

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

Present:

**Mr. Justice S. M. Saiful Islam**

**Civil Revision No. 3224 of 1997**

IN THE MATTER OF:

An application under section 115(1) of the  
Code of Civil Procedure. (Against Decree)

And

IN THE MATTER OF:

Md. Chan Miah and others.

---- Appellant-Petitioners.

-versus-

Md. Alamgir Islam and others.

---- Opposite Parties.

No one appears

--- For the Petitioners.

Mr. Rubel Kazi with

Mr. Mamunur Rashid Chowdhury, Advocates

--- For the Opposite Parties.

**Heard On: 14.01.2026**

**Date of Judgment: 20.01.2026.**

**S. M. Saiful Islam, J.**

This revisional application, under section 115(1) of the Code of Civil Procedure, 1908 has been directed against the judgment and order dated 31/03/1997, passed by the 2<sup>nd</sup> Subordinate Judge, Panchagarh, in Miscellaneous Appeal No. 11 of 1996, affirming those dated 14/11/1996, passed by the learned

Assistant Judge, Debiganj, District- Panchagarh in Miscellaneous Case No. 04 of 1995 (Pre-emption Miscellaneous Case under section 96 of the S. A. & T. Act, 1950). Upon that application a Rule was issued calling upon the opposite party Nos. 1-3 to show cause as to why the impugned judgment should not be set aside and/ or such other or further order or orders passed as to this Court may deem fit and proper.

Facts relevant for the disposal of this Rule is that the opposite party Nos. 1-3 as petitioners instituted Miscellaneous Case No. 04 of 1995 in the Court of Assistant Judge, Debiganj, Panchgarah praying for pre-emption of the land described in the schedule under section 96 of the State Acquisition and Tenancy Act, 1950. Pre-emptor-petitioners case in short was that in S A 574 *Khatian* of Mauja-Alamnagar under Debiganj Police Station of Panchgarah District, Harendra Nath, Narendra Nath, Surendra Nath and Dhoronikanta were recorded tenants who transferred their land to Mobarak Ali (father of the pre-emptor-petitioners) by *Kabla* (কবলা) dated 04/05/1960, 08/11/1969 and 23/04/1969. Mobarak Ali died leaving behind 7 sons including the pre-emptor- petitioners, 1 daughter and 1 wife. Thus, the petitioners became the co-sharers by inheritance in S A *Khatian* No. 514. Recorded tenant of this *Khatian*, Dharinikanta also transferred his property in this *Khatian* to the pre-emptor-petitioners by registered *Kabla* (কবলা) dated 13/02/1982. In S A 689 *Khatian* of the same Mouja, Mobarak Ali was recorded tenant and after his death the pre-emptor-petitioners became co-sharers by inheritance in this *Khatian*. Thus, the pre-emptor-petitioners are co-sharers by inheritance and purchase in the suit *Khatians*. Brother of the pre-emptor-petitioners Tojammel Haque secretly transferred the scheduled land to the opposite party Nos. 1-8 by several registered *Kabla* (কবলা) deeds described in the schedule.

That *Kabla* (কবলা) purchasers are strangers in the suit *Khatians*. Hence, the petitioners filed the petition for pre-emption under section 96 of the State Acquisition and Tenancy Act, 1950 to pre-empt the scheduled land.

*Kabla* (কবলা) purchaser opposite party (pre-emptees) Nos. 1-8 contested the case by filing a written objection. In that written objection they claimed that they are also co-sharers in the suit *Khatians* by purchase. They purchased land in the suit *Khatians* in different *Kabla* (কবলা) since 1974. Therefore, they prayed for dismissal of the pre-emption miscellaneous case.

Learned Trial Court took following four issues to decide the case:

- 1) Whether the case is barred by the law of limitation;
- 2) Whether the case is bad for defect of parties;
- 3) Whether the case is maintainable in its present form;
- 4) Whether the petitioners are entitled to preempt the suit land as prayed for;

Learned Trial Court after hearing of both the parties and after considering the evidence adduced by the parties, allowed the Pre-emption Miscellaneous Case No. 04 of 1995 by the judgment and order dated 14.11.1996. Learned Trial Court held that the petitioners are co-sharers by inheritance in the suit *Khatians*. Though, the opposite parties are co-sharers by purchase in that *Khatians*, the petitioners as co-sharers by inheritance are entitled to preempt the suit land. Accordingly, the Trial Court allowed the Miscellaneous case for pre-emption.

Being aggrieved from that judgment and order dated 14.11.1996, pre-emptee- opposite party filed Miscellaneous Appeal No. 11 of 1996 before the learned District Judge, Panchagarh and the said Appeal was heard by the 2<sup>nd</sup> Subordinate Judge, Panchagarh who upon hearing of both the

parties disallowed the said Appeal by the impugned judgment and order dated 31.03.1997. Being aggrieved and dissatisfied with the impugned judgment and order, the pre-emptees as petitioners filed this revisional application and obtained the Rule.

At the time of issuance of the Rule on 26/8/1997, operation of impugned judgment was stayed for 6 (six) months and later on it was extended till disposal of the Rule.

None appears to move the Rule on behalf of the petitioners.

Mr. Rubel Kazi along with Mr. Mumunur Rashid Chowdhury, the learned Advocates appearing on behalf of the pre-emptors- opposite party submits that the learned Courts below have rightly allowed the pre-emption petition by the impugned judgment and order. The pre-emptor- petitioners are co-sharers by inheritance in the suit *Khatians*. There is nothing to interfere with the concurrent findings of the learned Courts below. Learned Courts below have not committed any error of law in the impugned judgment and order and as such it has not occasioned any failure of justice. Hence, he prays for discharge of the Rule.

Heard the learned Advocates for pre-emptor-opposite party. Perused the impugned judgment and order, revisional application and annexures therewith and the lower Court records. Though, none appeared on behalf of the pre-emptee-petitioners at the time of hearing, I think, justice will be best served if the Rule is disposed of on merit as the Rule is a long pending one.

As to the ground of the revisional application, it has been stated in the application that the Appellate Court erred in law in the impugned judgment by misreading and not discussing the contents of the evidence of the PWs, DWs, documents and other materials to the effect that both the parties are co-sharers and the

pre-emption miscellaneous case is bad for defect of parties. The pre-emptor-petitioners did not include the name of the heirs of Sabed Ali, S/O Moslem Sheikh and Yunus Ali, S/O Mobarek, who are co-sharers of the suit property since 1969. It was pointed out before the Appellate Court, but that has not been considered in passing the impugned judgment, resulting in an error in the decision occasioning failure of justice. Deeds of Sabed Ali and Yunus Ali are lying in the trial Courts records and regarding that point evidence has been recorded, but they have not been made parties in the Trial Court. A petition was submitted to the Appellate Court on 29/03/1997, but the Appellate Court did not consider it. For these reasons, Pre-emptee-petitioners prayed for making the Rule absolute.

Thus, it appears that the pre-emptee-petitioners filed this revisional application mainly on two grounds: firstly, they are co-sharers in the suit *Khatian* and pre-emption petition is not maintainable against them, and secondly, the case is bad for defect of parties, because some co-sharers were not made parties in the case. Regarding the first point, it may be mentioned here that according to the provisions of section 96(5)(a), co-sharers by inheritance shall be given priority over the co-sharers by purchase. It is not denied by the pre-emptee- petitioners that the pre-emptor- opposite parties are co-sharers by inheritance in the suit holding. Pre-emptee- petitioners claim themselves as co-sharers by purchase in the suit holding. So, according to the provisions of section 96(5)(a), of the State Acquisition and Tenancy Act, 1950 the pre-emptor- opposite party shall have preferential right over the pre-emptee- petitioners in pre-empting the suit land.

Regarding the second point, it may be mentioned here that whether all necessary parties have been included or not is mainly

a question of fact. Both the Trial Court and Appellate Court below have concurrently decided that the instant pre-emption miscellaneous case does not suffer from defect of parties. It has been stated in the judgment of both the Courts below that the pre-emptors submitted interrogatories to the pre-emptees and the pre-emptees supplied the names of necessary parties and accordingly those persons were made parties. OPW- 1 in cross-examination has stated, “অত্র মোকদ্দমায় প্রথমে অনেক পক্ষ বাদ পড়িলে তাহা আমরা উত্তরের মাধ্যমে জানাইয়া দেই।” On perusal of record it appears that the pre-emptors amended their pre-emption petition on 23-05-1996 and opposite party Nos. 27-55 were included according to the names supplied by the pre-emptee- petitioners. In such facts and circumstances, the pre-emptee- opposite party cannot further raise the question of defect of parties. Similar view was taken by our Apex Court in the case of *Abdur Rashid Sarker -Vs- Dines Chandra Das* [26 BLC (AD) 53]. Moreover, defect of parties has not been established by any clear cut evidence at the time trial. Considering all these, I think, both the learned Courts below have rightly decided that the case is not bad for defect of parties.

It is well settled principle of law that a revisional Court may exercise its power when there is an error of law resulting in an error which occasioned failure of justice and when the lower Court acted illegally or with material irregularity in exercise of law or has committed error in procedure during the course of trial and such breach or error has affected the ultimate exercise of the jurisdiction of the Court. In revision under section 115(1) concurrent findings of fact cannot be disturbed unless those are manifestly perverse. In the instant case both the Courts below on perusal of relevant laws and evidence on record, decided that the pre-emptor-petitioners are entitled to pre-empt land of the disputed deed. Both the Courts below decided that the case is not

barred by limitation and there is no defect of parties. Decisions of the Courts below are based on relevant laws and legal evidence. I do not see anything in the impugned judgment and order of the Appellate Court which is unlawful or is based on non-consideration or misreading of any evidence. Consequently, I find no reason to interfere with the impugned judgment and order. The impugned judgment of the Court of Appeal does not suffer from any legal infirmity or impropriety and as such, no interference is called for by this Court.

Considering the facts and circumstances, I find no merit in the Rule. So, the Rule is liable to be discharged.

In the result, the Rule is discharged without any order as to costs.

Order of stay passed earlier by this Court is hereby vacated.

Records of the Courts below be sent to the concerned Court at once along with a copy of this Judgment and Order.