

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 2611 OF 2004

Sukdeb Majumder and another
Pre-emptees-Appellants-Petitioners

Versus

Birendra Nath Barai and others
Pre-emptors-Respondents-Opposite Parties

Santosh Baidya and others
Non-Contesting-Defendants-Opposite Parties

No one appears
for the Pre-emptees-Appellants-Petitioners

Mr. Sarder Abul Hossain, Advocate with
Mr. Md. Shamim Hossain, Advocate
for the Preemptors-Respondents-Opposite
Parties

Judgment on: 31.7.2023

This Rule was issued calling upon the opposite party Nos. 1-3 at the risk of the pre-emptees-petitioners to show cause as to why the impugned Judgment and Order dated 12.04.2004 passed by the learned Joint District Judge, 2nd Court, Gopalganj in Miscellaneous Appeal No. 78 of 2001 dismissing the appeal and thereby affirming the Judgment and Order dated 18.10.2001 passed by the learned Senior Assistant Judge, Kotalipara, Gopalganj in Miscellaneous Case No. 19 of 2000 should not be set aside and/or

such other or further order or orders passed as to this Court may seem fit and proper.

The father of the opposite parties No. 1-3 Biswanath Barai as pre-emptor filed a case before the Court of Assistant Judge, Kotalipara, Gopalganj under section 96 of the State Acquisition and Tenancy Act for pre-emption of the case land on the allegations, inter-alia, that one Nil Kanta Baiddya was tenant of the 1.33 acres of land under Mouza Lazna appertaining to R.S. Khatian No. 108 and S.A. Khatian No. 115 from which the pre-emptors purchased .81 acres of land on 19.01.1963 and became co-sharers of case land khatian by purchase. Nil Kanta transferred the rest .52 acres of land to Upananda on 19.01.1963 and on his death his son Rampada transferred the said land to the pre-emptee petitioners along with .13 acres of other land in total .65 acres of land without issuing any notice to the others through a registered kabala dated 08.03.2000 and the pre-emptor was informed about the transfer on 25.04.2000 from his village man Paran Barai and thereafter collecting the certified copy of the alleged kabala on 10.05.2000 filed the case for pre-emption. The pre-emptor was not given any notice or co-sharer of the property by purchase and the pre-emptee petitioners are strangers of the case property and the pre-emptors already deposited the consideration money and

entitled to have pre-emption and thereafter, he died and his three sons were substituted.

The pre-emptees contested the pre-emption case by filing a written objection contending, inter-alia, that the pre-emptors have no right and cause of action to file this case and the same is not maintainable, that the khatian record of the case land has been separated and the pre-emptees are in peaceful possession and the pre-emptors are not co-sharers of the case land.

The learned Senior Assistant Judge, Kotalipara, Gopalganj allowed the pre-emption case by his Judgment and Order dated 18.10.2001. Against the aforesaid Judgment and Order the pre-emptees as appellants preferred Miscellaneous Appeal No. 78 of 2001 before the learned District Judge, Gopalganj which was transferred before the learned Joint District Judge, 2nd Court, Gopalganj who dismissed the appeal on 12.4.2004 and thereby affirmed the Judgment and Order dated 18.10.2001 passed by the learned Senior Assistant Judge, Kotalipara, Gopalganj in Miscellaneous Case No. 19 of 2000 and thus the pre-emptees as petitioners moved this application under Section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

No one appears on behalf of the petitioners to press the Rule despite the matter appearing in the cause list of this Court with the name of the learned Advocate.

Mr. Sarder Abul Hossain, learned Advocate for the pre-emptors-opposite parties, submits that the learned Trial Court clearly stated in his Judgment and Order that “মজহর পক্ষের দাখিলী ১৯-১-১৯৬৩ তারিখের দলিল প্রদর্শনী ১, এস.এ ১১৫ নং খতিয়ান প্রদর্শনী ২ পর্যালোচনা করিলাম। পর্যালোচনায় মজহর যে, জোতের ক্রয় সূত্রে শরীক প্রজা তাহা প্রমানিত হয়। আর মজহর যে, জোতের ক্রয়সূত্রে শরীক প্রজা নন তাহা তরপছানীগণ দাবী করেন না।” and it is admitted by the pre-emptees that the pre-emptors are co-sharers of the case land and it was supported by the Judgment and Order by the Appellate Court below and delivered concurrent finding. He further submits that pre-emptors have filed the instant case within the stipulated period of time and no objection raised by the pre-emptees on the ground of limitation. He then submits that in the appeal hearing pre-emptees-appellants raised objection about only one issue out of six issues framed by the learned Court below that the pre-emptors have waved their pre-emption right before filing the case and both the Courts below did not find any substance in this issue and both the Courts below have rightly delivered Judgment and Order in favour of the pre-emptors and the observations and findings of the Courts below are correct. He further submits that in the Judgment and Order of the Appellate Court below has clearly observed that the vendor of the Kabala Deed No. 1861 dated 08.3.2000, Rampada Barai was present in favour of the pre-emptors as P.W. 2 and in the Judgment and Order

the learned Judge of the Appellate Court below observed that “সবচেয়ে মজার বিষয় হইল, ১/২ নং তরফছানী লিখিত আপত্তিতে নালিশী কবলা দাতা রামপদ বাউড় প্রথমে মজহরের নিকট নালিশী ভূমি বিক্রয়ের প্রস্তাব দেয় দাবী করা হইলেও উক্ত রামপদ বাউড় মজহর পক্ষে ২ নং সাক্ষী হিসাবে উপস্থিত হইয়া জবানবন্দিতে বলেন যে, তিনি মজহরকে নালিশী জমি খরিদ করিতে সাধেন নাই” and the learned Courts below have given concurrent findings about the same. He lastly submits that if the pre-emptors waved their pre-emption right on the ground of financial inability and later he will not debar from claiming his right at the proper time and inability of financial crises would not debar the pre-emptors from exercising their legal right of pre-emption and it was established by the evidence that the seller did not approach the pre-emptor for selling the case land and the learned Trial Court and the Appellate Court below has given concurrent findings about the same and Judgment and Order passed by the Trial Court and Appellate Court below are correct.

Heard the learned Advocate for the pre-emptors-opposite parties and perused the record.

From the record it appears that the pre-emptors are co-sharers of the case land. The pre-emptees did not claim that pre-emptors are not co-sharers of the case land. Both the Courts below on concurrent findings of facts passed the impugned Judgment and Order. There is no misreading and non-consideration of evidences adduced by the parties for which under revisional jurisdiction the

impugned Judgment and Order cannot be interfered with and the Rule has no merit at all.

In the result, the Rule is discharged.

The impugned Judgment and Order dated 12.04.2004 passed by the learned Joint District Judge, 2nd Court, Gopalganj in Miscellaneous Appeal No. 78 of 2001 dismissing the appeal and thereby affirming the Judgment and Order dated 18.10.2001 passed by the learned Senior Assistant Judge, Kotalipara, Gopalganj in Miscellaneous Case No. 19 of 2000 is hereby up-held.

The order of stay granted earlier by this Court is hereby vacated.

Send down the lower Court's record with a copy of the Judgment to the Courts below at once.