

**Present:**

**Mr. Justice Md. Kamrul Hossain Mollah**

**Civil Revision No. 834 of 2017**

**IN THE MATTER OF:**

An application under Section 115(1) of the Code of Civil Procedure

- AND -

**IN THE MATTER OF:**

Abdul Hai Mollah

.....Respondent-Petitioner

-Versus -

Md. Syed Miah @ Kamal Miah

..... Appellant-Opposite Parties

Mr. Diponkar Debnath, Advocate

..... for the petitioner

No one appears

..... For the Opposite Parties

**Heard on 18.10.2023 and  
Judgment on 19.10.2023**

**Md. Kamrul Hossain Mollah, J:**

On an application filed by the petitioner, under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and order dated 21.11.2016 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Brahmanbaria in allowing the Miscellaneous Appeal No. 69 of 2010 and reversing the judgment and order dated 17.08.2010 passed by the learned

Senior Assistant Judge, Kosba, Brahmanbaria in Miscellaneous (Pre-emption) Case No. 12 of 2006 should not be set-aside and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court stayed the operation of the impugned judgment and order dated 21.11.2016 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Brahmanbaria in allowing the Miscellaneous Appeal No. 69 of 2010 and reversing the judgment and order dated 17.08.2010 passed by the learned Senior Assistant Judge, Kosba, Brahmanbaria in Miscellaneous (Pre-emption) Case No. 12 of 2006 for a period of 06 (six) months from date.

Facts necessary for disposal of the Rule, in short, are that out of 90 decimals of land in Dag No. 675 one Ayet Ali purchased 60 decimals land and rest 30 decimals land purchased Fande Ali, Ali Ahmed, Ali Azam, Abdur Rahman, Ali Akbar and Abul Hashem and they all are enjoying the title and possession, of the said land and ROR record was prepared under Khatian No. 132, thereafter, Fande Ali died leaving 2 sons, Ali Ahmed died leaving 2 sons, 1 daughter and 1 wife and they are enjoying the possession and title, over the said land and they sold the suit land to the opposite party No. 1 and handed over the possession and he is the owner of 15 decimal land by inheritance in Dag No. 375 and enjoying the possession and title, of the said land and during enjoying the privilege on the suit land the opposite party No. 1 on 21.04.2003 went to Dubai and after staying a certain period the opposite party No. 1 arrived at home on 18.02.2006 and on 05.06.2006 the preemptor opposite party No. 1 saw the petitioner on the

suit land for clearing grass, thereafter he asked to the petitioner about the suit land and he disclosed that he purchase suit land.

Thereafter, he took the certified copy of the said deed on 06.06.2006 and filed the suit for preemption on 05.07.2006.

The purchaser pre-emptee contested the suit by filing written objection denying the material allegation of the plaint and contended inter alia that he is a farmer and he is the owner of 115 decimals of land adjacent to Dag No. 674 at the northern side of the suit land and enjoying the possession and title of that land more than 12 years and the vendor opposite party No. 2 sold the land on 09.11.2004 to the instant petitioner vide deed No. 4638 and handed over the possession and due to requirement of money opposite party No. 2 in presence of Jitu Mia and Ayes Mia proposed to sell the suit land to his 2 brothers namely Ronu Mia and Fazu Mia, but both of them denied to purchased and the petitioner purchase the suit land with every hardship and the opposite party departed to abroad and become solvent, in the meantime, the value of the suit land increased, so, the opposite party filed the suit for preemption.

After hearing both the parties the learned Senior Assistant Judge, Kosba, Brahmanbaria discharged the Miscellaneous (Preemption) Case No.12 of 2006 by his judgment and order dated 17.08.2010 on the ground that the suit is barred by limitation.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 17.08.2010 passed by the learned Senior Assistant Judge,

Kosba, Brahmanbaria in Miscellaneous (Preemption) Case No.12 of 2006 the opposite parties filed the Miscellaneous Appeal No. 69 of 2010 before the learned District Judge, Brahmanbaria which was transferred to the learned Joint District Judge 2<sup>nd</sup> Court Brahmanbaria after hearing the parties the learned Joint District Judge, 2<sup>nd</sup> Court, Brahmanbaria allowed the said appeal and hereby dismissed the judgment and order dated 17.08.2010 passed by the learned Senior Assistant Judge, Kosba, Brahmanbaria in Miscellaneous (Preemption) Case No.12 of 2006 by his judgment and order dated 21.11.2016.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 21.11.2016 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Brahmanbaria in Miscellaneous Appeal No.69 of 2010 allowing the Appeal, the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and stay.

Mr. Diponkar Debnath, the learned Advocate appearing on behalf of the petitioner submits that the pre-emptor opposite party No.1 went to Dubai on 21.04.2003 and arrived at home on 18.02.2006 and during remain in Dubai he earned money and become solvent and arrived at home on 18.02.2006, he come to know the sale of the suit land on the arrival date, but did not take any step. After passing 4 months 17 days from his arriving date, he filed the pre-emption case, which is barred by limitation.

He further submits that the learned Senior Assistant Judge, Kosba, Brahmanbaria rightly passed the judgment and order dated 17.08.2010, but the learned Joint District Judge, 2<sup>nd</sup> Court, Brahmanbaria erred in law and

facts and passed the impugned judgment and order dated 21.11.2016 wrongly, which is liable to be set-aside.

He next submits that the opposite party No.1 knew the matter of sale of the suit land, but due to shortage of money he denied to purchase the same, which was evaluated from the deposition and the learned Judge of the Appellate Court failed to consider this matter.

The learned Advocate lastly submits that the sale deed was registered on 09.11.2004, but opposite party No.1 filed the suit after 1 year and 7 months 26 days, which is barred by law, the learned Judge of the Appellate Court failed to consider this fact. Accordingly, he prays for making the Rule absolute.

No one appears on behalf of the opposite parties to oppose the Rule, when the matter was taken up for hearing although it appears in the daily cause list several times.

I have perused the revisional application, the impugned judgment and decree of the Courts' below, the submissions of the learned Advocate for the petitioner, the papers and documents as available on the record.

It appears from the record that out of 90 decimals of land in Dag No. 675 one Ayet Ali purchased 60 decimals land and rest 30 decimals land purchased Fande Ali, Ali Ahmed, Ali Azam, Abdur Rahman, Ali Akbar and Abul Hashem and they all are enjoying the title and possession, and ROR record was prepared under Khatian No. 132, thereafter, Fanda Ali died leaving 2 sons, Ali Ahmed died leaving 2 sons, 1 daughter and 1 wife and they are enjoying the possession and title, and they sold the suit land to the opposite party No. 1 and handed over the possession and he is the

owner of 15 decimal land by inheritance in Dag No. 375 and enjoying the possession and title, and during enjoying the privilege on the suit land the opposite party No. 1 on 21.04.2003 went to Dubai and after staying a certain period the opposite party No. 1 arrived at home on 18.02.2006 and on 05.06.2006 the pre-emptor opposite party No. 1 saw the petitioner on the suit land for clearing grass, thereafter he asked to the petitioner about the suit land then the petitioner disclosed that he purchase the suit land. Thereafter, the pre-emption took the certified copy of the said deed on 06.06.2006 and filed the suit for preemption on 05.07.2006.

On the other hand the pre-emptee petitioner case is that the petitioner purchaser pre-emptee is a farmer and he is the owner of 115 decimals of land adjacent to Dag No.674 at the northern side of the suit land and enjoying the possession and title of that land more than 12 years and the vendor opposite party No. 2 sold the land on 09.11.2004 to the instant petitioner vide deed No. 4638 and handed over the possession and due to requirement of money opposite party No. 2 in presence of Jitu Mia and Ayes Mia proposed to sell the suit land to his 2 brothers namely Ronu Mia and Fazu Mia, but both of them denied to purchased and the petitioner purchase the suit land with every hardship and the opposite party went to abroad and become solvent, in the meantime the value of the suit land increased, so, the opposite party filed the suit for preemption. After hearing both the parties the learned Senior Assistant Judge, Kosba, Brahmanbaria discharged the Miscellaneous (Preemption) Case No.12 of 2006 by his

judgment and order dated 17.08.2010 on the ground that suit is barred by limitation

Being aggrieved by and dissatisfied with the impugned judgment and order dated 17.08.2010 passed by the learned Senior Assistant Judge, Kosba, Brahmanbaria in Miscellaneous (Preemption) Case No.12 of 2006.

Being aggrieved the opposite parties filed the Miscellaneous Appeal No. 69 of 2010 before the learned District Judge Brahmanbaria , and thereafter the aforesaid appeal transferred to the learned Joint District Judge, 2<sup>nd</sup> Court, Brahmanbaria. After hearing the parties the learned Joint District Judge, 2<sup>nd</sup> Court, Brahmanbaria allowed the said appeal and hereby set-aside the judgment and order dated 17.08.2010 passed by the learned Senior Assistant Judge, Kosba, Brahmanbaria in Miscellaneous (Preemption) Case No.12 of 2006 by his judgment and order dated 21.11.2016 rightly, which is maintainable in the eye of law.

Upon careful scrutiny further it appears that the learned Senior Assistant Judge, Kosba, Brahmanbaria took decision that the opposite party No.1 knew about the sale of suit land from the beginning. But he did not take any step. So, the suit is barred by limitation. In taking such a decision, the learned Senior Assistant Judge, Kosba, Brahmanbaria assumed that the opposite party No.1 had prior knowledge of the suit deed due to his contact with his wife in Bangladesh while he was abroad. There is no legal basis for such assumption by the lower Court. Because there is no logical reason to assume that the opposite party No.1 would have prior knowledge of the suit deed, if he had contact with his wife. Moreover, the witnesses of the

respondent No.1 have all stated in their evidence that the opposite party No.1 was abroad at the time of registration of the suit deed and the opposite party No.1 was not asked for the purchase of the suit land. It is proved by the testimony of the witnesses of the respondent No.1 that the opposite party No.1 had no prior knowledge about the sale of the suit land. On the other hand, the opposite party No.1 has proved through their oral and documentary evidence that the opposite party No.1 was correctly aware about the sale of suit land on 06.06.2006 by extracting the Jabeda copy of the suit deed. Accordingly, learned Senior Assistant Judge, Kosba, Brahmanbaria passed the judgment and order dated 17.08.2010 in Miscellaneous (Preemption) Case No.12 of 2006 discharging the same for barred by limitation is not tenable in the eye of law. On the other hand, the judgment and order dated 21.11.2016 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Brahmanbaria in Miscellaneous Appeal No.69 of 2010 allowing the Appeal rightly.

It is also found from the record that when the suit land was transferred by the sale deed no. 4638 dated 9.11.2004, then the pre-emptor opposite party was staying in Dubai and this transfer of land was beyond his knowledge. The pre-emptor opposite party also mention that when he come back to home and saw the petitioner on the suit land then he disclosed that he purchase the land. Thereafter he took the certified copy of the sale deed on 6.6.2006 and he filed the pre-emption case on 5.07.2006 and all the facts he described in his petition That is proved by the evidences of witnesses. So the suit not time bird. It is also found for the evidence on



recorded that pre-emptor opposite party is the co-sharer by inheritance in the suit jote on the other hand pre-emptor petitioner is a Stanger purchaser.

Considering the above facts and circumstances and materials on record, in this case it is my view that the learned Joint District Judge, 2<sup>nd</sup> Court, Brahmanbaria rightly passed the judgment and order dated 21.11.2016 in Miscellaneous Appeal No.69 of 2010 is maintainable in the eye of law and I do not find any substance to interference into the said judgment and order and I find substance in the submission of the learned Advocate for the opposite parties.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and decree dated 21.11.2016 passed the judgment and order dated 21.11.2016 in Miscellaneous Appeal No.69 of 2010 allowing the Appeal and thereby set-aside the judgment and order dated 17.08.2010 passed by the learned Senior Assistant Judge, Kosba, Brahmanbaria in Miscellaneous (Preemption) Case No.12 of 2006 is hereby upheld and confirmed.

The order of stay granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

Let a copy of this judgment and order with L.C.R be sent to the concerned Court below at once.