

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3939 OF 2017

In the matter of:

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

And

Omar Ali Sheikh

... Petitioner

-Versus-

Abdur Rouf Gazi and others

... Opposite parties

Mr. Sasti Sarker with

Mr. Mohammad Samsul Islam, Advocates

.... For the petitioner.

Mr. Chanchal Kumar Biswas, Advocate

.... For the opposite party No.1.

Heard on 07.11.2024 and Judgment on 27.11.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 25.09.2017 passed by the learned Joint District Judge, 2nd Court, Bagerhat in Miscellaneous Appeal No.84 of 2002 rejecting the appeal thereby affirming the judgment and order dated 15.09.2002 passed by the Assistant Judge, Rampal, Bagerhat in Miscellaneous Case No.106 of 2000 allowing the pre-emption case 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 opposite party as petitioner instituted above Miscellaneous Case under Section 96 of the State Acquisition and

Tenancy Act, 1950 for pre-emption against registered kabala deed dated 14.11.2000 alleging that the petitioner was a co-sharer by purchases in above holding by registered kabala deed dated 20.10.1998 and he was not notified about above transfer of disputed 0.2650 decimal land by above kabala deed.

Opposite party No.1 contested above case by filling a written objection on 06.02.2001 alleging that the petitioner was not a co-sharer by purchase but the opposite party was a co-sharer by purchase in the disputed holding by registered kabala deed dated 24.06.1992. Subsequently on 08.05.2002 the opposite party submitted a petition seeking a rateable pre-emption of disputed land admitting that the petitioner was also a co-sharer by purchase in the disputed holding.

At trial petitioner examined 1 witness and opposite party examined 2 witnesses and documents of the petitioner were marked as Exhibit No.1 and 2 and that of the opposite party was marked as Exhibit No.'Ka'.

On consideration of facts and circumstances of the case and evidence on record the learned judge of the trial court allowed above case and granted pre-emption to the petitioner.

Being aggrieved by above judgment and order of the trial Court opposite party No.1 preferred Miscellaneous Appeal No.84 of 2002 to the District Judge, Bagerhat which was heard by the learned Joint

District Judge, 2nd Court who dismissed the appeal and affirmed the judgment and order of the trial Court.

Being aggrieved by above judgment and order of the Court of Appeal below above appellant as petitioner moved to this Court and obtained this Rule.

Mr. Shasti Sarker, learned Advocate for the petitioner submits that admittedly petitioner and opposite party No.1 both were co-shares in the disputed holding by purchase and the petitioner became a co-sharer by purchases in above holding before the opposite party No.1. The opposite party No.1 first contested the suit on an assumption that opposite party was not a co-sharer in the disputed joma but when he became aware that the opposite party was a co-sharer by purchase he submitted a petition on 08.05.2002 for rateable pre-emption. The learned of judges of the Courts below have rejected above petition for rateable pre-emption of the petitioner on the mere ground that above petition was filed beyond the statutory period of limitation of two months as has been provided in Section 96(3) of the State Acquisition and Tenancy Act, 1950. But the learned Judges of the Court below failed to appreciate that the petitioner was the pre-emptee co-sharer and his intention was to defeat the pre-emption petition of the opposite party and retain the total disputed land which he purchased and he submitted the petition for rateable pre-emption before trial of the case.

In support of above submission the learned advocate refers to the case law reported in 27 BLT (AD) Page- 11 which reads as follows:

“In the context, we must state that nowhere in Section 96 of the Act, 1950 it has been stipulated that the right of a co-share as co-preemptor shall be denied or defeated if he comes late with the prayer for pre-emption of the case land and similarly there is nothing in Section 96 to deny the right of a co-preemptor on the ground of the decree of necessity”.

The learned Judge of Court of appeal below committed serious error in understanding the facts of the case and the relevant laws and most illegally affirmed the flawed judgment and order of the trial Court which is not tenable in law, concluded the learned Advocate.

On the other hand Mr. Chanchal Kumar Biswas, learned Advocate for opposite party No.1 submits that Section 96(3) of the State Acquisition and Tenancy Act, 1950 clearly mentions that any co-sharer of the disputed holding interested to be added as a co-applicant to seek rateable pre-emption he must file an application for rateable pre-emption within two months from the date of receipt of the notice of the case. Undisputedly opposite party No.1 filed written objection on 06.02.2001 but he submitted the petition for rateable pre-emption on 08.05.2002 long after the expiry of statutory period of two months. On

consideration of above facts and circumstances of the case and evidence on record the learned Judges of the Courts below have rightly rejected the petition of the petitioner for rateable pre-emption and allowed the pre-emption of the opposite party which calls for no interference. In support of above submission the learned advocate refers to the case laws reported in 1985 BLD (Ad) Page-82, 45 DLR (AD) Page-132, 30 BLD (AD), Page-41, 64 DLR (AD) Page-133 and 76 DLR (AD) Page-204.

I have considered the submissions of the learned Advocates for respective parties and carefully examined all materials on record.

It is admitted that opposite party No.1 is a co-sharer of the disputed holding by purchase by registered kabala deed dated 20.10.1998 and the petitioner was a co-sharer by purchase in above holding pursuant to registered kabala deed dated 24.06.1992. The petitioner submitted a written objection on 06.02.2001 in order to resist the pre-emption application of the opposite party No.1 on the ground that opposite party No.1 was not at all a co-sharer of the disputed holding. But on 08.05.2002 the petitioner submitted a petition for rateable pre-emption admitting that the opposite party No.1 was also a co-sharer by purchase of the disputed holding. In this case both the preemptor and the pre-emptee stand on the same status and both of them are co-sharer in the disputed holding by purchase.

When the petitioner purchased disputed land by impugned kabala deed dated 14.11.2000 (Exhibit No.2) he wanted to keep total

disputed land and by submitting the written objection on 06.02.2001 he tried to resist the pre-emption application on an assumption that petitioner was not at all a co-sharer in the disputed holding. As soon as he understood that petitioner is also a co-sharer by purchase he submitted a petition for rateable pre-emption on 08.05.2002 before the trial of the case. The law provides that any co-sharer who wants a rateable pre-emption must come within two months of the service of notice of the transfer but the petitioner was not an ordinary co-sharers of the holding he was the pre-emptee and co-sharer of the holding of the same status like the pre-emptor who was not required to make deposit under Section 96(8) of the State Acquisition and Tenancy Act, 1950 like other co-sharers.

The intention of the petitioner was to have the total disputed land and by submitting the petition for a rateable pre-emption on 08.05.2002 the petitioner admitted the right of the opposite party as a co-sharer by purchase and sought rateable pre-emption.

In above view of the materials on record I hold that the case law referred to above by the learned Advocate for the petitioner is applicable in this case and the facts and circumstances of the case laws referred to above by the learned Advocate for the opposite party No.1 is quite distinguishable from the facts and circumstance of the case in hand and those are not applicable in this case.

The learned judge of the Court of Appeal below committed serious illegality in rejecting the petition for rateable pre-emption filed by the petitioner which is not tenable in law.

In above view of the facts and circumstances of the case and evidence on record I find substance in this Civil Revision and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and order dated 25.09.2017 passed by the learned Joint District Judge, 2nd Court, Bagerhat in Miscellaneous Appeal No.84 of 2002 affirming the judgment and order dated 15.09.2002 passed by the Assistant Judge, Rampal, Bagerhat in Miscellaneous Case No.106 of 2000 is set aside and above Miscellaneous Case is allowed in part for $13\frac{1}{4}$ decimal land and petitioner is granted rateable pre-emption for the rest half land of the impugned kabala deed. The opposite party No.1 can withdraw half of the deposited money and the petitioner shall withdraw the rest depositing money.

However, there is no order as to costs.

Send down the lower Courts records immediately.