

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.2856 OF 2015

Md. Alimuddin Pramanik and others

..... *Pre-emptors-Petitioners.*

-VERSUS-

Most. Mohua Bewa and others

.... *Pre-emptor-Opposite Parties.*

Mr. Md. Jamil Akhter Elahi, with

Mr. Sirajul Karim advocates

..... *For the petitioners.*

No one appears

..... *For the opposite parties.*

Heard on 08.05.2025, 01.07.2025

and 14.07.2025

Judgment on 14.07.2025

By this Rule, the opposite parties were called upon to show cause as to why the Judgment and order dated 19.03.2015 passed by learned District Judge, Natore in Miscellaneous Appeal No.13 of 1999, affirming the Judgment and order dated 14.03.1999 passed by the learned Assistant Judge, Lalpur, Natore in Miscellaneous Case No.10 of 1996, rejecting Miscellaneous Case for

preemption under section 96 of the State Acquisition and Tenancy Act should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The facts, in brief for disposal of the Rule, are that the petitioners herein as preemptors instituted Miscellaneous Case No.10 of 1996 before the Assistant Judge, Lalpur, Natore under section 96 of the State Acquisition and Tenancy Act, 1950 contending inter-alia that, the preemptors are the co-sharer of the case holding but the preempt opposite party No. 3 transferred the suit land by Kabala dated 15.03.1995 to the opposite party Nos. 1 and 2 without serving any notice. The preempt opposite parties No. 1-2 are strangers to the case holding.

The pre-empt opposite parties contested the case by filing a joint written statement, denying all material allegations and stating, inter alia, that the pre-empt selar taken a loan of Tk. 3000/- from the preempt opposite party Nos. 1-2 and executed the registered Sale Deed No. 2138 dated 15.03.1995 instead of a mortgage deed, since there are no provisions for a deed of mortgage. Thereafter,

having found the loan amount, the case land was reconveyanced to the preemptor seller by a Kabala dated 26.08.1996. Therefore, the case land was not sold by an out-and-out sale deed.

The learned Assistant Judge, Lalpur, Natore, framed the necessary issues to determine the dispute involved between the parties. Subsequently, the learned Assistant Judge, Lalpur, Natore, disallowed the Miscellaneous Case by the Judgment and order dated 14.03.1999.

Being aggrieved, the pre-emptors as appellants, preferred Miscellaneous Appeal No.13 of 1999 before the District Judge, Natore. Eventually, the learned District Judge, Natore, by the Judgment and order dated 19.03.2015, disallowed the appeal and thereby affirmed those passed by the trial Court below.

Being aggrieved, the pre-emptor-petitioners preferred this Civil Revision under section 115(1) of the Code of Civil Procedure before this court and obtained the instant Rule.

Mr. Jamil Akhter Elahi, the learned advocate appearing on behalf of the preemptor petitioners, submits that both the court below, in their observations, failed to

consider that the alleged deed of transfer is not a deed of reconveyance but a colourable exercise of transfer.

Despite the matter appearing on the cause list for hearing on consecutive dates, no one feels to appear on behalf of the opposite parties to contest the case. However, in the presence of the learned advocate for the petitioners, I am inclined to dispose of the matter on its merits.

I have anxiously considered the submissions advanced by the Bar, perused the impugned Judgment and order, and other materials available on record.

It is evident that the preemptor petitioners filed the instant suit under Section 96 of the State Acquisition and Tenancy Act, 1950, and claimed that they are the co-sharers of the case, holding that the preemptor purchasers are strangers to the case holding. However, the preemptor seller sold the case land to the preemptor purchasers without serving any notice.

In order to prove their respective cases, the preemptors examined as many as three witnesses and exhibited material evidence; on the contrary, the preemptor

purchasers examined as many as five witnesses and exhibited material evidence.

I have scrutinized each deposition and cross-examination of witnesses and considered the material evidence and other related documents of both parties. It appears that the trial court, as well as the appellate court below, disallowed the case with concurrent observation that the case land was not transferred by an out-and-out sale deed rather an agreement of reconveyance.

Analyzing the case records and the evidence from the respective parties, it is evident that P. W. 1, P. W. 2, and P. W. 3, in their examination-in-chief, tried to corroborate the pleadings case of the preemptors, but all of them have been discredited in their cross-examination, and on the other hand, OP. W. 1- 5 corroborated one another in respect of the pleading's case of the preemptive opposite parties. Except for some minor discrepancies, no such material contradiction or omission is noticed, by dint of which these witnesses can be disbelieved.

Notably, scrutinizing the above-mentioned deed dated 15.03.1995 and 26.08.1996 respectively it is evident to

note that the case deed as it appears in its face is a 'deed of reconveyance' not a sub-kabala deed and it is the positive contention in the pleadings of the opposite parties that the case land was not sold in favour of the preemptive opposite party No. 1-2 by the preemptive opposite party No. 3.

Under the ambit of section 96 of the State Acquisition and Tenancy Act, 1950 [XXVIII of 1951] it is a decided matter in our judiciary that in case of a colourable transaction, the onus of proof is entirely lies upon the party, who assert that the transfer is a sub-kabala in disguise of a deed of exchange/re-conveyance under section 101 and 103 of the Evidence Act [I of 1872]. Apart from this, the contents of the deed will get priority until and unless it is rebutted by sufficient, convincing, credible evidence, with that of the oral evidence adduced from the sides of the parties. It is the incumbent duty upon the pre-emptor-petitioners to prove by sufficient tangible, credible evidence that the deed in question is out and out a sale deed, in disguise of a deed of exchange/reconveyance.

In the instant case, I have come across from the evidence on records that the pre-emptor-petitioners have

failed to discharge their onus of proof and the courts below rightly and judiciously come to a concurrent observation and findings based on evidences on records, rightly held that the deed-in-question is purely a deed of reconveyance, not a sub-kabala and as such it is not pre-emptable under the ambit of section 96 of the State Acquisition and Tenancy Act, 1950.

Having regard to the facts, circumstances and the discussions referred to above, I am constrained to hold such a view that in the impugned Judgment and order there is no illegality or infirmity or misreading or non-reading of evidence or non-consideration of material facts resulting in an error in the decision occasioning failure of justice, by which it can be interfered with.

Considering the above facts and circumstances, I do not find any merit in the Rule.

Resultantly, the Rule is discharged with cost.

Communicate the Judgment and send down the lower court records at once.

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(Md. Salim, J).