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

Present:
Mr. Justice Md. Khairul Alam

Civil Revision No. 1010 of 2016

Md. Nuruddin
….. Petitioner.
-Versus-
Md. Abdul Ahad alias Hiru Mia and others.
….. Opposite parties.
No one appears
…… For the petitioner.
Mr. Hasnat Quiyum, Advocate
..... For the opposite party No. 1.

Heard on: 25.06.2025, 26.06.2025 and
Judgment on: 08.07.2025.

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 14.01.2016 passed by the learned Additional District Judge, Kishoreganj in Title Appeal No. 35 of 2006 allowing the appeal and thereby reversing those date 13.04.2006 passed by the learned Senior Assistant Judge, Bajitpur, Kishoreganj in Pre-emption Case No. 56 of 2000 rejecting the pre-emption application should not set aside, and/or pass such other or further order or orders as to this court may seem fit and proper.

Relevant facts for disposal of the Rule are that the present opposite party No. 1 as pre-emptor filed the pre-emption case under section 96 of the State Acquisition and Tenancy Act, 1950 (shortly the Act, 1950) for pre-empt the land transferred under a registered kabala deed dated 05.10.2000 alleging that the pre-emptee No. 2 sold the land to the pre-emptee No.1, a stranger, without serving any notice

upon him although he was a co-sharer in the holding. At the time of making the application the pre-emptor deposited in the Court the amount of the consideration money together with ten percent compensation. The present petitioner as pre-emptee No. 1, contested the pre-emption case pleading that the pre-emption case was bad for defect of parties, barred by the principle of waiver and acquiescence, and therefore, the pre-emptor was not entitled to get the property under pre-emption. The pre-emptee also pleaded that he had expended taka 5,500/- for making improvements in respect of the holding.

During the trial, both parties adduced both oral and documentary evidence. The documentary evidence adduced by the parties were duly exhibited.

The learned Senior Assistant Judge, Bajitpur, Kishoreganj after hearing the parties by the judgment and order dated 13.04.2006 found that the pre-emptor was a co-sharer tenant of the holding and the share of the holding was sold to a stranger without serving any statutory notice. The learned Senior Assistant Judge also found that the consideration money together with ten percent compensation was deposited, so the pre-emption application was maintainable and did not find the application barred under the principle of waiver and acquiescence. Despite that the trial Court rejected the pre-emption application holding that as all the necessary parties mentioned in the law were not impleaded, the case was bad for a defect of parties. The trial Court did not frame any issue regarding the improvement costs.

Against the said judgment and order the pre-emptor filed the appeal in the court of the District Judge, Kishoregong. At the appellate stage, the pre-emptor impleaded the persons as parties for whom the

pre-emptees objected to the trial Court. The learned District Judge, Kishoreganj after hearing the parties by the judgment and order dated 14.01.2016 allowed the application for pre-emption and set aside the judgment and order passed by the trial Court.

Being aggrieved thereby the petitioner filed this civil revision and obtained the Rule.

No one appears to support the Rule.

In the revisional application, the petitioner mainly contended that the suit, being a suit for pre-emption impleading the parties beyond the period of limitation of 4 (four) months is exceeding the mandate of the law.

Mr. Hasnat Quiyum, the learned Advocate appearing for the opposite parties No.1 submits that impleading the parties beyond the period of limitation of 4 (four) months is not fatal.

Heard the Advocate for the opposite parties and perused the revisional application and other materials on record.

Admittedly, the pre-emptee No. 2 sold the land to the pre-emptee No.1, a stranger, without serving any notice upon the pre-emptor who was a co-sharer in the holding and the pre-emption application was filed within the stipulated time by depositing the consideration money together with ten percent compensation. It is also admitted that some of the necessary parties were impleaded beyond the period of four months.

Therefore, the issue to be adjudicated in this Rule is whether impleading the parties beyond the period of 4 (four) months is maintainable or not.

To adjudicate the issue, it would be useful to peruse the first two sub-sections and part of sub-section three of section 96 of the State Acquisition and Tenancy Act, 1951, which are as follows:-

> ***"96 Right of pre-emption-****(1)If a portion or share of a holding of a raiyat is transferred, one or more co-sharer tenants of the holding may, within four months of the service of the notice given under section 89, or, if no notice has been served under section 89, within four months of the date of the knowledge of the transfer, apply to the Court for the said portion or share to be transferred to himself or themselves; and if a holding or a portion or a share of a holding is transferred, the tenant or tenants holding land contiguous to the land transferred may, within 4 months of the date of the knowledge of such transfer, apply to the Court for the holding or portion or share to be transferred to himself or themselves:*
>
> *Provided that no co-sharer tenant or tenant holding land contiguous to the land transferred shall have the right to purchase under this section unless he is a person to whom transfer of the holding or the portion or share thereof, as the case may be, can be made under section 90.*
>
> *(2) In an application made under sub-section (1) by a co-sharer tenant or co-sharer tenants, all other co-sharer tenants of the holding and the transferee shall be made parties; and in such an application made by a tenant holding land contiguous, to the land transferred, all the co-sharer tenants of the holding and all the tenants holding lands contiguous to the land transferred and the transferee shall be made parties.*
>
> *(3)(a) An application made under sub-section (1)shall be dismissed unless the applicant or applicants, at the time of making it, deposit in the Court the amount of the consideration money or the value of the transferred holding or portion or share of the holding as stated in the notice under section 89 or in the deed of transfer, as the case may be, together with compensation at the rate of ten per centum of such amount....."*

From the aforesaid provisions, it appears that sub-section (1) requires an application for pre-emption to be made by a co-sharer within four months from the date of notice of the sale, or within four months from the date of knowledge of the sale when no such notice was issued. This is all that the law requires concerning the question of

special limitation of the provisions. Sub-section (2), as quoted above, is an independent section which provides that in the aforesaid application, all the parties as mentioned in the said sub-section must be impleaded. It must, therefore, be held that an application under section 96 of the Act cannot be maintained without impleading the parties mentioned in sub-section (2). If we now turn to sub-section (3), it would be seen that the law requires dismissal of the application in limine if the necessary amount of money as set out in sub-section (3) is not deposited at the time of making the application.

Considering the aforesaid three sub-sections collectively, the position as it stands is that the limitation of a period of four months as set out in sub-section (1) is solely to make an application. The requirement to impleaded parties, as set out in sub-section (2), is a separate mandate of law and the law of limitation as set out in sub-section (1) does not necessarily attract itself to the provisions of sub-section (2). The words “shall be dismissed” were used in sub-section (3), but a similar word was not used in sub-section 2.

I, therefore, hold that it cannot be held that the pre-emption application was not maintainable because of the facts that necessary parties were impleaded by subsequent amendment after the expiry of the period of limitation as has been laid down in sub-section (1) of the said section 96, when the application for pre-emption itself was made in time. I also hold that the necessary parties may be impleaded by subsequent amendment in the appellate stage, as in the present case, as the appeal is the continuation of trial.

Hence, the appellate Court below rightly passed the impugned judgment and order, and I do not find any scope to interfere with the

impugned judgment and order passed by the appellate court, and do not find any merit in the Rule.

In the result, this Rule is discharged, however, there is no order as to costs.

The order of status quo passed at the time of issuance of the Rule is hereby recalled and vacated.

Send down the L.C.R. along with a copy of this judgment to the concerned court for information and necessary action.

Kashem/BO