Introduction

This is a case of sale with the right of redemption of a plot of land for a limited period of time, the parties to the contract being Bedouin of ʿArab al-Taʿāmira. At the termination of that period, the plot is to be returned to the seller provided he manages to repay the price of the plot to the purchaser. If he does not, the sale is to become a pledge without limitation of time and the purchaser becomes a pledgee. This implies in practical terms that the seller-pledger remains the owner of the plot and the purchaser-pledgee has the right to usufruct thereof so long as he does not receive the loan-price of the plot.

The contract of sale with the right of redemption, dating back to the second half of the nineteenth century, though phrased in legal terms is articulated in poor Arabic. Hence one tends to regard the contract as reflecting a customary, rather than a sharīʿī, practice. This impression is further strengthened by the fact that the sellers comprise only male agnates who have inherited the plot from their ascendants, probably by means of an out-of-court arrangement, rather than through a sharīʿī succession order. Yet there is good reason to believe that the practice of sale with the right of redemption in the case under review is inspired by the sharīʿa. Thus the legal document is referred to as sharīʿī and the sale is coupled with an attempt to circumvent the sharīʿī prohibition of interest.

Finally, the conversion of sale with the right of redemption into a pledge suggests that the borderline between the two institutions was blurred in daily practice. This may be due to the fact that the two institutions share the same motive, viz., the desire to confer upon the owner of the landed property the option to restore the ownership to himself by revoking the transaction (in the case of sale with the right of redemption) or to maintain the ownership (in the case of pledge); in both cases, the purchaser or pledgee may not alienate the landed property to a third party, though they have the right to the usufruct. The two institutions facilitate the accommodation of the sharīʿa to economic conditions by allowing the circumvention of the prohibition of interest in a legitimate manner.
Text

“For payment of between 100 and 1000 kurush\(^1\) and for a purchase and sale document relative to the [same] value—20 para”  
Eight Hundred and Sixty-One Piasters (ghursh) Only in Current Currency

On the morning of the date indicated below, Rabî’ Awval 16, [1]284H, the following persons appear (qad ḥadara) [at the session of sale, each of them] having all the excellent qualities [required by the shari‘a], the Ottoman Muslims of al-Ta‘amira Bedouin (‘urbān) who belong to the Liwā‘ of Jerusalem the Noble: ‘Iwād Allāh Ismā‘īl Salāḥ, Sulaymān (5) al-Sālim, ‘Awda al-Hasan, Salāma al-Hasan, Maḥmūd al-Jawda, Ḥamdān Musallam, Salāma Abū Haniyya and ‘Abd Allāh al-Ṣāliḥ al-Fūrānī. [These persons,] of their own accord, appoint him [an agent] as the representative (wakkala‘)\(^2\) of their group. The aforementioned [persons] hereby sell (qad bā‘ū) everything belonging to them, private property (mīlīk) originating from the estates left (mukhalla‘fāt) by their male ascendants,\(^3\) viz., the entire plot of land situated within the boundaries of the land of al-Ta‘amira. This parcel, called al-Kīha {Kabha?}, is bounded by ushūbal{?}\(^4\) in the south, the vineyard (karm) in the east, the public road (al-tarīq al-mārra) in the north, and the land of Bīr al-Ḥajāḥija in the west. The above-mentioned [persons through their representative] hereby sell (qad bā‘ū) the entire said plot of flat land (wātī‘) in return for a price whose precise and declared amount is eight hundred and sixty-one piasters \(\{10\}\) in the negotiable currency of the market of Bethlehem. The aforementioned ‘Iwād Allāh Ismā‘īl, Sulaymān Sālim, ‘Awda al-Hasan, Salāma al-Hasan, Maḥmūd al-Jawda, Ḥamdān Musallam, Salāma Abū Haniyya and ‘Abd Allāh al-Ṣāliḥ al-Fūrānī sell [the plot] to the bearer of this shar‘i document (huji‘), Ismā‘īl Ibn Ḥamdān Musallam Ta‘amī. The plot hereby passes (qad sārat) [into the possession of the latter] for a restricted (māḥdūda) period and countable (mā‘dūda) days, viz., a fixed period (wa‘da) of five [agricultural seasons of] ploughings (karbūt)\(^5\) and five [seasons of] of sowings (zirā‘at),\(^6\) altogether ten years as from the date of [this document]. After the termination of this period, if God so decrees and the sellers manage to return [the price for the plot] to Ismā‘īl al-Ḥamdān, the plot of land will return to its owners;\(^7\) if [the sellers] do not manage to do this [return the price], the plot of land will become a pledge (rahn) in the possession of Ismā‘īl al-Ḥamdān until [the sellers] return to him the money\(^8\) \(\{15\}\) because this is a sale with [the right of] redemption of the property\(^9\) with no interest (bay‘ radūd māl bi-lā ribā),\(^10\) [the purchaser having the right to possess] the land, sow it, remove stones (qal‘) out of it and dispose of it without fear (taṣarruf fihā bilā raw‘).\(^11\)

I hereby write this document for the sake of announcing [publicly the sale] in the presence of those present [at the session of the contract], but Allāh, exalted and sublime be He, is the best of witnesses.

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\(^1\) An Ottoman Turkish script appears beside the Arabic script.

\(^2\) The name of the representative is not mentioned in the document.

\(^3\) There are no females among the sellers and no mention of shar‘i succession order. It seems safe to conclude that the division of the patrimony among the heirs took place out of court, in accordance with tribal customary law.

\(^4\) This is presumably a distortion of “hospital.”

\(^5\) See Glossary, s.v. krāb.

\(^6\) See Glossary, s.v. zirā‘a.

\(^7\) This implies practically that the sellers have the right of redemption if they manage to raise the money and return the price of the plot to the purchaser; see Glossary, s.v. bay‘ al-wafā‘.

\(^8\) At this point, the right of redemption is converted into a pledge. See Glossary, s.v. rahn.

\(^9\) The document does not use the shar‘i technical term bay‘ al-wafā‘ but rather a popular phrase (bay‘ radūd māl) which may support the assumption that we are dealing here with local practice rather than a shar‘i institution.

\(^10\) Although the sale with the right of redemption is not phrased in shar‘i terms, the reference to the prohibition of interest (ribā) indicates that it was inspired by the shar‘i. In other words, it was presented as a legitimate device for circumventing the shar‘i prohibition on interest.

\(^11\) In other words, the pledgee has only the right of usufruct, not ownership, implying thereby that he may not sell the plot to a third party.