

36 - THE BOOK OF PRE-EMPTION

[*As-Salam in Ash-Shufa*
(pre-emption)]

(1) CHAPTER. *Shufa* (pre-emption) is valid if the property is undivided, but if the limits become defined, then there is no pre-emption.

2257. Narrated Jābir bin ‘Abdullāh رضي الله عنه gave the verdict of pre-emption (*Shufa*) for every undivided joint thing (property). But if the limits are defined (or demarcated) or the ways and streets are fixed, then there is no pre-emption.

(2) CHAPTER. The partner should inform his partner, who has the right of pre-emption, of his intention to sell his share before selling it.

Al-Hakam said, “If the pre-emptor allows his partner to sell before selling, then he has no pre-emption any more.” *Ash-Sha’bi* said, “If the pre-emptor witnesses the sale of what he has the right to buy by pre-emption and does not object to that sale, he loses the right of pre-emption.”

2258. Narrated ‘Amr bin *Ash-Sharid*: While I was standing with Sa’d bin Abi Waqqās, Al-Miswar bin Makhruma came and put his hand on my shoulder. Meanwhile Abū Rāfi’, the freed slave of the Prophet ﷺ came and asked Sa’d to buy from him the (two) dwellings which were in his house. Sa’d said, “By Allāh I will not buy them.” Al-Miswar said, “By Allāh, you shall

٣٦ - كتاب الشفعة

(١) بَابُ الشُّفْعَةِ فِيمَا لَمْ يُقَسَّمْ فَإِذَا وَقَعَتِ الْحُدُودُ فَلَا شُفْعَةَ

٢٢٥٧ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا عَبْدُ الْوَاحِدِ: حَدَّثَنَا مَعْمَرٌ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ رَضِيَ اللَّهُ عَنْهُمَا قَالَ: قَضَى النَّبِيُّ ﷺ بِالشُّفْعَةِ فِي كُلِّ مَا لَمْ يُقَسَّمْ، فَإِذَا وَقَعَتِ الْحُدُودُ، وَصُرِّقَتِ الطُّرُقُ، فَلَا شُفْعَةَ. [راجع: ٢٢١٣]

(٢) بَابُ عَرْضِ الشُّفْعَةِ عَلَى صَاحِبِهَا قَبْلَ الْبَيْعِ

وَقَالَ الْحَكَمُ: إِذَا أُذِنَ لَهُ قَبْلَ الْبَيْعِ فَلَا شُفْعَةَ لَهُ. وَقَالَ الشَّعْبِيُّ: مَنْ بَاعَ شُفْعَتَهُ وَهُوَ شَاهِدٌ لَا يُعْرِئُهَا فَلَا شُفْعَةَ لَهُ.

٢٢٥٨ - حَدَّثَنَا الْمَكِّيُّ بْنُ إِبْرَاهِيمَ: أَخْبَرَنَا ابْنُ جُرَيْجٍ: أَخْبَرَنِي إِبْرَاهِيمُ بْنُ مَيْسَرَةَ، عَنْ عَمْرِو بْنِ الشَّرِيدِ قَالَ: وَقَفْتُ عَلَى سَعْدِ بْنِ أَبِي وَقَّاصٍ فَجَاءَ الْمِسْوَرُ بْنُ مَحْرَمَةَ فَوَضَعَ يَدَهُ عَلَى إِحْدَى مَنكَبَيْي إِذْ جَاءَ

buy them.” Sa’d replied, “By Allāh, I will not pay more than four thousand (Dirhams) by installments.” Abū Rafī‘ said, “I have been offered five hundred Dīnār (for it) and had I not heard the Prophet ﷺ saying, ‘The neighbour has more right than anyone else because of his nearness, I would not give them to you for four thousand (Dirhams) while I am offered five hundred Dīnār (one Dīnār equals ten Dirhams) for them.’” So, he sold it to Ṣa’d.

أَبُو رَافِعٍ مَوْلَى النَّبِيِّ ﷺ فَقَالَ: يَا سَعْدُ ابْتَعْ مِنِّي بَيْتِي فِي دَارِكَ. فَقَالَ سَعْدٌ: وَاللَّهِ مَا أَبْتَاعُهُمَا، فَقَالَ الْمِسْوَرُ: وَاللَّهِ لَتَبْتَاعَنْهُمَا، فَقَالَ سَعْدٌ: وَاللَّهِ لَا أُرِيدُكَ عَلَى أَرْبَعَةِ آلَافٍ مُجَمَّةً أَوْ مُقَطَّعَةً. قَالَ أَبُو رَافِعٍ: لَقَدْ أُعْطِيتُ بِهَا خَمْسِمِائَةَ دِينَارٍ، وَلَوْلَا أَنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الْجَارُ أَحَقُّ بِسَقْبِهِ» مَا أُعْطِيتُكُمَا بِأَرْبَعَةِ آلَافٍ وَأَنَا أُعْطِي بِهَا خَمْسِمِائَةَ دِينَارٍ، فَأَعْطَاهَا إِيَّاهُ.

[انظر: ٦٩٧٧، ٦٩٨١]

(3) CHAPTER. Who is considered as the nearer neighbour?

(٣) بَابٌ: أَيُّ الْجَوَارِ أَقْرَبُ؟

2259. Narrated ‘Āishah رَضِيَ اللهُ عَنْهَا: I said, “O Allāh’s Messenger! I have two neighbours and would like to know to which of them I should give presents.” He replied, “To the one whose door is nearer to you.”

٢٢٥٩ - حَدَّثَنَا حَجَّاجٌ: حَدَّثَنَا شُعْبَةُ. ح وَحَدَّثَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا شَبَابَةُ: حَدَّثَنَا شُعْبَةُ: حَدَّثَنَا أَبُو عِمْرَانَ قَالَ: سَمِعْتُ طَلْحَةَ بْنَ عَبْدِ اللَّهِ عَنِ عَائِشَةَ رَضِيَ اللهُ عَنْهَا قُلْتُ: يَا رَسُولَ اللَّهِ، إِنَّ لِي جَارَيْنِ فإِلَى أَيِّهِمَا أُهْدِي؟ قَالَ: «إِلَى أَقْرَبِيهِمَا مِنْكَ بِأَبَا». [انظر: ٢٥٩٥، ٦٠٢٠]