

Bench:
Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 3452 of 2014

Purnima Rani Mandolpetitioner

-Versus-

Debendra Nath Mistry and others

.....opposite parties

Mr. Bivas Chandra Biswas with

Ms. Shebani Biswas, Advocates

.....for the petitioner

Mr. Sabyasachi Mondal, Advocate

.....for opposite party1

Judgment on 08.05.2024

In this Rule the pre-emptee has challenged the judgment and orders of affirmance passed by the Courts below allowing the case for pre-emption.

The material facts for disposal of this Rule, in brief, are that the pre-emptor filed Miscellaneous Case No. 34 of 1998 (pre-emption) in the Court of Senior Assistant Judge, Khulna under section 96 of the State Acquisition and Tenancy Act for getting pre-emption of the *kabala* dated 25.03.1998. In the pre-emption application he claimed him a co-sharer in the case holding by inheritance and the pre-emptee as stranger purchaser; that opposite party 2 very secretly transferred the case land to the pre-emptee without serving any notice upon him as required by the law. He collected the certified copy of the *kabala* and filed the case within the period of limitation.

The pre-emptee, petitioner herein, contested the case by filing written objection denying the statements made in the case. In the written objection she stated that being a poor lady she collected money from others and purchased the case land. She has been residing therein by erecting houses thereon expending huge amount. She purchased the land with the consent of the pre-emptor and as such the case would be rejected.

On pleadings the trial Court framed 4 issues. In trial, the pre-emptor examined 02(two) witnesses while the pre-emptee examined 04(four). The documents produced by the parties were exhibited as per law. However, the trial Court allowed the case for pre-emption holding that the application has been filed within the statutory period of limitation; that the pre-emptee is a stranger purchaser and that the pre-emptor is a co-sharer by inheritance.

Being aggrieved by the pre-emptee preferred Miscellaneous Appeal No.76 of 2005 before the District Judge. The appeal was heard on transfer by the Additional District Judge, 3rd Court, Khulna who by the judgment and order passed on 21.07.2014 dismissed the miscellaneous appeal and affirmed the judgment and order passed by the trial Court. In this event, the pre-emptee approached this Court and obtained this Rule with an interim order of stay.

Mr. Bivash Chandra Biswas, learned Advocate for the petitioner takes me through the judgment and orders passed by the

Courts below and submits that both the Courts below misconceived the scope and nature of the pre-emption case and passed the judgments which are against the law provided in Order 41 Rule 31 of the Code of Civil Procedure. She then taking me through the evidence of OPWs 2, 3 and 4 submits that by their evidence the pre-emptee proved that she has expensed a huge amount in erecting dwelling houses in the case land which is not at all considered by the Courts below. Mr. Biswas finally submits that the judgments passed by the Courts below is not in accordance with law and those should be interfered with by this Court in revision.

Mr. Sabyasachi Mondal, learned Advocate for opposite party 1, on the other hand, opposes the Rule. He submits that both the Courts below concurrently found that the case has been filed within the statutory period of limitation; that the pre-emptor is a co-sharer by inheritance and the pre-emptee is a stranger purchaser. The pre-emptee failed to prove that she spent any amount for development of the case property. The finding of facts arrived at by the courts below should not be interfered with by this Court in revision unless there is gross misreading and non consideration of the evidence of witness and others materials on records. The petitioner failed to show anything to that effect. The Rule, therefore, having no merit would be discharged.

I have considered the submissions of both the learned Advocates, gone through the judgments passed by the Courts below and evidence of witnesses as referred to by Mr. Biswas. It transpires that both the Courts below found that the pre-emptor is a co-sharer in the case *jote* by way of inheritance and that the pre-emptee is a stranger purchaser. The Courts below further found that the case for pre-emption has been filed within the statutory period of limitation and as such allowed the case. I find nothing in the record to interfere with the aforesaid findings of the Courts below.

I have scrutinized the evidence of OPWs 2, 3 and 4 to ascertain whether any development work as alleged by the pre-emptee was done over the suit land. In cross-examination OPW3 who is the brother-in-law of the pre-emptee admitted that there are 4(four) tin shed houses in his(OPW3's) land where the pre-emptee, her husband, daughter and son-in-law reside. The above evidence of OPW3 prove that the pre-emptee did neither erect any house over the pre-empted land nor she developed it as claimed in her written objection. She lives in the house situated on the land of OPW3. Therefore, the submission made by Mr. Biswas of getting development cost from the pre-emptor bears no substance.

In view of the discussion made hereinabove, I find no merit in this rule. Accordingly, the Rule is discharged. No order as to costs.

The order of stay stands vacated. The judgments passed by the Courts below is hereby affirmed.

Communicate the Judgment and send down the lower Courts' record.