

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3488 OF 2017

In the matter of:

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

And

Shree Bed Kantha Sarker

.... Petitioner

-Versus-

Shree Rabindranath Biswas and others

.... Opposite parties

Mr. Bivash Chandra Biswas, Advocate

.... For the petitioner.

Mr. A. H. M. Obaydul Kabir, Advocate

.... For the opposite party

No.1.

Heard on 20.02.2025 and Judgment on 16.03.2025.

On an application 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 23.08.2017 passed by the learned Senior District Judge, Jashore in Miscellaneous Appeal No.38 of 2016 disallowed the appeal and thereby affirming the judgment and order dated 31.08.2016 passed by the learned Assistant Judge, Keshabpur, Jashore in Miscellaneous Case No.23 of 2010 should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as petitioner instituted Miscellaneous Case No.23 of 2010 under Section 96 of the State Acquisition and Tenancy Act, 1950 for pre-emption against registered kabla deed dated 27.09.2009 executed by opposite party No.2 in favour of opposite party No.1 transferring 23 decimal land appertaining to S. A. Khatian Nos.166 and 252.

It was alleged that the petitioner is a co-sharer by inheritance in above holding but opposite party No.1 is a stranger. Opposite party No.2 transferred above land to opposite party No.1 without any notice upon the petitioner and the petitioner came to know about the impugned kabla deed on 25.07.2010 and filed this case within the statutory period of limitation.

Opposite party No.1 contested above case by filing a written objection alleging that the petitioner mediated the transfer of above 23 decimal land by opposite party No.2 to opposite party No.1 and on his advice consideration money of above kabla deed was written as Taka 2,00,000/- instead of Taka 2,50,000/- to reduce registration cost. Opposite party No.2 after acquiring above land from her father by registered deed of gift dated 02.12.1991 mutated her name and created separate Khatian by Miscellaneous Case No.184/IX-1/09-10 for above 23 decimal land on observing due process. After above separation of the holding the petitioner ceased to be a co-sharer of above holding. After purchase of above land opposite party has constructed a pacca dwelling house and living in the same along with the members of his family.

Opposite party No.1 does not have any other land or dwelling hut and if above pre-emption is allowed the opposite party No.1 will become a landless and homeless person.

At trial the petitioner and opposite party examined two witnesses each. Documents of the petitioner were marked as Exhibit Nos.1-9 and those of the opposite party were marked as Exhibit No."Ka" and "Kha".

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge dismissed the case.

Being aggrieved by above judgment and order of the trial Court above petitioner as appellant preferred Miscellaneous Appeal No.48 of 2016 to the District Judge, Jashore who dismissed the appeal and affirmed the judgment and order of the trial Court.

Being aggrieved by and dissatisfied with above judgment and order of the Court of Appeal below above appellant as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Bivash Chandra Biswas, learned Advocate for the petitioner participated in partial hearing of this Rule and obtained one week adjournment but today no one appears on behalf of the petitioner for conclusion of hearing.

Mr. A. H. M. Obaydul Kabir, learned Advocate for opposite party No.1 submits that the opposite party No.1 has made specific mention in the written objection that opposite party No.2 got her name mutated and created a separate khatian being No.251/1 after observing due

process vide Miscellaneous Case No.184/IX-1/09-10 and was in possession in above property by paying rent to the Government and thereafter she transferred above 23 decimal land to the opposite party No.1 by registered kabla deed dated 27.09.2009. After above separation of the holding and creation of new Khatian being No.251/1 in the name of opposite party No.2 the petitioner ceased to be a co-sharer in above holding.

The petitioner did not make any specific averment as to above specific case of opposite party No.1 by amendment of the plaint. While giving evidence as PW1 the petitioner did not mention anything about separation of the holding by opposite party No.2 by above Miscellaneous Case. In cross examination PW1 merely expressed his ignorance as to whether opposite party No.2 separated above holding and created separate khatian vide Miscellaneous Case No.184/IX-1/09-10. PW2 Nironjon Sarkar admitted that after getting disputed 23 decimal land by gift from her father opposite party No.2 got her name mutated and created a separate holding.

It is admitted that after purchase of above land opposite party No.1 has constructed a pacca dwelling house in the disputed land and he is living in the above house along with the members of his family and he has no other land or dwelling house and if this case is allowed opposite party No.1 will become a landless and homeless person. Section 6 of Ordinance No.1 of 1984 prohibits the eviction of any person in the rural area from his dwelling house and this case is barred by

above provision of Ordinance No.1 of 1984. In support of above submissions the learned Advocate referred to the case law reported in 19 ALR (HCD) 2020 at Page No.114.

I have considered the submissions of the learned Advocate for opposite party No.1 and carefully examined all materials on record including the pleadings, judgments of the both the Courts below and evidence.

This case under Section 96 of the State Acquisition and Tenancy Act, 1950 has been filed against registered kabla deed dated 27.09.2009 executed by opposite party No.2 in favour of opposite party No.1 (Exhibit No.2). In the schedule to the petition the disputed land has been described as 23 decimal land appertaining to S. A. Khatian Nos.166 and 256. But it turns out from the impugned kabla dated 27.09.2009 (Exhibit No.2) that 23 decimal land of mutation and Separate Khatian Holding No.252/1 was transferred by above kabla deed. The petitioner has claimed to be co-sharer by inheritance of S. A. Khatian Nos.166 and 252 but by the impugned kabla deed no land of above khatians were transferred. The petitioner did not claim that he is also a co-sharer of Khatian No.252/1 nor there is any claim that above separate khatian was not created in accordance with the provision of the State Acquisition and Tenancy Act, 1950.

It has been alleged by the petitioner that opposite party No.2 after acquiring disputed 23 decimal land from her father by registered gift deed got her name mutated and separated above holdings and created

a new khatian in her name being Khatian No.252/1 by Miscellaneous Case No.184/IX-1/09-10 and petitioner ceased to be a co-sharer of the above property. While giving evidence as OPW1 opposite party No.1 has produced a certified copy of order dated 23.08.2009 passed in Miscellaneous Case No.184/IX/09-10 which was marked as Exhibit No."Ka". Above document proves above claim of opposite party No.1 that separate Khatian No.252/1 was created for disputed 23 decimal land in the name of opposite party No.2.

While giving evidence as PW1 the petitioner did not mention anything about above separation of holding or above Miscellaneous Case. In cross examination he merely stated that he did not know if opposite party No.2 separated the holdings and created new Khatian No.252/1 for above 23 decimal land before transfer of disputed land to opposite party No.1. PW2 Nironjon Sarker has admitted in cross examination that opposite party No.2 after acquiring disputed land got her name mutated and separated the holdings.

In view of above evidence on record I hold that the concurrent findings of the Courts below that opposite party No.2 after acquiring 23 dismissal land including disputed land from her father separated the holding and created new Khatian No.252/1 and the petitioner ceased to be a co-sharer of above holding are based on evidence on record and this Court cannot in its revisional jurisdiction interfere with above concurrent findings of facts.

It has been stated in the written objection that the petitioner himself mediated purchase of disputed land by opposite party No.1 and he fixed the price of above land at Taka 2,50,000/- and on his advice the consideration of above kabla deed was falsely mentioned to be written Taka 2,00,000/- to reduce registration cost. While giving evidence as OPW1 opposite party No.1 has reiterated above claims and OPW2 Dulal Chandra Biswas has corroborated above claim of the opposite party No.1. Above OPWs were cross examined by the petitioner but their evidence remained consistent and credence inspiring.

It is admitted that the nature of the disputed land is viti land and after purchase of above land opposite party No.1 has constructed dwelling house and living in the same along with the members of his family and he did not have any other land or home. In his evidence as OPW1 opposite party No.1 has reiterated above claims as set out in his written objection and stated that if above case is allowed he will become a homeless and landless person. Learned Advocate for the opposite party No.1 submits that that the disputed land is a dwelling house in a rural area and allowing this case will result into eviction of the opposite party No.1 from his dwelling house and making a homeless person. As such above case is barred by Section 6 of Ordinance No.1 of 1984. In support of above submissions the learned Advocate referred to the case law reported in 19 ALR (HCD) 2020 at Page No.114 which runs as follows:-

“19. The obvious consequence or ultimate outcome of a pre-emption case is, if allowed, the pre-emptor will be substituted in the impugned kabla deed in place of the pre-emptees and the Court shall evict the pre-emptees from the case land and deliver possession to the pre-emptor. In this particular case allowing the case will result into eviction of opposite party No.2 from his homestead or dwelling hut. Section 6 of the Land Reforms Ordinance, 1984 (Ordinance No.10 of 1984) which came into force on 26.01.1984 prohibits such dispossession of an owner of a homestead in rural area by any legal process. Section 3 of above Ordinance gives an overriding effect of above provision on any other law. Sections 3 and 6 of above mentioned Ordinance No.10 of 1984 are reproduced below:-

“3. Ordinance to override other laws, etc.-
the provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or, in any custom or usage or in any contract or instrument.”

“6. No eviction or, etc., from homestead.-
Any land used as a homestead by its

owner in the rural area shall be exempted from all legal processes, including seizure, distress, attachment or sale by any officer, Court or any other authority and the owner of such land shall not be divested or dispossessed of the land or evicted the reform by any means.”

20. Since undisputedly opposite party No.1 owner of the case land which is a homestead and situated in a rural area and opposite party No.2 is living in a hut in the case land they are protected against eviction by Section 6 of above Ordinance.

21. Pre-emption as provided by Section 96 of the State Acquisition and Tenancy Act, 1950 is a statutory right but Ordinance No.10 of 1984 is a subsequent legislation with an overriding clause. Since the subject matter of the impugned kabla deed is a homestead in the rural area, opposite parties right to pre-emption is barred by Section 6 of the Ordinance No.10 of 1984.”

On consideration of facts and circumstances of the case and evidence on record I hold that above case law fully applies to this case in hand and the right to pre-emption of the petitioner is barred by Section 6 of Ordinance No.1 of 1984.

In above view of the materials on record I am unable to find any illegality or irregularity in the impugned judgment and order of the Court of Appeal below nor I find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there is no order as to cost.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER