DOCUMENT THIRTY-EIGHT

BREACH OF SALE CONTRACT ENTAILING LEGAL INTEREST AND DAMAGES
(1936)

Introduction

This contract, concluded between tribesmen belonging to ‘Arab al-Ḥajāhija, records the sale of the First Party of his share in a jointly owned tribal property (a kind of mushā’) to the Second Party, comprising three brothers enjoining equal rights to the property in question, probably with the expectation that, at some future time, the jointly owned property would undergo division (ifrāz) at a personal level.

Broadly speaking, the transaction is concluded according to the provisions of the Mejelle, that is, by absolute (bātt), final (qaṭ’ī) sale (bay’). Other shar‘ī terms used are acceptance (qabūl) (though offer (ījāb) is missing), seeing (mu‘ayana), closely inspection (taqlīb) of the object of sale and fluctuation of prices (taqallub). The document also states that the seller bought the object of the sale by means of a “common” (‘ādī) sale, which may perhaps indicate that the shar‘ī contract of sale has been elevated to the status of custom.

The parties to the contract appear to ignore the shar‘ī prohibition of interest. To be more accurate, we are dealing here not with shar‘ī interest (ribā) but rather with “statutory interest” (fā’ida qānūniyya), which seems to have been common practice in the Judean Desert.

The Bedouin are fully aware of the importance of legal documents as an instrument to safeguard their property rights; the documents are required to prove these rights in the process of land settlement (taswiya) and their registration in the Land Register (tābū).

The document seems to have been drafted by someone well versed in the civil law, that is, in the Mejelle and in the judicial practice of the civil courts. Thus it is stipulated in the agreement that if the seller delays in carrying out his obligations, he shall have to pay a fine (gharāma) and damages (‘atāl wa-darar) to the purchasers, without “cause notice or warning to be given by any official or unofficial agency, the delay constituting notice and warning” toward settling the dispute in civil court.
Drawn up between Maḥmūd Sālim al-ʿIwād, of ʿArab al-Ḥajāḥiṣa al-Taʿāmira, as the First Party and ʿAbd, Aḥmad and Ibrāhīm, the children [sons] of Ḥasan al-Ḥumayd, of ʿArab al-Ḥajāḥiṣa al-Taʿāmira, as the Second Party, on the following terms:

1. The First Party owns (milk) and disposes (tasrif) of one-and-a-quarter out of twenty-five qirāṭs of a parcel of desert land (malsā) ready for sowing, known as the location of the lands of al-Maṣārīḥ, situated in al-Taʿāmira lands [territory], which passed into his hands by way of purchase (shirāʾan) from Maḥmūd al-Salmān al-Sulaymān, of ʿArab al-Ḥajāḥiṣa al-Taʿāmira by virtue of a common (ʿādī) deed of sale. The parcel bounded by the lands of Aḥmad al-Ḥumām, which adjoin Wādī al-Kufāy, in the south, the lands of Ḥājj Muḥammad ʿIwād Allāh al-ʿUrūj and his fraction [of tribesmen] (jamāʿa) in the east, the lands of al-ʿArza[?] al-ʿUbayyāt in the west and Shiʿb al-ʿAyn in the north; and whereas he, whilst in a state of good health and by free choice [as required by the sharāʾi], has agreed to sell, by absolute (bāṭt), final (qatʿī) sale (bayʿ), the whole of one-and-a-quarter out of twenty-five qirāṭs—the whole parcel of land the repute (shuhra) and boundaries of which are described above—to the Second Party, viz. ʿAbd, Aḥmad and Ibrāhīm, the children [sons] of Ḥasan al-Ḥumayd, in equal shares, i.e., each of them taking one-third, for the sum of fifteen Palestine pounds, which the Second Party has paid to the First Party in cash.

2. The Second party agrees to this purchase (shirāʾ) by sharʿi acceptance (qabūl) after inspecting the land with their own eyes (muʿāya), having regard to the fluctuation [of prices] (taqallub) and after having closer inspection [of the object of sale] (taqlīb), without coercion or compulsion, and he [hereby] pays the aforesaid price in full to the First Party.

3. The First Party affirms and acknowledges having received the full cost price (thaman... min al-asl) of one-and-a-quarter out of twenty-five qirāṭs, viz. fifteen Palestine pounds, in cash, at the time of the signing of this agreement, from the hands and out of the funds of the Second Party, the aforesaid ʿAbd, Aḥmad and Ibrāhīm. The whole of the land has become the private property (milk) of the Second Party, who may dispose (yataṣarrarraf) thereof as owners dispose of their property and holders of rights of their rights.

4. The First Party undertakes that if anyone should appear claiming to have a right (mustahiqqa) to all or part of the sold property (mabī) and should sue the Second Party, the First Party will, without demur and without need for judicial proceedings (muḥākama), return the full price of fifteen Palestine pounds, together with legal interest (fāʿida ḥānīniyya) from today’s date until the date of the last payment, and damages (aṭal wa-ḍarar) for any drawback whatsoever that may have been caused to the Second Party. The First Party also undertakes to register the aforesaid

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1. Usually a complete unit of property consists of 24 qirāṭs, for arithmetic reasons.
2. See Glossary, s.v. malsā.
3. The reference seems to be to krāb, cultivated and tilled land ready for sowing; see Glossary. This is a clear indication that sedentary Bedouin own private land and are engaged in agriculture.
4. “Common” in the sense of “customary”; in other words, sharʿi sale has become the norm among the Bedouin, which may perhaps imply that it has been elevated to the status of custom.
5. In other words, the one-and-a-quarter out of twenty-five qirāṭs is the seller’s virtual share in the jointly owned property of his tribe. See Glossary, muʿāda.
7. Alternative translation for taqallub: “turning the matter over in their minds.”
9. The reference is to the judicial proceedings in the civil court; see below
10. A distinction should be drawn between interest (riḥā) in the sharʿi sense of the term (Saleh, 35ff., 47–48) and interest within secular context such as that prevailing in the banks. The Bedouin appear to accept without any inhibitions the notion of interest that is common practice in daily commercial life; cf. doc. 49 (the seller undertakes that if he infringes one of the sale contract’s conditions, he shall be required to return the price paid in addition to legal interest [fāʿid ḥānīni] at the rate of nine percent per annum); Shuqayr, 418–19.