

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

First Miscellaneous Appeal No. 32 of 2016
In the matter of:

Rahima Begum and others

.....Appellant

-VERSUS-

Mst. Parvin Aktar and others

..... Respondent

Mr. Goutam Kumar Roy, Advocate

.....for the appellant

Mr. Md. Taha Molla, Advocate

.....for the respondents

Heard on: 28.01.2019, 04.03.2019 & 18.04.2019
Judgment on: 16.10.2019

Present:

Mr. Justice Mamnoon Rahman

And

Mr. Justice Ashish Ranjan Das

Ashish Ranjan DAs, J:

Learned Joint District Judge First Court, Madaripur by his order dated 29.04.2015 passed in Miscellaneous pre-emption case no. 33 of 2012 dismissed the case on contest. Being aggrieved the pre-emptor being in the meantime dead his successor brought this Miscellaneous Appeal.

We have heard the learned Advocates for both the parties and perused the record.

Short facts is that the disputed land appertaining to R.S Khatian No. 61 Mouza Panin Chatra P.S.-Madaripur admittedly belonged to Jahura Bibi and others. It was subsequently recorded in S.A Khatian No. 49 in the name of Eskander Ali Shikder and Sekandhar Ali Shikder who sold 22 decimal of land on 17.08.1967 to Mojaffor Hossain Mollah and Abdul Hai Mollah. Another tenant Gagan Shikder's daughter Hamida Begum sold 4 decimal of land on 27.11.1969 Mojaffor Hossain Mollah and Abdul Hai Mollah. Gagan Shikder's another daughter Halimon Nesa on 27.10.1976 sold another 4 decimal of land to those two persons. Thus the latter purchased 15 decimal of land in all. Jahura Begum sold another 5 decimal of land to those two persons. In total Abdul Hai Mollah acquired little above 30 decimal of land. He was the initial pre-emptor. His co-shares opposite party nos. 2-5 of the proceeding secretly sold the disputed land of 4 decimal on 14.02.2012 to opposite party no.1. Cause of action arose on 07.06.2012 and the case of pre-emption was brought.

The case of the purchaser opposite party is that admittedly the land belonged to the S.A recorded tenants. The purchaser is the brother's son in law of the purchaser himself. But opposite party nos. 2-5 had separated their share through Miscellaneous case no. 916/IX-PI/11-12. Next their portion was recorded in S.A Khatian no. 49/8 that was recorded in the recent Khatian No. 130. Thus firstly the petitioner no more remained as the co-sharer in the Joma. Besides he was aware of the transaction but he remained silent. The learned trial court found

that according to the admission of the witness the proposal for sale was raised with the petitioner when he disagreed. Hence the case barred by the principle of waiver and acquiescence. Secondly, according to the porcha the transferors had separated that portion by opening a new Khatian no. 49/8 (Exhibit-५). Hence he dismissed application for pre-emption.

We find nothing to disagree with the resolution of the learned trial court. Taking in to consideration of the evidence of P.W. 1 and the separated Porcha (Exhibit-५) the trial court appears to have been quite justified in dismissing the case. As a result the appeal is dismissed.

However, there is no order at to costs.

Communicate the judgment and order to the concern Court at once.

Justice Ashish Ranjan Das.

Mamnoon Rahman, J;

I agree.