

District- Jessore

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

Present:

Mr Justice Md Atoar Rahman

Civil Revision No. 4187 of 1996

Md. Golam Mustofa

...pre-emptor-petitioner

- versus-

Mst. Rahima Khatun and others

...pre-emptee- opposite parties

No one appears

....for the pre-emptor-petitioner

No one appears

... for the pre-emptee- opposite parties.

Judgment on: 10.03.2024

This Rule was issued on an application under section 115 of the Code of Civil Procedure calling upon the opposite parties No. 1-2 to show cause as to why the judgment and order dated 03.10.1996 passed in Miscellaneous Appeal No. 01 of 1995 by the learned Additional District Judge, Jessore reversing the judgment and order dated 28.11.1994 passed in Miscellaneous Case No. 21 of 1994 by the learned Assistant Judge, Monirampur should not be set aside and/or passed such other or further order or orders as to this court may seem fit and proper.

The short facts for the purpose of disposal of the Rule are that the petitioner as pre-emptor filed a Miscellaneous Case being No. 21 of 1994 under section 96 of the State Acquisition and Tenancy Act for pre-emption in the Court of Assistant Judge, Monirampur, Jessore against the opposite parties stating *inter alia* that the suit plots were

originally belonged to Ezaharuddin Biswas who died leaving the pre-emptor petitioner and seller opposite party and others. On 12.01.1994 the pre-emptor-petitioner for the first time came to know that his brother Abdul Kader Biswas sold his share to the opposite party No. 1 who is a stranger to the holding by the registered deed dated 23.02.1992 without serving any notice upon him under section 89 of the State Acquisition and Tenancy Act and hence the case for pre-emption.

The purchaser opposite party contested the case by filing written objection stating *inter alia* that the pre-emption miscellaneous case was barred by limitation and principle of weaver, estoppels and acquiescence.

Learned trial judge after hearing both the parties and considering the evidence on record allowed the pre-emption case by his judgment and order dated 28.11.1994 against which the pre-emptee opposite party preferred an appeal being Miscellaneous Appeal No. 01 of 1994 in the Court of District Judge, Jessore. On transfer the appeal was heard by the learned Additional District Judge, Jessore who by the impugned judgment and order dated 09.10.1996 allowed the appeal holding that the miscellaneous case was hopelessly barred by limitation.

Being aggrieved by and dissatisfied with the above judgment and order passed by the appellate court the pre-emptor-petitioner moved

this court with an application under section 115 of the Code of Civil Procedure and obtained the present Rule.

No one appears for either of the parties.

I have perused the application and the record along with the impugned judgment and other connected papers on record.

It transpires that the deed of sale in question (exhibit-2) was registered under section 60 of the Registration Act on 23.02.1992 and the miscellaneous case was filed on 13.02.1994, almost after 2 years from completion of registration of the deed of sale. Thus, apparently it is found that the case was barred by limitation. However, the pre-emptor petitioner claimed that he for the first time on 12.01.1994 came to know about the impugned sale from his Borgadar, Sirajul Islam. In support of his contention the pre-emptor as PW 1 during cross examination stated that on 19th Poush he heard about the sale from his Borgadar, Sirajul Islam. But said Sirajul Islam during examination in chief as PW 3 stated that he had informed the pre-emptor about the impugned transfer on 29th Poush which is not corroborative to the PW 1. Learned judge of the appellate court considering this aspect and other facts and circumstances found that actually the pre-emptor petitioner was aware about the sale from very beginning and he could not prove that he for the first time on 12.01.1994 heard about the sale from PW 3.

In view of the above discussions, I am of the opinion that as the final court of facts the appellate court found that the miscellaneous case was barred by limitation and I do not find any commission of error of law in deciding the miscellaneous appeal occasioning failure of justice by the appellate court. Thus, the Rule does not have merit and accordingly the same is liable to be discharged.

In the result, the Rule is discharged without any order as to cost.

The impugned judgment and order is hereby affirmed. The pre-emptor-petitioner is entitled to withdraw the consideration money if deposited.

Let the lower courts' records along with a copy of this judgment be transmitted at once.