

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

**Present:**  
**Mr. Justice Md. Mozibur Rahman Miah**

**CIVIL REVISION NO. 4713 OF 2001**

In the matter of:

An application Under Section 115(1) of the Code of Civil Procedure.

AND

In the matter of:

Md. Mokter Hossain, son of late Akbor Ali of village-Shibrampur Pachimpara, Police Station-Shahzadpur, District- Sirajgonj.

..... Petitioner

-Versus-

Md. Pashan Ali and others

..... Opposite-parties

No one appears

... For the petitioner.

No one appears

...For the opposite-parties

**Heard and Judgment on 02.09.2024.**

**Md. Mozibur Rahman Miah, J:**

At the instance of the pre-emptee (purchaser) in Miscellaneous Case No. 51 of 1997 and that of the respondent in Miscellaneous Appeal No. 09 of 2000, this rule was issued calling upon the opposite-party nos. 1 and 2 to show cause as to why the judgment and order dated

24.07.2001 passed by the learned District Judge, Sirajganj in Miscellaneous Appeal No. 09 of 2000 allowing the appeal and reversing the judgment and order dated 31.10.1999 passed by the Senior Assistant Judge, Shahzadpur, Sirajganj in Miscellaneous Case No. 51 of 1997 dismissing the Miscellaneous Case should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, this court also stayed the operation of the impugned judgment and order dated 24.07.2001 passed by the learned District Judge, Sirajganj in that Miscellaneous Appeal till disposal of the rule.

The short facts leading to issuance of the instant rule are:

The present opposite-party nos. 1-2 as pre-emptors filed the aforesaid Miscellaneous Case under section 96 of the State Acquisition and Tenancy Act, 1950 stating *inter alia* that, the case land appertaining to S.A Khatian No. 23 out of Plot No. 618 measuring an area of 32 decimals of land originally belonged to one, Korop Ali Molla and Sher Ali Molla. Korop Ali Molla died leaving behind opposite-party nos. 7-14 while Sher Ali Molla died leaving behind opposite-party nos. 2-6 and they had been possessing the suit land in *ejmali*. Subsequently, opposite-party nos. 7, 9 and 10 sold 11 decimals of land to the pre-emptors by registered sale deed dated 28.05.1996 and the opposite-party no. 2 sold out 16 decimals of land to opposite-party no. 1 at a consideration of taka 3,000/- on 20.05.1997. However, the opposite-party nos. 1 and 2 in collusion with each other shown the sale deed as of deed of exchange

and the pre-emptee-opposite-party no. 1 has shown to have got disputed 16 decimals of land from opposite-party no. 2 for an exchange of his 4 decimals of land to the opposite-party no. 2 of the disputed mouza even though the opposite-party no. 1 has still been possessing that 4 decimals of land. The pre-emptors had no knowledge about the transfer of the disputed land made on 20.05.1997 who came to learn about the said transfer of case land on 05.07.1977 and after obtaining certified copy of the same on 08.07.1977 filed the pre-emption case.

On the contrary, the case of the pre-emptee-purchaser-opposite-party no. 1 in short, is that, the case is bad for defect of parties and barred by limitation. It has also been stated that, S.A. Khatian No. 23 has been prepared in the name of Korop Ali Molla and Sher Ali Molla in equal share. Subsequently, Korop Ali Molla died leaving behind opposite-party nos. 7-14 while Sher Ali Molla died leaving behind opposite-party nos. 2-6. The opposite-party no. 2-seller agreed to exchange his 16 decimals of land with 4 decimals of land of the pre-emptee-opposite-party no. 1 and accordingly, they exchanged their respective land on 20.05.1997. Subsequently, opposite-party no. 1-pre-emptee spent taka 5,000/- for the development of the case land he got from opposite-party no. 2 and also spent taka 30,000/- on account of planting various trees in the case land. It has further been stated that, the opposite-party no. 2 has been possessing 4 decimals of land he got through exchange from the opposite-party no. 01. It has lastly been stated that, the disputed deed is purely a deed of exchange and not any deed of sale and therefore, the pre-emption case is liable to be dismissed.

In order to dispose of the Miscellaneous Case, the learned Senior Assistant Judge, Shahzadpur, Sirajganj framed as many as five different issues and the pre-emptors-opposite-party nos. 1-2 adduced as many as 3(three) witnesses while the pre-emptee-purchaser-petitioner adduced 4(four) witnesses. Apart from that, the pre-emptors also produced several documents which were marked as exhibit nos. 1-3 while the pre-emptee-purchaser produced a single document which was marked as exhibit-'ka'. After considering the evidence and materials on record, the learned Judge of the trial court vide judgment and order dated 31.10.1999 dismissed the Miscellaneous Case holding that, the disputed deed is not a deed of sale rather a deed of exchange against which no pre-emption case can be filed even though the learned Judge of the trial court disposed of all the remaining issues in favour of the pre-emptors.

Being aggrieved by and dissatisfied with the said judgment and order dismissing the Pre-emption Miscellaneous Case, the pre-emptors as appellants then preferred an appeal before the learned District Judge being Miscellaneous Appeal No. 09 of 2000 and the learned District Judge himself heard the said Miscellaneous Appeal and vide impugned judgment and order dated 24.07.2001 allowed the appeal and thereby set aside the judgment and order passed by the trial court consequent to allowed the pre-emption case.

It is at that stage, the pre-emptee-purchaser as petitioner came before this court and obtained instant rule and order of stay.

None appeared either for the petitioner or for the opposite-party to press or oppose the rule.

However, I have gone through the impugned judgment and order so passed by the trial court as well as the appellate court below. On going through the judgment passed by the trial court, I find that, the learned Judge while dismissing the pre-emption case found the disputed deed dated 20.05.1997 which was marked as exhibit-'3' as deed of exchange against which no pre-emption case can be filed and to arrive at the decision, the learned Judge of the trial court discussed the evidences of the pre-emptee-opposite-party nos. 1 appeared as OPW-1 to OPW-4. On the contrary, while setting aside the said judgment and order passed by the trial court, the learned District Judge found the disputed deed dated 20.05.1997 as an out and out deed of sale not a deed of exchange rather in the grab of deed of exchange, the pre-emptee no. 1 actually purchased 16 decimals of case land from the opposite-party no. 2 but curiously enough, the learned Judge of the trial court did not discuss the evidence of P.W-3 who happens to be the seller (opposite-party no. 2 in the pre-emption case) of the disputed 16 decimals of land in favour of the pre-emptee-purchaser that is, opposite-party no. 1. In arriving the decision, the learned Judge of appellate court also found that, in the self-same mouza the valuation of the case land that is, 16 decimals of land can never be same of the valuation of 4 decimals of land when the learned Judge also found that, P.W-3 who in his respective deposition has clearly asserted that, the disputed deed had been written on the advice of the pre-emptee-purchaser and he did not go through the said deed. We also find from the testimony of P.W-3 that, the alleged 4 decimals of land has still been possessing by the pre-emptee-purchaser

and he (seller-opposite-party no. 2) never got possession of that 4 decimals of land alleged to have been exchanged in his favour. So that very vital piece of evidence given by P.W-3 has not been taken into consideration by the learned Judge of the trial court. Had he considered the said evidence so deposed by the P.W-3, the learned Judge of the trial court would not have dismissed the pre-emption case rather allowed the same.

Furthermore, to substantiate the case, the pre-emptors also placed a decision so have been reported in 48 DLR 137 which has clearly supported the case of the pre-emptors-opposite-party nos. 1-2 as in that decision, it has been held that, if in the preamble of any document it is written as deed of exchange but in the body of the document it is found that, in the guise of a deed of exchange, actually sale has been made among the parties then pre-emption can be allowed and the *ratio* settled in that decision is thus equally applicable for the pre-emptors-opposite-party nos. 1-2 as well.

Given the above facts and circumstances, we don't find any illegality and impropriety in the impugned judgment and order passed by the appellate court below who rather allowed the pre-emption case perfectly.

Hence, we find no substance in the rule.

Accordingly, the rule is discharged however without any order as to costs. The judgment and order passed by the appellate court below is thus affirmed consequent to the pre-emption case is allowed

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment along with the lower court records be transmitted to the court concerned forthwith.