

(BY SRI KADLOOR SATYANARAYANACHARYA, ADVOCATE)

AND:

1. ABDUL SUKUR
S/O. LATE MASTANSAB MIYAN BHAI,
SINCE DEAD BY HIS LRS.
- 1A) SMT. REEZWANA BEE
W/O. LATE ABDUL SUKUR,
AGE: 58 YEARS, OCC: HOUSEHOLD.





- 1B) FIROZ S/O. LATE ABDUL SUKUR,
AGE: 42 YEARS, OCC. BUSINESS,
- 1C) HAJIMIZAN S/O. LATE ABDUL SUKUR,
AGE: 42 YEARS, OCC. BUSINESS,
- ALL R/O. NEAR KALI MASJID,
OLD PANCHAYAT AREA,
PET UDAYA NAGAR, HALLIKHED (B),
TQ. HUMANABAD, DIST. BIDAR-585414.

...RESPONDENT

(BY SRI MEER MOHAMMAD ALI, ADVOCATE
FOR R1(A) TO R1(C))

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE JUDGMENT AND DECREE DATED 16.10.2015 PASSED IN R.A.NO.86/2013 ON THE FILE OF THE II ADDL. DISTRICT AND SESSIONS JUDGE, BIDAR, SITTING AT BASAVAKALYAN, CONFIRMING THE JUDGMENT AND DECREE DATED 14.08.2013 PASSED IN O.S.NO.54/2011 ON THE FILE OF THE SENIOR CIVIL JUDGE AT HUMNABAD AND TO PASS ANY OTHER APPROPRIATE ORDERS.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.10.2025, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, THE COURT DELIVERED THE FOLLOWING:



CORAM: HON'BLE MR. JUSTICE M.G.S.KAMAL

CAV JUDGMENT

This regular second appeal is by the defendants aggrieved by the judgment and decree dated 14.08.2013 passed in O.S.No.54/2011 on the file of Senior Civil Judge, Humnabad (hereinafter referred to as the 'trial Court'), which is confirmed by the judgment and order dated 16.10.2015 passed in R.A.No.86/2013 by the Court of the Additional District and Sessions Court, Bidar sitting at Basavakalyan (hereinafter referred to as the 'appellate Court').

2. Subject matter of the suit is land bearing Sy.No.583, totally measuring 03 acres 27 guntas situated at Hallikhed (B) village [hereinafter referred to as the 'subject land' for brevity].

3. The case of the plaintiff is that;

3.1. The said subject land originally belonged to one Mastansab, who passed away leaving behind his sons



namely, Abdul Sukur the original plaintiff and Ghudusab as his legal heirs. That the original plaintiff and Ghudusab were in joint possession and enjoyment of the entire extent of the subject land. Ghudusab passed away on 10.09.2003 leaving behind his wife Smt.Meherun Bee - defendant No.2 and two sons. Upon the demise of Ghudusab, original plaintiff alone has been cultivating the suit land being in exclusive possession and enjoyment of the same along with defendant No.2.

- 3.2 During his lifetime, deceased Ghudusab was residing at Hyderabad along with his wife - defendant No.2 and his sons, in the house of mother of defendant No.2. Ghudusab was visiting Hallikhed (B) occasionally with his family. Original plaintiff who was cultivating the subject land was giving half of the yield and income to deceased Ghudusab. That there was no partition of the subject land and the same has been in possession of the family for over 50 years.
- 3.2. That recently defendant No.2 in collusion with the revenue officials and active assistants of defendant No.1 had got her name mutated in the revenue records showing herself to be the owner and possessor to an extent of 01 acre 33 guntas out of 3



acres 27 guntas of the subject land. Such mutation was effected with an ill-intention of causing loss and injury to the plaintiff.

- 3.3. The defendant No.1 without the knowledge of the original plaintiff has obtained registered deed of sale executed on 15.07.2006 in his name from defendant No.2 for a consideration of Rs.1,46,000/- allegedly paid prior to the registration of the said document.
- 3.4. Plaintiff learnt about the said illegal transaction when he along with his son Fairoz were ploughing the subject land on 07.12.2006 by using the tractor belonging to one Sri Revanappa Police Patil. That at about 09.30 a.m. on 07.12.2006 defendant No.1 came to the spot and claimed that he had purchased from defendant No.2 for valuable sale consideration Rs.1,46,000/-southern portion of the subject land along with half of right to irrigate from of the right to irrigate from the well and to the produce from the tamarind tree. That defendant No.1 attempted to prevent the plaintiff from ploughing the southern half portion of the land.
- 3.5. Plaintiff called the neighboring landowners namely, Sangappa S/o Shankereppa Mali Patil, Shivaraj S/o Shankereppa Yelagundi and several other local



persons of Hallikhed (B) and demanded defendant No.1 that he being the co-owner and the co-sharer along with defendant No.2 was entitled to purchase the share of defendant No.2 and he was ready to buy the same by paying the entire consideration of Rs.1,46,000/-. However, defendant No.1 refused the said demand made by the plaintiff on 08.12.2006.

3.6. Plaintiff came to the Sub-Registrar Office and obtained certified copy of sale-deed and went to Hyderabad to enquire about the execution of deed of sale by her in favour of defendant No.2 without his knowledge as he was ready to purchase the same at the same value and requested defendant No.2 to join with defendant No.1 in conveying the land in his favour as he was ready to purchase the same. That he made the said request in the presence of Sangappa Mali Patil and Shivaraj Yelagondi and others at Hyderabad. Defendant No.2 refused to comply with the demand made by the plaintiff in exercise of his right of pre-emption.

3.7. Plaintiff again approached defendant No.1 on 23.12.2006 offering to purchase the portion of the property for Rs.1,46,000/- and requesting him to execute registered deed of sale in his favour along with defendant No.2 which was also refused. Giving



rise to cause of action for the suit. Hence the suit seeking following reliefs:

- a) *That, a decree be kindly passed declaring that the above named plaintiff is entitled to exercise his right of Pre-emption (Shuffa) to re-purchase the southern half portion of the land measuring 01 acres 33 guntas R.A. of Rs. 6.07 paise out of the suit survey number 583 total measuring 3 acres 27 guntas R.A. of Rs. 12.14 paise, situated at village Hallikhed-B taluka Humnabad District Bidar from the defendants no.1 & 2 jointly or severally by way of giving the consideration amount of Rs. 1,46,000/-as mentioned in the suit sale deed bearing document no. C-1372/06-07 dated 15/07/2006 Registered in the office of the Sub-Registrar Humnabad as per law immediately.*
- b) *That, a further decree of the nature of Mandatory injunction be kindly passed directing the above named defendants no.1 & 2 jointly and severally to execute the necessary Registered sale deed in respect of the southern portion of 01 acre 33 guntas R.A. of 6.07 paise land out of suit survey number 583 in the name of the above named plaintiff by receiving amount of Rs. 1,46,000/-with all the necessary stamp duty, registration charges etc., to be born for the same exclusively by the plaintiff named herein above.*
- c) *That, a further necessary decree be also kindly passed, in the event of failure on the part of the defendants no.1 & 2 jointly and severally to comply the above terms of decree, enabling to the above named plaintiff to get execute the necessary sale deed of the southern half portion of the land measuring 01 acres 33 guntas R.A of Rs. 6.07 paise out of Suit survey number 583, as mentioned in the suit sale deed bearing document no. C-1372/06-07 registered in the*



office of the Sub-registrar Humnabad dated 15/07/2006 in the name of the above named plaintiff of this suit through the Commissioner to be appointed for that purpose by this Hon'ble Court with the required expenses to be born by the plaintiff towards stamp duty and registration charges etc.,

d) Any other equitable reliefs be also kindly granted to which the plaintiff is entitled."

4. Defendants in their written statement denying the maintainability of the suit contented that:

4.1. The husband of defendant No.2, Ghudusab was the exclusive owner and possession of the southern portion of the subject land and after his demise the same has been mutated in the name of defendant No.2 in accordance with law. Plaintiff was never the joint owner along with deceased Ghudusab. Plaintiff has got his separate share in the subject land while the husband of defendant No.2 was having his separate share. The records of rights never showed joint ownership of the plaintiff and the deceased Ghudusab at any time.

4.2. That upon the demise of husband of defendant No.2, plaintiff had become dishonest and with an intention of harassing the defendant No.2, as she was residing at Hyderabad, filed the false suit. The plaintiff and



the husband of the defendant No.2 were in separate and exclusive possession and enjoyment of their respective shares. However, a well situated in the subject land was in joint possession and enjoyment of the plaintiff and his deceased brother, each having half share right, title, interest therein. Plaintiff is in possession of the northern side of the subject land while the southern portion of the subject land belonged to deceased Ghudusab.

4.3. That upon the demise of husband of defendant No.2, she having conveyed southern portion of the subject land in favour of defendant No.2 to the knowledge of the original plaintiff, she has left the village of Hallikhed (B) for the further education and employment of her sons at Hyderabad. Hence, sought for dismissal of the suit.

5. Based on the pleadings, trial Court framed the following issues:

1. *Whether the plaintiff proves that there was no partition in the suit Sy.No.No.583, measuring 3 acres 27 guntas as alleged ?*
2. *Whether the plaintiff further proves that he has got right of preemption to repurchase the southern half portion of the land measuring 01 acre 27 guntas of village Hallikhed-B, Tq. Humnabad as alleged ?*



3. *Whether the plaintiff further proves that he is entitled for mandatory injunction as sought for in the suit ?*
4. *Whether the defendant Nos.1 and 2 prove that the defendant No.1 got valid title to the suit land through registered sale deed bearing document No.1372/06-07 dated 15.07.2006 for valid consideration of Rs.1,46,000/- executed by defendant No.2 as alleged ?*
5. *Whether the defendants further proves that the suit of the plaintiff is false and fictitious and thereby they are entitled for compensatory costs of Rs.10,000/- from the plaintiff as alleged ?*
6. *What order or decree ?*

6. Plaintiff examined himself as PW-1 and another witness by name Krishna as PW-2 and exhibited 11 documents marked as Ex.P1 to P11. Four witnesses have been examined on behalf of defendants as DW-1 to DW-4 and have exhibited 7 documents marked as Ex.D1 to D7(a) to (c). On appreciation of the evidence, the trial Court answered Issue Nos.1 to 3 in the affirmative, Issue Nos.4 and 5 in the negative and consequently, decreed the suit, directing the defendants and the legal heirs of deceased Ghudusab to execute registered deed of sale in favour of the plaintiff by receiving Rs.1,46,000/- which



was deposited before the Court, holding that the plaintiff is having right of preemption to re-purchase the suit land within two months from the date of the order.

7. Being aggrieved, defendants preferred a regular appeal in R.A.No.86/2013. Considering the grounds urged, the first appellate Court framed the following points for its consideration :

1. *Does appellants prove that the finding of trial Court that the defendants failed to prove the partition in the suit Sy.No.No.583, measuring 3 acres 27 guntas is illegal one ?*
2. *Does the trial Court judgment and decree need to be interfered with ?*
3. *What order ?*

On re-appreciation of evidence, answered point Nos.1 and 2 in the negative and consequently dismissed the appeal confirming the judgment and decree passed by the trial Court. Being aggrieved, defendants are before this Court.



8. This Court by order dated 29.05.2024 admitted the aforesaid appeal for consideration on the following substantial questions of law :

1. *Whether the required formalities/conditions precedent to the exercise of the right preemption by making necessary demands as per the provisions of Section 231 and 236 of the Mohomedan Law, which are called as talab-i-mowasibat and talab-i-ishhad have been complied?*
2. *Whether the Courts below have fell in error in decreeing the suit of the plaintiff holding that the plaintiff is entitled to exercise his right of preemption to repurchase the southern half portion of land measuring 1.33 guntas?"*

9. Sri Kadloor Satyanarayanacharya learned counsel appearing for the appellant reiterating the grounds urged in the memorandum of appeal submitted that:

- 9.1. The trial Court and the first appellate court have grossly erred in decreeing the suit without adverting to the requirement of strict compliance to the provisions of Section 231 and 236 of the Mulla's Principles of Mahomedan Law.
- 9.2. That the trial Court and the first appellate Court have erred in not appreciating the evidence made



available on record, which categorically proved that the plaintiff and the husband of the defendant No.2 were not in joint possession and enjoyment of the property as claimed. He refers to paragraphs 4, 6, 14, 16, 23 and 27 of the deposition of PW-1 to contend that plaintiff was in possession and enjoyment of northern half portion of the property while husband of defendant No.2, Ghudusab was in cultivation and possession of southern half of the property. That the joint cultivation was only till the marriage of Ghudusab with defendant No.2.

- 9.3. That the records of rights would indicate the property was mutated jointly in the name of plaintiff and Ghudusab. Later it was made in the name of plaintiff alone. That there is definite bifurcation of the suit land into northern and southern portion.
- 9.4. The defendant No.1 is not a stranger to the parties, as he is, admittedly the owner of the land situated on the southern side of the subject land.
- 9.5. That there has been no demand as contemplated under Sections 231 and 236 of Mulla's Principles of Mahomedan Law.
- 9.6. That the suit is also bad in law as sons of Ghudusab have not been made parties to the suit. Exercise of



right of pre-emption can only be made by a co-owner by making a demand against the other co-owners. Defendant No.2 being the wife of Ghudusab is only entitled for 1/8th share in the southern portion of the subject land, in terms of the principles of Muslim Personal Law of Inheritance. As such, there cannot be a demand for exercising right of pre-emption in respect of part of the land. Consequently, there is no compliance of the law requiring demand to be made in respect of the entire portion of the land.

- 9.7. The evidence of PW-2 is of no consequence as the said witness apart from being a chance witness, has pleaded his ignorance with regard to the contents of his affidavit filed in lieu of examination-in-chief. That he has clearly admitted he not visiting Hyderabad to meet defendant no.2 as sought to be contented by plaintiff, demanding execution of deed of sale in furtherance to exercise of his right of pre-emption. No witnesses have been examined to prove the exercise of right of pre-emption by the plaintiff demanding execution of sale-deed in respect of southern portion of the subject land.



9.8. In support of his submission, the counsel relied upon the following judgments:

- (i) ***Radhakisan Laxminarayan Toshniwal vs. Shridhar Ramchandra Alshi and others*** reported in ***AIR 1960 SC 1368***; and
- (ii) ***Maheboobsab Buransab Maniyar vs. Mohadinsab Maheboobsab Maniyar*** reported in ***ILR 2012 (1) KAR 1192***.

Hence seeks for substantial question of law to be answered in favour of the appellants/defendants.

10. *Per contra*, Sri Meer Mohammad Ali, learned counsel appearing for plaintiff/respondent submitted that:

10.1. There has been no partition of the subject land anytime during the lifetime of husband of defendant No.2 or subsequent thereof. That the records of right produced at Ex.D-2, indicate that name of Mastansab, the father of plaintiff and husband of defendant No.2 being reflected for the years 1958-1961. Thereafter, name of plaintiff and Ghudusab was reflected for the year 1962-63. That there are no revenue records between the year 1963 to 2000. The records of right produced at Exs.P3 to Ex.P7 for the years 2006 and 2007 reflect only name of plaintiff.



Name of Ghudusab has been reflected on and after 15.07.2006 at the instance of defendant No.2.

10.2. Defendant No.2 alone has no right to alienate the entire property. The conveyance of the land in favour of defendant No.1 by defendant No.2 is defective. Since there has been no partition, and the subject land has remained in common, sons of deceased Ghudusab need not be made parties to the suit.

10.3. That there has been a categorical admission by defendant No.2 in her deposition regarding plaintiff and defendant No.2 cultivating the land together and there being no bifurcation. No documentary evidence is produced by the defendants to evidence partition of the property into northern and southern portions.

10.4. That merely because defendant No.1 owned his land on the southern side, he would not get any prerogative to purchase the property denying the statutory right of preemption available in favour of the plaintiff.

10.5. There is no suggestion made to PW-1 or to PW-2, denying the circumstance of plaintiff making demand on 07.12.2006, 08.12.2006 and 23.12.2006 in exercise of his right of preemption. In fact, DW-1 has admitted the circumstance of such demand being



made by the plaintiff in his deposition. Similarly, defendant No.2 has also admitted the demands that were made by the plaintiff.

10.6. The ground of non impleadment/non-joinder of parties, namely sons of Ghudusab, is raised for the first time in this appeal and the same has neither been pleaded nor urged before the trial Court and the first appellate Court.

10.7. Plaintiff has pleaded that tenancy in common which has been accepted by the trial Court and the first appellate Court. There has been complete compliance of the provisions of Section 236 of Mulla's Principles of Mahomedan Law. The trial Court having adverted to factual and legal aspect of the matter have rightly decreed the suit which is confirmed by the first appellate Court and no substantial question of law therefore would arise for consideration. Hence seeks for dismissal of the appeal.

11. Heard. Perused the records.

12. Since, the suit is one seeking declaratory relief regarding plaintiff's entitlement to exercise his right of pre-emption and for mandatory injunction directing



defendants to execute deed of sale in respect of portion of subject land, appropriate to refer to the provisions of Sections 231, 236 and 245 of the Mulla's Principles of Mahomedan Law which are extracted hereunder:

""231. Who may claim pre-emption : *The following three classes of persons and no others, are entitled to claim pre-emption, namely:-*

(1) a co-sharer in the property [shafi-i-sharik];

A mukarraridar (lessee in perpetuity) holding under a co-sharer has no right to pre-empt as against another co-sharer ;

(2) a participator in immunities and appendages, such as a right of way or a right to discharge water [shafi-i-khalit]; and

(3) owners of adjoining immovable property [shafi-i-jar], but not their tenants, nor persons in possession of such property without any lawful title [Baillie, 481]. A wakf or mutawalli is not entitled to pre-empt, as the wakf property does not vest in him.

The first class excludes the second, and the second excludes the third. But when there are two or more pre-emptors belonging to the same class, they are entitled to equal share of the property in respect of which the right is claimed [Baillie, 500].

Exception : The right of pre-emption on the third ground, viz., that of vicinage does not extend to estates of large magnitude, such as villages and zamindaris, but is confined to houses, gardens, and



small parcels of land. The right, however, may be claimed by a co-sharer."

"236. Demands for pre-emption : *No person is entitled to the right of pre-emption unless-*

(1) he has declared his intention to assert the right immediately on receiving information of the sale. This formality is called talab-i-mowasibat (literally, demand of jumping, that is, immediate demand): and unless

(2) he has with the least practicable delay affirmed the intention, referring expressly to the fact that the talab-i-mowasibat had already been made, and has made a formal demand-

(a) either in the presence of the buyer, or the seller, or on the premises which are the subject of sale and

(b) in the presence at least of two witnesses. This formality is called talab-i-ishhad (demand with invocation of witnesses.

Explanation 1. The talab-i-mowasibat should be made after the sale is completed. It is of no effect if it is made before the completion of the sale [s.232].

Explanation II - It is not necessary that the talab-i-mowasibat or talab-i-ishhad should be made by the pre-emptor in person. It is sufficient if it is made by a manager or a person previously authorized by the pre-emptor to make the demand. When the pre-emptor is a minor, his de facto may make a demand on his behalf. A demand made by the father or facto guardian brother of the pre-emptor is not sufficient, even if he has a right to pre-empt, unless he has been previously authorized to make the demand.



When the pre-emptor is at a distance, the demand may be made by means of a letter.

Explanation III - If the talab-i-ishhad is made in the presence of the buyer, it is not necessary that the buyer should then be actually in possession of the property in respect of which pre-emption is claimed.

Explanation IV - When two or more persons claim to pre-empt, each one of them should make the demands, unless one of them has also been authorized by the other to do so, and he makes the demands on their behalf also. If a suit is brought by several persons claiming to pre-empt, and only one of them has made the demand on his own behalf the suit will proceed as regards him, but it must be dismissed as to the rest.

Where there are two or more buyers, and the talab-i-ishhad is not made in the presence of the vendor or on the property sought to be pre-empted, the demand must be made to all the buyers. If it is made only to some of them, the shares of those buyers only can be pre-empted.

Explanation V. - No particular formula is necessary either for the performance of talab-i-mowasibat or talab-i-ishhad so long as the claim is unequivocally asserted."

"245. Suit for pre-emption: What the claim must include.- *where the property is sold to a single buyer, a person claiming to pre-empt must pre-empt the whole interest comprised in the transfer, to the buyer. A suit which does not ask for pre-emption of the whole of such interest is defective, and should not be entertained."*



13. The Co-ordinate Bench of this Court in the case of **Maheboobsab Buransab Maniyar vs. Mohadinsab Maheboobsab Maniyar** reported in **ILR 2012 (1) KAR 1192**, paragraphs 23, 24, 25 and 26 has analyzed and summed up the aforesaid provisions. The said paragraphs are extracted here under:

"23. As is clear from Section 231 referred to above under the Mahomedan Law, three classes of persons and no others are entitled to claim pre-emption, i.e., co-sharer in the property or the participator in immunities and appendages such as right of way or a right to discharge water or owners of adjoining immovable property. The right of pre-emption on the aforesaid third ground, i.e., vicinage does not extend to estates of large magnitude, such as villages and zamindaris, but is confined to houses, gardens and small parcels of land. However, the Apex Court in the case of Bhau Ram Vs. B. Baijnath Singh, and in Sant Ram and Others Vs. Labh Singh and Others, reported in 1994(7) SCR 756, has held that law of pre-emption based on vicinage is void.

24. Therefore, now only two grounds remain. Therefore, in that context it was necessary for the plaintiffs to have pleaded specifically what is the nature of pre-emptive right which they have and they are enforcing in the suit. That apart, Section 236 as set out above, prescribes what are the conditions precedent which are to be satisfied before the claim for pre-emption would be up held by the Courts. The conditions are: firstly, the person claiming pre-emption right has to declare his intention to assert the right immediately on receiving the information of the same. That is formally called



talab-i-mowasibat. Secondly, with the least practicable delay affirmed intention and making formal demand either in the presence of buyer or seller or on the premises which are the subject of sale, in the presence of atleast two witnesses. The second formality is called as talab-i-ishhad (demand for invocation of witness). It is only thereafter he can resort to third step of filing a suit for enforcement of pre-emptive right, if the earlier two demands are not complied with.

25. In **GANGAPRASAD vs. AJUDHIA reported in (1905) 28 ALL 24**, the High Court of Allahabad held that, to constitute a valid talab-i-ishhad it was necessary that the witnesses should have been specifically called upon to bear witness to the demand being made. This was dissented from in two later Allahabad cases, which held that the omission of this invocation addressed to the witnesses was not necessarily fatal. But the Calcutta High Court approved the GANGAPRASAD'S case and considers that the witnesses must be asked to witness the demand by some such words as "by ye witnesses to this". This reason of the judgment is that the enforcement of the right of pre-emption must be proceeded by an observance of the preliminary forms prescribed by Mahomedan Law. Patna High Court has recently held that invocation of witnesses to bear testimony to the demand is an essential element of Talab-i-Ishhad. The Bombay High Court in a recent judgment was held that it is sufficient if the pre-emptor informs the witnesses of his right to pre-empt and the witnesses are taken to the purchaser for the purpose of attesting the Talab. It is also that talab-i-ishhad may be combined with the talab-i-mowasibat. Thus, if at the time of talab-i-mowasibat the pre-emptor has an opportunity of invoking witnesses in the presence of the seller or the buyer or on the premises to attest the talab-i-mowasibat and witnesses are in fact invoked to attest it, it will suffice both the talabs (demands).



26. Therefore it is clear that when a Muslim wants to enforce the pre-emptive right that is conferred on him by the custom, the requirement prescribed under the custom is to be strictly followed. The essence of this pre-emptive right is firstly he must express his intention to purchase the property immediately on receiving the information of the sale. Then he has to follow such communication by making a demand to the purchaser or seller in the presence of two witnesses. It is only if such a demand is not complied with, a cause of action arises for him to file a suit within a period of one year from the date of sale enforce the right of pre-emption. This is the requirement prescribed in the custom. Therefore when the customary right is sought to be enforced in a Court of law, all the prescriptions of the custom have to be meticulously followed."

14. The facts and circumstances of the present case needs to be analyzed in the light of aforesaid principles of law governing exercise of right of preemption by the plaintiff.

15. Admitted facts of the matter is that subject land originally belonged to Mastansab who passed away leaving behind his sons namely Abdul Sukur, the original plaintiff and his brother Ghudusab, each becoming entitled for equal share therein.



16. Revenue records produced at Exs.P.3 to P.6 by the original plaintiff reflect his name upto the year 2004-2005. Exs.D.1, D2, D2A, D3, D3A also reflect the name of plaintiff for the years 1958-59 to 1962-63.

17. Name of defendant No.2 has been mutated in the revenue records vide M.R.No.53 on 18.05.2006 as per Ex.D5. The said document refers to a partition purportedly having taken place on 09.10.2003.

18. According to the plaintiff, during the lifetime of his brother Ghudusab and even thereafter he has been exclusively cultivating the subject land by giving half of the produce and proceeds to Ghudusab as he was residing with his family at Hyderabad. The factum of Ghudusab residing with his wife at Hyderabad is not denied. In fact, according to defendant No.2 even after selling the southern portion of the property she has gone back to Hyderabad. Clearly Ghudusab during his lifetime had relocated at Hyderabad and his family continued to reside at Hyderabad even after his demise.



19. The trial Court in its judgment, while answering issue Nos.1 to 4, at paragraphs 17, 18, 19, 20 and 21 has extracted the deposition of DW.2, who has categorically admitted that she was cultivating the land along with the plaintiff. That even after the sale of land in favour of defendant No.1, the plaintiff is cultivating the same.

20. The trial Court has also taken note of the fact that though the defendant No.2 has claimed partition having been taken place between the original plaintiff and her husband during their lifetime, she has not given any details as to the year in which such partition had taken place.

21. The first appellate Court on re-appreciation of the matter has confirmed the finding and conclusion arrived at by the trial Court. It has also taken note of the fact that if at all there was a partition between original plaintiff and his brother Ghudusab, the same could have been entered into the revenue records. But, the defendant No.2 failed to produce any evidence to prove the division



of subject land between the original plaintiff and Ghudusab.

22. No materials placed on record by the defendants to justify their claim of division of the subject land between original plaintiff and his brother Ghudusab in a manner northern portion being allotted to the share of original plaintiff and southern portion being retained by Ghudusab.

23. Thus, in the light of trial Court and the first appellate Court coming to the conclusion of defendants failing to prove the partition, the original plaintiff and the defendant No.2 and her children could be the co-sharers and tenants-in-common in respect of the subject land. This factual aspect of the matter satisfies the requirement of Section 231 (1) of the Mulla's Principles of Mahomedan Law extracted above.

24. As regards demand by the original plaintiff for preemption by asserting his right to purchase the portion



of the subject land sold by defendant No.2 in favour of defendant No.1 in furtherance to the provisions of Section 236 of Mulla's Principles of Mahomedan Law noted above, the original plaintiff has examined himself as PW.1 and has reiterated the plaint averments in his examination-in-chief. He has specifically deposed that on 07.12.2006 between 9:30 and 10:00 am while he was ploughing the subject land along with his son Firoz with the tractor of one Sri Revanna Police Patil, defendant No.1 had come to the spot claiming to have purchased the southern half of the subject land and had asked plaintiff not to plough the said southern half portion of the subject land. That, while the original plaintiff and defendant No.1 discussing several persons including one Sangappa Malipatil, Shivaraj Yelagundi, Krishna along with other persons had gathered at the subject land. In their presence, original plaintiff had requested defendant No.1 to sell portion of the suit land purchased by him and that he was ready to pay Rs.1,46,000/- to repurchase the same. Said request was



made in the presence of persons who were gathered there. The said request was not accepted by defendant No.1. That 3-4 days thereafter original plaintiff had gone to Hyderabad along with aforesaid persons to enquire defendant No.2 as to how she could sell the portion of the subject land without the knowledge of the original plaintiff and without there being division of the same. That he had also requested her if she could come over to Hallikhed (B) village and join defendant No.1 in reselling the portion of subject land in his favour which was also refused.

25. To the aforesaid oral testimony of the original plaintiff there is not even a suggestion in the cross-examination of PW.1 denying the offer made by him in the presence of the persons named above on 07.12.2006 to the defendant No.1 to purchase a portion of suit land.

26. Further, the original plaintiff has examined PW.2 namely Krishna S/o Narayanrao Deshpande who in his examination-in-chief has deposed about he being present at the spot when the original plaintiff had



demanded defendant No.1 to sell the property to him. He has also deposed about he accompanying the original plaintiff along with one Sangappa Malipatil to Hyderabad asking defendant No.2 to sell the portion of property to the original plaintiff. In the cross-examination the said witness has stated that on the day when the offer was made by the original plaintiff to purchase the portion of subject land there were about 10-12 persons were present. Nothing has been elicited from the said witness to discredit the case of the original plaintiff of he offering to purchase the portion of the subject land.

27. Learned counsel for the defendants however refers to the answer to a suggestion made by PW.2 at para-3 of his deposition recorded on 07.08.2009 wherein the said witness has replied that himself and original plaintiff had not visited Hyderabad to see defendant No.2. The said answer may not be of much significance as there is no specific denial of original plaintiff and said witness along with others visiting defendant No.2 enquiring about



she selling the portion of subject land and the original plaintiff making an offer to purchase the said portion of the subject land.

28. DW.1 on the other hand, in his cross-examination has admitted that on 07.12.2006 he had gone to the suit land at that time original plaintiff and his son Firoz were present on the suit land. He has however denied the suggestion of they questioning about his rights and he responding to them of he having purchased portion of the subject land for Rs.1,46,000/- from defendant No.2. He has also denied the suggestion of original plaintiff making an offer to purchase the subject land in the presence of Sangappa Malipatil, Shivaraj Yelagundi and others.

29. The admission of the defendant No.1 in his deposition regarding he visiting the suit land on 07.12.2006 where the original plaintiff and his son Firoz being present on the said spot tallies and stands



corroborated with the version of the original plaintiff – PW-1 and PW-2.

30. Defendant No.2 has denied the suggestion of original plaintiff visiting her along with two witnesses at Hyderabad.

31. The aforesaid deposition of the parties establish the fact that soon after original plaintiff learning about defendant No.1 purchasing the southern portion of the subject land from defendant No.1, had demanded exercise of his right of preemption. As seen in the operative portion of the order of the Trial Court in furtherance of his intention, original plaintiff had even deposited Rs.1,46,000/- being the sale consideration paid by defendant No.1 to defendant No.2 for purchase of southern portion of the subject land in exercise of his right of preemption. In the light of this available material on record, contention of original plaintiff not examining specific witnesses before whom he made the offer as named in the plaint shall not be an impediment. This is



particularly in view of the fact that PW-2 in his affidavit evidence at paragraph-9 has spoken about the presence of Sangappa Malipatil and Shivaraj Yelagundi on 07.12.2006 at the spot when the original plaintiff had declared his intention and had offered to purchase the subject land. In the cross-examination not even a suggestion put to PW-2 denying the presence of said witnesses at the spot.

32. The contention of the counsel for the defendants/appellants that the demand made by the original plaintiff to purchase the subject land was only against defendant No.2 who had only 1/8th share in the property without sons of Ghudusab being made as party in the suit, the exercise of right of preemption would be in complete cannot be countenanced in the facts situation of the matter. The demand by the original plaintiff was to the entire extent of land sold by defendant No.2 in favour of defendant No.1 and not to the portion are part of the same.



33. From the aforesaid material evidence available on record the following facts emerged :

- i) That the original plaintiff and Ghudusab were the co-owners/co-sharers of the subject land each being entitled for half equal share after demise of their father Mastansab.
- ii) That there has been no partition of the subject land between the original plaintiff and Ghudusab during his life time or even thereafter between original plaintiff and defendant No.2.
- iii) That the original plaintiff continued to be in possession and cultivation of the entire subject land as co-sharer/ and tenant-in-common even after the demise of Ghudusab.
- iv) That original plaintiff along with his son Firoz were present and ploughing their land on 07.12.2006 when the defendant No.1 visited the subject land.
- v) That original plaintiff had indeed made a demand of his rights of preemption by offering to purchase southern portion of subject land sold by defendant No.1 in favour of defendant No.2 in the presence of the witnesses named in the plaint and in the evidence.



- vi) In furtherance to his intention to purchase the property, original plaintiff had even deposited Rs.1,46,000/- before the trial Court.
- vii) The requirement of provision of Section 231 and 236 of the Mulla's Principles of Mahomedan Law stands complied.

34. Substantial questions of law are answered accordingly. Accordingly, the following:

ORDER

- i) Appeal is ***dismissed***.
- ii) Judgment and decree dated 14.08.2013 passed in O.S.No.54/2011 on the file of the Senior Civil Judge, Humnabad and the judgment and decree dated 16.10.2015 passed in R.A.No.86/2013 on the file of II Additional District and Sessions Court, Bidar, sitting at Basavakalyan are confirmed.

Sd/-
(M.G.S.KAMAL)
JUDGE