

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 4416 OF 1995

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Abdus Samad

--- Preemptor-Petitioner.

-Versus-

Md. Abdul Hye and others

--- Preemptee-Opposite Parties.

Mr. Subrata Saha, Advocate

--- For the Petitioner.

Mr. Mohammad Kamal Hossain, Advocate

---For the opposite parties.

Heard on: 24.07.2023, 27.07.2023,
30.07.2023 and 08.08.2023.

Judgment on: 30.08.2023.

At the instance of the present preemptor-petitioner, Md. Abdus Samad, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1 only to show cause as to why the impugned judgment and order dated 28.06.1995 passed by the then learned Subordinate Judge, Court No. 1, Sherpur in the Miscellaneous Appeal No. 07 of 1994 reversing the judgment and order dated 07.02.1994 passed by the learned Assistant

Judge, Additional Court, Sherpur in the Preemption Case No. 425 of 1973 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioner as the preemptor filed the Preemption Case No. 425 of 1973 in the court of the then Munsif, Sherpur claiming a right of preemption under section 96 of the State Acquisition & Tenancy Act, 1950 claiming that total land measuring 1.40 acres was recorded in S. A. Khatian No. 1052 which belonged to opposite party Nos. 2 and 3. It is further claimed that the preemptor executed a purchase deed dated 28.04.1973 and it was registered on 30.04.1973 for purchasing land measuring 50 decimals and thereby he became a co-owner by the purchase land measuring 35 decimals from the same jote (জোত). It is further claimed that the preemptee- opposite party No. 1, namely, Md. Abdul Hye, now deceased and also substituted by his legal heirs, purchased $28\frac{1}{2}$ decimals of land from the opposite party No. 2, namely, Sree Shatta Ranjan Hori by a registered sale deed No. 7266 dated 30.04.1973 without serving any notice under section 96 of the State Acquisition & Tenancy Act, 1950.

The present preemptee- opposite party No. 1 contested the suit by filing a written objection contending, *inter alia*, that the preemptor is not a co-sharer in the case land. The preemptor manipulated the sale deed No. 7266 which was executed on 28.04.1973 and registered on 30.04.1973 by managing the Registry Office in order to show the sale deed subsequently. It is further contended that after the purchase of the said land the preemptee- opposite party No. 1 made improvement for making the land for cultivation and other things at the cost of huge money.

The case was heard by the learned Assistant Judge, Sherpur after obtaining and examining the depositions of PWs and DWs and after the conclusion of the hearing the learned Assistant Judge, Sherpur allowed the preemption case by the judgment and order dated 07.02.1994. Being aggrieved the present preemptee-opposite party No. 1 filed the Miscellaneous Appeal No. 07 of 1994 in the court of the learned District Judge, Sherpur which was subsequently heard by the then learned Subordinate Judge, Court No. 1, Sherpur who after hearing the parties and considering the evidence reversed the judgment of the learned trial court by dismissing the preemption case. Being

aggrieved the present petitioner as the preemptor filed this revisional application challenging the legality of the impugned judgment of the learned appellate court below and this Rule was issued thereupon.

Mr. Subrata Saha, the learned Senior Counsel, appearing on behalf of the preemptor-petitioner submits that in the face of the clear findings by the trial court, the preemptor's deed of purchase bearing No. 7266 executed on 28.04.1973 and registered on 30.04.1973 is earlier both in respect of execution and registration than the disputed sale deed No. 7280, as such, the preemptor is a co-sharer to the case land is entitled to preemption and the learned court of appeal below evidently erred in law in holding that the date of execution is totally irrelevant in deciding the question of co-shares in the jote (জোত) and the same has resulted in error in the impugned decision occasioning a failure of justice.

The learned Advocate also submits that the preemptor-petitioner accrued the right of preemption under section 96(4) of the Act, 1950, as such, the learned trial court allowed the preemption case, whereas, the learned appellate court below committed an error of law by disallowing the appeal thereby

reversing the judgment of the learned trial court, as such, the Rule should be made absolute.

The present Rule has been opposed by the present preemptee-opposite parties.

Mr. Mohammad Kamal Hossain, the learned Advocate, appearing for the present opposite parties submits that the learned trial court committed an error of law without considering the proper sale deed of the suit land by the preemptee-opposite party No. 2 to the preemptee opposite party No. 1 when the present preemptor was not a co-sharer but the learned appellate court below properly considered the case of the preemptee opposite party and thereby came to a conclusion to disallow the preemption case by reversing the judgment and order of the learned trial court, as such, the Rule is liable to be discharged.

The learned Advocate further submits that the preemptor has manipulated the registered deed No. 7280 dated 30.04.1973 in order to become a co-sharer in the same jote (জোত) thereby the learned appellate court below committed no error of law under the provision of section 96 of the Act, 1950 by raising a question of registration on the same date by the preemptor for the land

measuring $28\frac{1}{2}$ decimals, as such, the Rule is liable to be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and order passed by the learned appellate court below and also perusing the very old documents adduced and produced by the respective parties by way of depositions as PWs and DWs in the learned courts below which have been included in the lower courts records, it appears to me that the present preemptor as a petitioner filed a preemption case seeking a preemption right under section 96 of the State Acquisition & Tenancy Act, 1950 upon a claim that by purchasing the land within the same jote (জোত) and he became a co-sharer by registering a deed on 30.04.1973. The case land was sold without serving any notice by the preemptee- opposite party No. 2 in favour of the preemptee- opposite party No. 1 and the same was registered on 28.04.1973. However, the preemptee- opposite party claimed that the sale deed was executed on

28.04.1973 but it was shown to have been on the same date i.e. 30.04.1973 in order to claim a co-sharer.

In view of the above, this court has to take a decision on whether the preemptor-petitioner could prove its own case by adducing and producing sufficient evidence. In order to answer the above question, I have carefully examined the documents adduced and produced by the parties in order to prove their respective cases. Under the provision of section 96 of the Act, 1950 a registration of a sale deed is considered to be registered as soon as the deed of sale is entered into the volume of the registry office. I have noticed that none of the parties have shown their evidence in order to record of the volume of the registry office. However, the preemptor shown to have purchased the suit land on the same date as the date of the impugned sale deed by the preemptee- opposite party No. 2 to the preemptee- opposite party No. 1. Accordingly, the law requires a date of registration for acquiring a right of preemption on the basis of the date of registration, as such, the preemptee- purchaser cannot be sold as a stranger, therefore, I consider that the learned trial court committed an error of law by allowing the preemption case. However, the learned appellate court below rightly decided that

the preemptee- purchaser had validated his purchase when the preemptor was not a co-sharer in the same jote as required by law. Now, I am examining the conflicting judgment and order passed by the learned courts below.

The learned trial court committed an error of law by finding its decision on the basis of the following manner:

...“অধিকন্তু প্রার্থী তাহাকে মামলায় হয়রানী ও ক্ষতিগ্রস্ত করার কথা জেরায় স্বীকার করিয়াছেন। প্রার্থীর দাখিলী দলিল প্রদর্শনী ১ প্রতীয়মান হয় যে, প্রার্থী ২৮.০৪.১৯৭৩ ইং তারিখে সম্পাদিত ও ৩০.০৪.১৯৭৩ ইং তারিখে রেজিস্ট্রিকৃত সাফ কবলা দলিল মূলে নালিশী জোতের শরীক প্রজা হইয়াছেন। প্রার্থী জেরায় উল্লেখ করেন যে, তাহার খরিদা দলিলটি ২৮.০৪.১৯৭৩ ইং তারিখে সকাল ৯ টায় লেখা হয়। এবং দাতার বাড়ীতে গিয়া সম্পাদন করা হয়। এই ক্ষেত্রে আরো উল্লেখ্য যে, প্রতিযোগী প্রতিপক্ষ উভয় দলিল একই তারিখে সম্পাদনের এবং প্রার্থীর দলিলের পরে ১ নং প্রতিপক্ষের দলিল লেখা ও সম্পাদন হওয়ার প্রার্থীর দাবী সরাসরি অস্বীকার করেন নাই। প্রতিপক্ষের মতে, প্রার্থীর দলিলটি ৩০.০৪.১৯৭৩ ইং তারিখে লেখা ও সম্পাদন করিয়া প্রতারণা ও যোগসাজসে ২৮.০৪.১৯৭৩ ইং পূর্বতন তারিখ যুক্ত করিয়াছেন। প্রতিযোগী প্রতিপক্ষ তাহার এই দাবী প্রমাণে সম্পূর্ণ ব্যর্থ হইয়াছেন। তাহার স্বীকৃত মতেই প্রতারণা ও চক্রান্ত করিয়া প্রার্থীর দলিল করার বিষয়ে এবং কাহার কাহার দ্বারা প্রতারণা করা হইয়াছে সে সম্পর্কে ১ নং প্রতিপক্ষ কিংবা তাহার মৌখিক সাক্ষীদের প্রত্যক্ষ জানা নাই।”...

On the other hand, the learned appellate court below lawfully disallowed the appeal preferred by the preemptor-petitioner on the basis of the following findings:

...“এমতাবস্থায় একই দিনে একটি দলিল সম্পাদিত ও রেজিঃকৃত হওয়ার জন্য উপস্থাপিত হওয়ার পর কিছুটা আগে পরে রেজিঃ হওয়ার জন্য এমনকি যে কাজের উপর প্রার্থীর কোন হাত ছিল না সেই কারণে প্রার্থী নাঃ জোতে শরিক ও ১ নং প্রতিপক্ষ আগন্তুক সাব্যস্ত হইবেন বলিয়া আমি উপরে আলোচিত সার্বিক দিক বিবেচনায় ও পর্যালোচনায় মনে করি না।

উপরের আলোচনার আলোকে প্রমাণিত হইল যে, প্রার্থী তৎখরিদা দলিল প্রদর্শিত- ১ মূলে ও ১ নং প্রতিপক্ষ নাঃ দলিল প্রদর্শিত- ২ মূলে একই দিনে নাঃ জোতে শরিক প্রজা সাব্যস্ত হইয়াছেন। নাঃ জোতে ১ নং প্রতিপক্ষও শরিক প্রজা সাব্যস্ত হওয়ায় তাহার বিরুদ্ধে অত্র প্রিয়েমশন মোকদ্দমা অচল।”...

In view of the above conflicting decision I find that the learned appellate court below committed no error of law and there is no misreading of the Act, 1950 as well as evidence produced by the respective parties by reversing the judgment of the learned trial court who without applying his judicial mind came to a wrongful decision which is liable to be discharged.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and order dated 28.06.1995 passed by the then learned Subordinate Judge, Court No. 1, Sherpur in the Miscellaneous Appeal No. 07 of 1994 is hereby upheld.

The judgment and order dated 07.02.1994 passed by the learned Assistant Judge, Additional Court, Sherpur in the Preemption Case No. 425 of 1974 is hereby *set aside*.

The concerned section of this court is hereby directed to send down the lower court records along with a copy of this judgment and order to the learned courts below immediately.