

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

In the Name of Allāh, the Most Beneficent, the Most Merciful

The Chapters On Preemption

(المعجم ١٧) أَبْوَابُ الشَّفْعَةِ

(التحفة . . .)

Comments:

Preemption has been defined as the right of one partner to buy the share of the other partner or partners.

Preemption is proven in the *Sunnah* of the Prophet ﷺ and the consensus of the scholars of the Muslim nation. Jābir narrates the the Prophet ﷺ allowed the right of preemption in an undistributed property, but when the property is distributed, and the path is separate then there is no right of preemption. All the scholars agree that the right of preemption is legal.

All the Islamic commands and principles have reason and wisdom behind them. Rights and duties of all Muslims as individuals and as a community have been fixed by Islamic law, so that people may live with love and harmony among themselves. Among these wise instructions is the right of preemption. If one of the two shareholders of a property wishes to sell his share, he must consult his co-shareholder about it and give him an offer to buy his share. This friendly gesture will create an atmosphere of understanding between them, and save them from unwanted conflict. If the other shareholder buys the property, well and good, otherwise it can be sold to a third party and it will be legal.'

Chapter 1. One Who Sells A Property Should Notify His Partner (Of His Intention)

(المعجم ١) - بَابُ مَنْ بَاعَ رِبَاعًا

فَلْيُؤْذِنْ شَرِيكَهُ (التحفة ٨٦)

2492. It was narrated that Jābir said: "The Messenger of Allāh ﷺ said: 'Whoever has a date-palm tree or land, should not sell it until he has offered it to his partner.'" (Sahih)

٢٤٩٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَ مُحَمَّدٌ بْنُ الصَّبَّاحِ، قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ كَانَتْ لَهُ نَخْلٌ أَوْ أَرْضٌ فَلَا يَبِيعُهَا حَتَّى يَعْرضَهَا عَلَى شَرِيكَهِ».

تخريج: [إسناده صحيح] أخرجه النسائي، البيوع، . الشركة في النخل، ح: ٤٧٠٤ من حديث سفیان به * سفیان بن عينة، وأبو الزبير صرحا بالسماع عند الحميدي، ح: ١٢٨١ بتحقيق، وصححه ابن الجارود، ح: ٦٤١، وأخرجه مسلم، ح: ١٦٠٨ من طريقين آخرين عن أبي الزبير به نحو المعنى.

2493. It was narrated from Ibn 'Abbâs that the Prophet ﷺ said: "Whoever has land and wants to sell it, let him offer it to his neighbor." (*Sahih*)

٢٤٩٣ - حَدَّثَنَا أَحْمَدُ بْنُ سِنَانٍ وَ الْعَلَاءُ بْنُ سَالِمٍ، قَالَا: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَنَّ أَبَا شَرِيكَ عَنْ سِمَاكِ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَأَرَادَ بَيْعَهَا، فَلْيُعْرِضْهَا عَلَى جَارِهِ».

تخريج: [صحيح] وصححه البوصيري، وفيه علة قاذحة، انظر، ح: ١٧١، والحديث السابق شاهد له.

Comments:

If there are two owners of a property and one of them wishes to sell his share, he must inform his co-shareholder and give him a chance to buy his share. They are supposed to cooperate each other in this matter. The neighbors also have the right of preemption, therefore, the neighbors should also be informed before any buying and selling occurs.

Chapter 2. Preemption By Virtue Of Being Neighbors

(المعجم ٢) - بَابُ الشُّفْعَةِ بِالْجَوَارِ

(التحفة ٨٧)

2494. It was narrated from Jâbir that the Messenger of Allâh ﷺ said: "The neighbor has more right to preemption of his neighbor, so let him wait for him even if he is absent, if they share a path." (*Da'if*)

٢٤٩٤ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا هُشَيْمٌ: أَنَّ أَبَا عَبْدِ الْمَلِكِ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْجَارُ أَحَقُّ بِشُّفْعَةِ جَارِهِ، يَنْتَظِرُ بِهَا وَإِنْ كَانَ غَائِبًا، إِذَا كَانَ طَرِيقَهُمَا وَاحِدًا».

تخريج: [إسناده ضعيف] أخرجه أبو داود، البيهقي، باب: في الشفعة، ح: ٣٥١٨ من حديث هشيم به، وحسنه الترمذي، ح: ١٣٦٩.

2495. It was narrated from Abu Râfi' that the Prophet ﷺ said: "The neighbor has more right to property that is near." (*Sahih*)

٢٤٩٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ عَلِيُّ بْنُ مُحَمَّدٍ، قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ إِثْرَاهِيمَ بْنِ مَيْسَرَةَ، عَنْ عَمْرِو بْنِ الشَّرِيدِ، عَنْ أَبِي رَافِعٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «الْجَارُ أَحَقُّ بِسُقْيِهِ».

تخريج: أخرجه البخاري، الحيل، باب في الهبة والشفعة، ح: ٦٩٧٧ من طريق سفیان به مطولاً.

2496. It was narrated that Sharid bin Suwaid said: "I said: 'O Messenger of Allâh, (what do you think of) land owned by only one person but this land has neighbors?' He said: 'The neighbor has more right to property that is near.'" (*Sahih*)

٢٤٩٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ حُسَيْنِ الْمُعَلِّمِ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ عَمْرِو بْنِ الشَّرِيدِ بْنِ سُوَيْدٍ، عَنْ أَبِيهِ شَرِيدِ بْنِ سُوَيْدٍ قَالَ: قُلْتُ يَا رَسُولَ اللَّهِ! أَرْضٌ لَيْسَ فِيهَا لِأَحَدٍ قِسْمٌ، وَلَا شَرِيكَ إِلَّا الْجَوَارِ؟ قَالَ: «الْجَارُ أَحَقُّ بِسَقْبِهِ».

تخریج: [إسناده صحيح] أخرجه النسائي، البيهقي، ذكر الشفعة وأحكامها، ح: ٤٧٠٧ من

Comments:

- The neighbor who has a common path to the property has more right of preemption than others.
- If at the time of selling a house or piece of land, the neighbor is absent or out of the town or village, the other party should wait for his arrival to give his right of preemption to him.

Chapter 3. If The Boundaries Have Been Fixed Then There Is No Preemption

2497. It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ ruled concerning preemption of land that has not been divided; if the boundaries have been set then there is no preemption. (*Sahih*)

Another chain with similar wording.

Abu 'Asim said: (The chain of Sa'eed bin Musayyab is *Mursal* (i.e., having a break after the successor Sa'eed). (The chain of) Abu Salamah from Abu Hurairah is *Muttasil* (i.e., unbroken & connected).

(المعجم ٣) - بَابُ: إِذَا وَقَعَتِ الْحُدُودُ
فَلَا شُفْعَةَ (الشفعة ٨٨)

٢٤٩٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى وَ عَبْدِ الرَّحْمَنِ بْنُ عُمَرَ، قَالَا: حَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى بِالشُّفْعَةِ فِيمَا لَمْ يُقَسَّمْ. فَإِذَا وَقَعَتِ الْحُدُودُ، فَلَا شُفْعَةَ.

حَدَّثَنَا مُحَمَّدُ بْنُ حَمَّادٍ الطَّهْرَانِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ، عَنْ مَالِكٍ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ وَ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ، نَحْوَهُ.

قَالَ أَبُو عَاصِمٍ: سَعِيدُ بْنُ الْمُسَيَّبِ مُرْسَلٌ. وَأَبُو سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ مُتَّصِلٌ.

تخريج: [صحيح] أخرجه البيهقي: ١٠٤، ١٠٣/٦ وغيره من طرق عن مالك به، وصححه جبان (موارد)، ح: ١١٥٢، والبوصيري، وأرسله جماعة عن مالك، وح: ٢٤٩٩ شاهد له.

2498. It was narrated from Abu Râfi' that the Messenger of Allâh ﷺ said: "The partner has more right to what is near him, so long as he is still a partner." (*Sahih*)

٢٤٩٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْأَجْرَاحِ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ، عَنْ عَمْرِو بْنِ الشَّرِيدِ، عَنْ أَبِي رَافِعٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الشَّريكُ أَحَقُّ بِسَقَمِهِ مَا كَانَ».

تخريج: أخرجه البخاري، انظر، ح: ٢٤٩٥.

2499. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ ruled that preemption takes effect in all cases where land has not been divided. But if the boundaries have been set and the roads laid out, then there is no preemption." (*Sahih*)

٢٤٩٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا الرَّزَّاقِ عَنْ مَعْمَرٍ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: إِنَّمَا جَعَلَ رَسُولُ اللَّهِ ﷺ الشُّفْعَةَ فِي كُلِّ مَا لَمْ يُقَسِّمْ. فَإِذَا وَقَعَتِ الْحُدُودُ وَصُرِّفَتِ الطُّرُقُ، فَلَا شُفْعَةَ.

تخريج: أخرجه البخاري، البيوع، باب بيع الشريك من شريكه، ح: ٢٢١٤، ٢٢١٣ حديث عبد الرزاق به.

Comments:

Ahâdith mentioned above show that only that neighbor who has a common path to the property has the right of preemption, and those neighbors who have nothing common in property have no right to preemption. It was made clear by mentioning that when property is divided and paths are separate then there is no right to preemption. Division of property and separation of paths makes them ordinary neighbors, and not allowed to enter in each other's deals.

Chapter 4. Requesting Preemption

(المعجم ٤) - بَابُ طَلْبِ الشُّفْعَةِ

(التحفة ٨٩)

2500. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: "Preemption is like undoing the 'Iqâl."^[1] (*Da'if*)

٢٥٠٠ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ الْحَارِثِ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ الْأَيْمَانِيِّ، عَنْ أَبِيهِ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الشُّفْعَةُ كَحَلِّ الْعِقَالِ».

^[1] *Iqâl* is the rope used to hobble a camel. It means that the opportunity may slip through your fingers if you do not hasten to take advantage of it, just as a camel released from the 'Iqâl will run away quickly. See explanation by Sindi.

تخريج: [إسناده ضعيف جداً] أخرجه البيهقي: ١٠٨/٦ من حديث محمد بن الحارث به، وقال: محمد بن الحارث البصري متروك ومحمد بن عبدالرحمن البيلماني ضعيف ضعفهما يحيى بن معين وغيره من أئمة أهل الحديث، والحديث ضعفه البوصيري وغيره.

2501. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "There is no preemption for a partner when his co-partner has beaten him to it (in another deal before), nor for a minor nor one who is absent." (Da'if)

٢٥٠١ - حَدَّثَنَا سُؤْدُ بْنُ سَعِيدٍ، قَالَ: حَدَّثَنَا مُحَمَّدُ بْنُ الْحَارِثِ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْيَلَمَانِيِّ، عَنْ أَبِيهِ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا شُفْعَةَ لِشَرِيكَ عَلَى شَرِيكِ إِذَا سَبَقَهُ بِالشَّرَاءِ. وَلَا لِصَغِيرٍ، وَلَا لِغَائِبٍ».

تخريج: [إسناده ضعيف جداً] أخرجه ابن عدي: ٢١٨٥، ٢١٨٨/٦ من حديث محمد بن الحارث به، وضعفه البوصيري، وانظر الحديث السابق لعلتيه.

Comments:

'When a partner has beaten his co-partner' means that if there are three co-sharers of a property and one of them buys the share of his co-shareholder, the third has no right to preemption. This narration is Weak.