

**Present:**  
**Mr. Justice Farid Ahmed**  
**-And-**  
**Mr. Justice Md. Shawkat Hossain**

**First Appeal No. 460 of 2001.**

Abdus Sattar Khan,  
...Plaintiff-Appellant.

-Versus-

Md. Aftar Ali and others.  
....Defendant-Respondents.

Mr. Parimal Chandra Guha, Advocate.  
....For the Appellant.

Mr. Mahbubey Alam with  
Mr. J. N. Deb,  
Ms. Umme Masumun Nesa and  
Mr. Chanchal Kumar Biswas, Advocates.  
.....For the Respondents.

**Heard on: 14.12.2010, 15.12.2010.**  
**03.01.2011, 05.01.2011**

**and**

**Judgment on: 24.01.2011.**

**Md. Shawkat Hossain, J:**

The instant appeal by the plaintiff is directed against the judgment and decree dated 11.02.2001 (decree signed on 15.02.2001) passed by the Subordinate Judge and Judge, Artha Rin Adalat, Sylhet in Title Suit No. 06 of 2000.

Briefly stated plaintiff's case is that the land in suit appertaining to Plot No. 7547 under Mutation Khatian No. 722 corresponding to D.P Khatian No. 143/530 under Mouza Sylhet Municipality, Mohalla Dhopadighir Dakshinpar as described in the schedule of the plaint originally belonged to

defendant Nos. 7-9. That the plot Nos. 7588 and 7548 adjacent South-West belonged to the plaintiff. That plaintiff acquired the land under Plot No. 7588 by purchase from Adbul Mudassir Chawdhary by registered Kabala deed dated 15.04.1976 and got a decree in Title Suit No. 241 of 1978 in the Court of Subordinate Judge, Sylhet. The Plaintiff purchased Eastern portion of Plot No 7548 from Alhaj Abdur Rahim by registered kabala deed dated 10.08.1985. The suit premises was under lock and key for a long time. On 12.03.1995 at about 9 a.m. when the plaintiff was coming to his business place 'Panama Hotel' adjacent to the land in suit he came to see the room on the suit premises open and stepping into the premises he came to see Sadiqur Rahman, defendant No. 4 chatting with some persons and the Plaintiff asked him how he got the suit premises but the defendant No.4 replied "Avcbvi c0qvRb wk?" The plaintiff became suspicious and on that day he requested Md. Rafiquzzaman, a deed writer to enquire whether the land has been sold. That on 23.03.1995 Md. Rafiquzzaman came to plaintiff's hotel at about 6 p.m. and delivered a copy of kabala in respect of transfer of the land in suit by the defendant Nos. 7-9 to defendant Nos. 1-6 at a consideration of Tk. 48,12,000/-. On hearing of the transfer of the land in suit Plaintiff instantly jumped up from his chair and exclaimed "Awig kwid bji"i i wk` tPŠaj x I Zvnyi kixKvb th RvqMv weµq KwiqvtQb, AvcZvi Avj x Ms Gi wbKU Awig Zvny Lwi`

Kwi tZ PvB | gj " w` tZ cŃZ AwQ0 |” The Plaintiff thereafter without loss of time rushed to the land in suit along with Rafiquzzaman and Zubair Ahmed and exclaimed ‘Avcbviv iwdKz4vgvb mvfne I Rfei Avg` mvfne mvf|x \_vvtKteb | Awig GKUyAvfM kwd WvvtKqvwQ Ges GLb kwd WvvtKtZwQ th, Avczvi Avj x Ms GB RvqMv bj”i i kx` tPšaj x I Zvnvi kixKvb nBtZ Lix` Kwi qvtQbDAwig GB RvqMv Lix` Kwi tZ PvB | Awig kwd’ and thereafter the Plaintiff asked Sadiqur Rahman, defendant No. 4 to transfer the land in suit to him on receipt of consideration money. Defendant No.4 retorted that he did not purchase the land for sale. Since the land in suit is situated to the adjacent East of the plaintiff’s Road on Plot No. 7548 from his hotel to the C & B Road, he requires the same. The Plaintiff observing all the formalities in above manner filed the suit under Mohammedan law for transfer the land in suit in his favour and deliver possession thereof.

Defendant Nos. 1-6 and 7-9 contested the suit by filing separate written statements. Although the written statements are separate but facts of their case are same.

Thus, the case of the Defendants in short, is that they have been residing in the Village Aoai, Under P. S. Golapganj, 20 miles far off from Sylhet town. Defendant No.1 has been residing in the village all through and the Defendant No. 4 in Sylhet town and sometimes in the village and the Defendant Nos. 2, 3, 5 and 6 have been living in aboard for long. That the Plaintiff lives in their adjacent Village and they had

familiarity with him for long. That the Plaintiff never met the Defendant No. 4 on 12.03.1995 and story of meeting with him and talk over the land in suit is quite false. That there was also strike for 48 hours from morning of 12.03.1995 at the call of some political parties. That on that day the Defendants all were in their Village house. That no formality of any demand was observed by the Plaintiff and story of getting certified copy of the deed through Rafiquzzaman, demanding of 1<sup>st</sup> talab and 2<sup>nd</sup> talab all are false and concocted. That the Defendant No. 4 in the early morning on 23.03.1995 went to his Village residence to attend a marriage ceremony of his relation and returned to Sylhet on 26.03.1995. That the Plaintiff has no land adjacent to the land in suit. Moreover, Plaintiff was aware of the transfer from earlier. That the Plaintiff filed the suit long after three and a half month without observing the required formalities. The notices of the sale of the land in suit was notified in the Signboard and daily News Papers of Sylhet and the Plaintiff himself, since they had familiarity with him, instigated them to purchase the land in suit and in presence of the Plaintiff the consideration money was fixed at Tk. 48,12,000/- and got possession of the same after measurement through Advocate Commissioner, demarcated the area, constructed boundary wall and appointed two guards thereon. That the Defendants initially entered to an agreement with the Defendant Nos. 7-9

on payment of Tk. 20,000,00/- in advance on 12.11.1994 and got the deed registered on 31.01.1995 with the knowledge of the Plaintiff. That the Defendants installed tube-well on 01.02.1995 and took electric connection on 09.03.1995 and renovated the old room and other necessary things in order to start a hotel thereon. The Plaintiff was all were aware of the activities of the Defendants.

Mr. Parimal Chandra Guha, the learned Advocate appearing on behalf of the Plaintiff-appellant submits that the plaintiff is admittedly a contiguous land holder of the land in suit and on 12.03.1995 at morning while he was coming to his hotel Panama adjacent south to the land in suit he found the ghar on the suit premises open and also found Defendant No.4 thereon and asked him how he got the land and at the reply of the Defendant No.4 he became suspicious and on that day he asked the deed writer Rafiquzzaman to search in the Sub-registry Office whether the land in suit has been transferred and at evening on 23.03.1995 Rafiquzzaman met the plaintiff with the certified copy of the transferred deed of the land in suit at his Panama hotel and the Plaintiff being fully aware of the complete sale instantly jumped and placed the 1<sup>st</sup> demand i.e talab-i-mowasibat and without any further delay rushed to the land in suit along with Rafiquzzaman and Jubayer, an Advocate who was residing in his hotel and was present at his office of the hotel and placed the 2<sup>nd</sup> demand

i.e. talab-i-ishhad to the Defendant No.4 in presence of the aforesaid witnesses and having failed to get the land in suit filed the above suit under Mohammadan law but the learned Subordinate Judge under misappreciation of facts and evidence erroneously held that formalities to the 2<sup>nd</sup> demand was not observed properly i.e. at the time of talab-i-ishhad, there was no reference of 1<sup>st</sup> talab i.e. talab-i-mowasibat and as such dismissed the suit. He further submits that the hotel of the Plaintiff is adjacent to the land in suit and placing the 1<sup>st</sup> demand he rushed to the land in suit without any loss of time and exercised his 2<sup>nd</sup> demand in presence of two witnesses and that both the demands were performed one after another at an interval of one or one and half minutes and that finding of the trial court that at the time 2<sup>nd</sup> demand he did not mention of the 1<sup>st</sup> demand is totally misconceived and misreading of evidence. He further adds that the Plaintiff observed the required formalities and he is entitled to get the land re-transferred by way of 'suffa' and the impugned judgment can't sustain in law.

Mr. Mahbubey Alam, learned counsel appearing on behalf of the respondents submits that there are some conditions precedents to the exercise of right of pre-emption under Mohammadan law, firstly- talab-i-mowasibat popularly spoken as 1<sup>st</sup> demand, secondly- talab-i-ishhad, the 2<sup>nd</sup> demand and thirdly- the institution of the suit. He further

submits that the Plaintiff is a contiguous land-holder to the land in suit and he had been carrying his hotel business thereat and as such he had practical knowledge of the transfer of the land in suit and he himself negotiated the sale, witnessed the activities of the respondents such as possession by measuring its boundary through Advocate Commissioner, construction of boundary wall, installation of tube-well, repairing of the rooms, engaging security guards since purchase by registered deed dated 31.01.1995 and that the Plaintiff with ill motive filed the suit without observing the conditions precedent to pre-emption. He also submits that evidence led by the Plaintiff on alleged talab-i-mowasibat and talab-i-ishhad are contradictory and the lower court considering the evidence of the Plaintiff rightly held that the Plaintiff failed to prove that conditions precedent to pre-emption of the land in suit were observed. He reiterated on the point of formalities in observing the 2<sup>nd</sup> demand i.e. talab-i-ishhad. He submits that there is no evidence that at the time of 2<sup>nd</sup> demand i.e. talab-i-ishhad there was the reference of 1<sup>st</sup> demand i.e. talab-i-mowasibat and it stands fatal consequence to the claim of pre-emption of the land in suit. He also adds that the demands for pre-emption under Mohammadan law should be promptly made on completion of sale under Muslim law being completed on payment of consideration money and delivery of possession of the

property whether or not registration of the sale has been completed. He finally submits that the lower Court on proper assessment of the evidence reached to its correct decision and rightly dismissed the suit and there is no material to warrant interference to the impugned judgment and decree. He refers 21 DLR 211 and 1981 BLD(AD) 332.

Learned Subordinated Judge framed five issues and considering facts of the cases of the parties and the evidence on record dismissed the suit by the impugned judgment and decree and thus being aggrieved Plaintiff preferred the above appeal.

We have considered the submissions of the Learned Advocates for both sides, the pleadings, evidence on record, both oral and documentary and the impugned judgment and the citations referred above including the relevant provisions of Mohammad Law.

It appears that the Plaintiff examined P.W.1 Md A. Sattar Khan, the plaintiff, P.W. 2 Zubaer Ahmed and P.W. 3 Md. Rafiquzzaman and his documents were marked as exhibit 1 to exhibit 5. Defendant Respondents examined 3 D.Ws-D.W-1 Md. After Ali, D.W-2 Mokhtar Khan and D.W. 3 Katu Mia and their documents were marked as exhibit 'ka' to exhibit 'Taa'.



Admittedly, the Plaintiff is the contiguous land-holder and the land in suit was transferred by registered deed dated 31.01.1995 and the suit was filed on 05.07.1995.

Under the Mohammadan Law the following classes of persons and no others, are entitled to claim of pre-emption, namely:-

- (i) *a co-sharer in the property i.e. shafi-i-sharik.*
- (ii) *a participator in immunities and appendages, such as a right of way or a right to discharge water i.e. shafi-i-khalit and*
- (iii) *owners of adjoining immovable property i.e. shafi-i-jar, but not their tenants, nor persons in possession of such property without any lawful title.*

Plaintiff falls on the third category. Some objection was raised as to the title of the plaintiff to the adjacent land of the land in suit but the learned Advocate for the Respondents did not make any submission that may disqualify the Plaintiff to his entitlement of being third category.

Under Article 10 of 1<sup>st</sup> schedule of Limitation Act, 1908, the limitation of filing the suit for pre-emption is one year. It appears that the Plaintiff preferred the suit within the above statutory period. Thus no objection raises on this point from the side of Respondents. Respondents' side also makes no objection that any contiguous land-holder was left out from the suit. It appears that Trial Court settled both the issues in negative i.e. sin favour of the Plaintiff. We don't find any error on these issues to invoke our interference.

Main controversy to the instant suit is- observation of the formalities.

Section 236 of Mohammadan Law provides-

“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-*
- (i) *either in the presence of the buyer, or the seller, or on the premises which are the subject of sale and*
- (ii) *in the presence at least of two witnesses. This formality is called talab-i-ishhad (demand with invocation of witnesses)-----.”*

In the instant case the Plaintiff claims that he maintains hotel business (Panama Hotel) on his land adjacent to the land in suit and the ‘ghar’ on the suit premises all the time was under lock and key and on 12.3.1985 at morning while he was on his way to hotel came to see the ‘ghar’ open and having entrance into it met with defendant No. 4 and asked him whether he got the property by transfer but getting no satisfactory reply he asked P.W. 3 on that date to inquire into the Sub-register’s office and thereafter on 23.03.1995 at evening on getting the certified copy being aware of the sale of the land in suit instantly jumped demanding talab-i-mowasibat in presence of P.Ws. 2 and 3 and with the least practicable delay rushed to the land in suit along with his above witnesses and made the 2<sup>nd</sup> demand i.e. talab-i-ishhad

to the Defendant No.4 whom he came across thereat and that being failed to get the land re-transferred filed the instant suit.

Defendants, on the other hand, claim that the Plaintiff was fully aware of the sale since he negotiated the price, witnessed all activities of the vendees on getting delivery of possession of the land in suit and the suit was filed without observing the formalities i.e. the required demands and the allegation of placing demands on 23.03.1995 is a got up story.

Defendants, in order to show the knowledge of the Plaintiff of the transfer in dispute from earlier, prior to 23.03.1995, produced oral and documentary evidence. But mere knowledge of the transfer if any would not play a legal bar to the claim of Plaintiff to pre-empt the land under Mohammadan law unless the sale is complete by way of payment of consideration money and delivery of possession.

Plaintiff claims that on 12.3.1995 he became merely suspicious of the transfer and on getting the certified copy on 23.03.1995 he attained full knowledge of the sale and instantly observed the ceremonies—talab-i-mowasibat and talab-i-ishhad. The crux of the dispute as it has been submitted before us by the learned counsels is whether the formalities as required to pre-emption were observed.

Since the Plaintiff asserts that he observed the formalities on 23.03.1995 having been confirmed of the sale on receipt of the certified copy of the transfer deed, the onus lies on him to prove that his knowledge of sale accrued on 23.03.1995 and with least practicable delay placed his demand to 'Suffa' i.e. pre-emption of the land in suit by observing talab-i-mowasiabat and talab-i-ishhad. Let us now see how the evidence of the Plaintiff on this aspect is convincing and credible. Plaintiff claims that both P.Ws 2 and 3 were present at the relevant time of attaining his full knowledge and observing formalities on 23.03.1995. Plaintiff case is that he became suspicious on 12.03.1995 and asked P.W.3 on that day to enquire to the Sub-Register's Office whether any sale has occurred in respect of the land in suit. Obviously, under the above circumstances a document is required to make proof of such inspection but the record does not speak of any such document. P.W. 3 deposed to support the Plaintiff on this point. Plaintiff filed the certified copy of the disputed transfer deed, exhibit 5 from which it transpires that stamp of the certified copy was procured on 08.02.1995.

P.W.3 deposed-

*0ev`x Avgv`K `ujj Zj`Kx w`Z etj 1995 mvtj i gvP`gv`mi c`lg w`K| Zwi L  
 `si b bvB| mgq gtb AvtQ `cj 2 NwJKv| ev`x Avgvi Kg`tj w`tq H Abtiva  
 Kwi qmQj | Avgvi Kg`j w`tj U m`i mve-ti w`Rw`A Awdm| Awmg tmBw`b w`tKtj B  
 `ujj Zj`Kx t`B| Awmg ce`ZP`2/3 gv`mi `ujj Zj`Kx t`B| `ujj Zj`Kxi i w`  
 Awmg tbB bvB| Awmg th Zwi tL Zj`Kx t`B tmB Zwi L nBtZ 20/25 w`b ci*

“ij tji mUvb bVB/ AZtci 3/4 w`b ci Avng bKtji Rb”`iLv`iKwi | Zvi 3/4 w`b ci GwótgúUi LiP Rgy t`B|” (under lines are ours).

Thus Plaintiff’s claim of direction to P.W 3 on 12 03.1995 for searching of the Sub-Register’s office falls short. Exhibit.5 speaks of delivery of certified copy on 23.03.1995.

Plaint case is that on 23.03.1995, at evening while the Plaintiff was in his office of Panama hotel along with P.W.2 he received the certified copy of the transfer deed from P.W 3 and he instantly jumped and placed 1<sup>st</sup> demand i.e. talab-i-mowasibat and with least practicable delay appeared on the land in suit along with the aforesaid witnesses i.e. P.Ws 2 and 3 and placed 2<sup>nd</sup> demand i.e talab-i-ishhad.

P.W.1, the Plaintiff deposed in his deposition-in-chief as under-

“23.03.1995 Bs Zwi tL Avgvi gúix uc`qgkb`ij tji Rite`v bKj Avgvi KtQ t`q/ Avng ZLb Avgvi tritúti i bXPZj vq tP`ti wj vq/ ZLb Avng 31.01. 1995 Bs Zwi tL n`lšfi m`utK`RibtZ cwi |”

He further deposed in his cross-examination-

“uc`qgkb`ij tji bKj 23.03.1995 Bs Zwi tL gúix iudK`vvgvb AvgvtK w`tqtQ/ ZLb weKvj 6 Uv evtR/ Avng tmB mgq bXPZj v Avdm Kt` Ae`vb Kwi tZwQj vq/ ZLb Avgvi Kt` Rfei Avntg` wj | ...../ Rfei Avntg` AvgvtK`ij tji bKj t`l qvi ci c`g 3 ciZv civ Kwi Ges`vovBqv evj`Rfei mvtne , iudK`vvgvb mvt` \_vtKb/ Avng kwd Kwi e/ Avng kwd Kwi e/ Avng kwd Kwi e, b`h` g`j`|” (Under lines are ours).

P.W. 2 deposed-

“..... R`K e`w<sup>3</sup> nvtZ GKw`ij tji bKj wbtq tP`ti c`ek Kwi qv QvEvi mvtne tK (Plaintiff) m`tab Kwi qv etj b Avng`ij tji Rvj mslMh Kwi qmQ Ges R`K bji fi i`k` tP`ajix AveZvi Avjx Ms eive`ti Rig we`uq Kwi qvtQb/ GB K\_v tkvbg`Z QvEvi mvtne`vovBqv etj b Avng kwd, Avng kwd/ GB Rig Lwi` Kwi e/Ó (Under lines are ours).

P.W.3, Rafiquzzaman in his deposition in-chief deposed-

*ÒZvici , Avng H`uj tji bKj Zuj 23.03.1995 Bs ZvitiL/ mvt\_ mvt\_ Avng H`uj tji bKj cvbqv tnvUtj ev`xi tPviti vbtq hvB Ges ev`xtK evj`uj j cvl qv vMqvQ/ AZtci ev`xi vbt`R tgvZvteK ZinvtK Avng`uj j vU cvovv i`bvB/`uj tji`vZv MbxZv I Zdvmtj gj` BZ`v` cvovv i`bvB/`uj j i`bvBvi ci ev`x AvÖvhŠZ nBqv Zr`bvZ emv Ae`iq nBtZ`vovBqv etj b Avng Aek`B kvd Kwie |”( Under lines are ours)*

The above evidence of P.Ws 1, 2 and 3, regarding attainment of knowledge on 23.03.1995 on receiving certified copy is found contradictory and it reasonably casts doubt to its credibility.

Plaintiff claims in his plaint that on placing talabi-mowasibat along with the P.Ws 2 and 3 with least practicable delay he rushed to the land in suit and referring the talab-i-mowasibat placed talab-i-ishhad and plaintiff as P.W.1 accordingly deposed. He specifically admits in his cross-examination that at that time none from the opposite party was there.

P.W 2 deposed-(deposition in-chief)

*Ò Zvici QvEvi mvtne`uj tji bKj ctob Ges AvqvKl`uj tji bKj msMh e`v`K vbtq bvt RvgtZ Avtmb Ges bvt RvgtZ v`Z GKvU t`vKvb Nti i mvgtb`Uvqv e`v`K t`LvBqv Avqv`i etj e`v`i bvg Qv`Ki ingvb (Defendant No. 4 in the suit)/ QvEvi mvtne (plaintiff) Qv`Ki ingvbtK D`I`K` Kvi qv etj b th, Avng Avcbvi GB RvqUKz μqKZ gj` tdi Z vbtZ PvB/ Qv`Ki ingvb QvEvi mvtne i c`kæmŠZ bv nI qvq, QvEvi mvtne Avqv`i D`I`K` Kvi qv etj b vZvb GB RvqMv kvd Kvi teb |”*

The presence of Sadiqur Rahman at the time of talab-i-ishad is not legal requirement for ‘suffa’ but it is mentioned to pick up the picture of demanding talab-i-ishad for assessment of credibility of the evidence of the Plaintiff on whom the entire burden lies.

P.W.3 deposed-

*“Zi ci er`x AvgtK mn 4/5 Rb tjvK ubqv bij xkv RigtZ hvb| bvt Rigi Dci`  
`voibqv er`x Avevi etj b Avig GB Rigt kiid Kwi e| Zi ci Avig Pij qv Avim| ”*

But in his cross-examination he admitted-

*“Avig er`xi mvt\_ bij xkv RigtZ XvK bvB| msj Mæiv`lq`voibv uQj vg | tmLvtb  
2/3 ugubU`voibqv Avig Pij qv Avim| GB mgtdi wfZti er`x bij xkv RvqMiq uK  
Kwi qvtQ Avig eij tZ cwie bv| GB mgq er`x kiid Kwie D`PriY Avig  
i`ubqvQ/...../”*

Learned Advocate for the Plaintiff-appellant also admits the above discrepancies of the depositions of the witnesses of the Plaintiff. He argues that the suit was filed in 1995 and deposition was made in the year 2000 and naturally it caused minor discrepancies. But we should bear in mind that immediate talabs and observation of formalities in strict form are the conditions precedent of Mohammadan pre-emption. We think that the above discrepancies on the material points is sufficient enough to cause loss to the credibility of the evidence in discharging the onus of the Plaintiff to place the demands immediately on attaining the knowledge of the transfer of sale which makes it complete on payment of consideration money and delivery of possession under the circumstances when the defendant claim that delivery of

possession of the land in suit occurred long earlier immediately after registration of the sale deed dated 31.01.1995 and Plaintiff himself negotiate the sale and was present at the time of delivery of possession on demarcation by Advocate Commissioner and day to day necessary improvements thereon.

It is claimed by the Plaintiff in his plaint that he referred the reference of 1<sup>st</sup> talab i.e. talab-i-mowasibat at the time of 2<sup>nd</sup> talab i.e. talab-i-ishad. But his evidence on this point is quite absent. We have quoted the relevant deposition of P.W.1 earlier but it does not speak of any reference that he referred of 1<sup>st</sup> talab i.e. talab-mowasibat at the time of talab-i-ishhad. To make it clear, we want to quote the relevant portion of his deposition-

*“mif\_ mif\_ Avig bij xkx RiqfZ hiv/ ZLb Avgi mif\_ Avgi gjiix i idKf4vgvb I G`WfFvKUR Rvftqi uQj b/ ZLb Aci tKD DcW`Z uQj bv/ Avig tmLvtb DcW`Z miv`ix`i tgvKvtej vq bvt Riq μq Kivi B`Qv e`3 Kwi / Ges 3 eri Avig kwd I miv`ix`i bvg ewj |”*

He reiterated the same fact in his cross-examination-

*“Zvi ci Avig Avgi Kf Z`vM Kwi qv bij xkv RvqMvq hiv/ Avgi mif\_ D`3 Rvftqi I i idKf4vgvb uQj | Avig bvt RvqMvq `votq ewj 0 Rvftqi mifne I i idKf4vgvb miv`ix`i vKteb GB RvqMv Dchf3 g`j ` Lwi ` Kwi tZ PvB, Avig kwd, Avig kwd, Avig kwd0/”*

Learned Subordinate Judge also found the above defect in placing the 2<sup>nd</sup> demand Learned Advocate for the Plaintiff-appellant submits that on placing the 1<sup>st</sup> demand with least practicable delay he rushed to the land in suit closely



adjacent from the place of 1<sup>st</sup> demand and placed the 2<sup>nd</sup> demand. He thus argues that under the above circumstances it is not proper appreciation of evidence that there was no reference of 1<sup>st</sup> talab at the time of 2<sup>nd</sup> talab and the learned Subordinate Judge on erroneous findings illegally dismissed the suit.

Under Section 236 (2) of Mohammedan law it necessarily requires the reference of 1<sup>st</sup> talab i.e. talab-i-mowasibat expressly at the time of formal demand i.e. talab-i-ishhad in presence either of buyer a seller or on the premises and in presence at least two witnesses.

In this regard Mr. Alam, the learned Counsel, appearing on behalf of the respondents rightly refers the decision held in the case. Md. Lokman Mondal VS. Amir Ali Mondal and others reported in 21 DLR (1969) 211.

The relevant para (para 10) runs thus-

*“In the present case the plaintiffs have neither claimed nor adduced evidence to the effect that at the time of making the second demand a reference was made to the first demand. That being so, I am of opinion that the plaintiffs are not entitled to claim pre-emption and the learned Courts below erred in law in not directing their attention to this question.”*

Here, in the instant case, although the Plaintiff claimed to make reference of the first demand at the time of second demand but no evidence adduced to that effect. Moreover, we have already observed that the claim of acquiring full

knowledge of sale on 23.03.1995 and tendering of required formalities lacks credible evidence.

It has been admitted by the Plaintiff that he had no tendered money at that time either in his hotel or in his bank account. But under section 238 of Mohammedan law tender of price is not essential. It is sufficient to declare his readiness and willingness to pay the price stated in the deed of sale.

Having regards to the facts, circumstances, evidence on record and our foregoing discussions, we are in conformity with the view of the court below that the Plaintiff failed to observe the required formalities to pre-empt the land in suit and the Learned Subordinate Judge did not commit any illegality in dismissing the suit.

We don't find any merit to the present appeal.

In the result, the appeal is dismissed.

We make no order as to costs.

Send down the lower Court's Record along with the copy of the judgment at once.

**Farid Ahmed, J:**

I agree.