

District-Gaibandha.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 2131 of 2017.

Md. Mukul Bepari.

.....Pre-emptor -Respondent-Petitioner.

-Versus-

Mst. Nurjahan Begum.

.....Purchaser-Opposite party-Respondent-
Opposite Party No.1.

Md. Mukru Bepari.

.....Seller-Opposite party-Respondents-
Opposite Party No.2.

Ghina Bepari alias Mir Hossain and others.

.....Opposite Party-Respondent- Opposite Party Nos.3-19.

Mr. A.B.M. Matiur Rahman Rahman, Advocate with
Mr. Md. Shahabuddin Khan, Advocate and
Ms. Shahana Sayed, Advocate

..... For the Pre-emptor -Respondent-Petitioner.

Mr. Md. Faizullah, Advocate

.....For the opposite party Nos. 1 & 2.

No one appears.

.....For the -Opposite Party Nos.3-19.

Heard On: 26.06.2025.

And

Date of Judgment: 1st Day of July 2025.

Md. Toufiq Inam, J.

This revisional application is directed against the appellate judgment and order dated 15.03.2017 passed by the learned District Judge, Gaibandha in Miscellaneous Appeal No. 74 of 2014, reversing the judgment and order dated 15.09.2014 passed by the learned Assistant Judge, Saghata, Gaibandha in Miscellaneous Case No. 24 of 2004 under section 96 of the State Acquisition and Tenancy Act, 1950 (hereinafter referred to as “the SAT Act”) allowing Pre-emption. The

learned District Judge allowed the appeal and dismissed the pre-emption case, which has been challenged before this Court. Upon initial hearing, this Rule was issued.

The facts, briefly, are that the petitioner, claiming to be a co-sharer by inheritance, filed the aforesaid Miscellaneous Case seeking pre-emption of 09 decimals of land transferred by opposite party No.2 (the vendor) to opposite party No.1 (a stranger to the jote) by a registered sale deed dated 26.08.2004. The pre-emptor claims he had no prior notice of the sale and came to know about it only upon obtaining a certified copy on 01.09.2004, following which he filed the case.

The purchaser-opposite party No.1 did not contest. The vendor-opposite party No.2 contested the application, contending that the transaction was not a genuine sale but a temporary mortgage. It was alleged that upon repayment of Tk. 8,500, the land was reconveyed by the purchaser in favour of the vendor through a registered deed dated 02.09.2004 (Exhibit-‘Ka’), which occurred prior to filing the pre-emption case.

The learned Assistant Judge, after considering the evidence and submissions, allowed the pre-emption application by judgment dated 15.09.2014. The trial Court found the pre-emptor to be a co-sharer in the jote, the sale genuine, and the application within limitation. The Court did not find any fatal defect in parties.

On appeal, the learned District Judge reversed the decision and dismissed the pre-emption application mainly on two grounds:

- a) That the pre-emption application was filed after reconveyance of the land to the vendor; hence, the sale no longer existed and there was no cause of action;
- b) That the case was bad for defect of parties, as not all co-sharers in the holding were made parties.

Mr. ABM Matiur Rahman, learned Advocate for the petitioner, submits that the right of pre-emption accrues upon execution and registration of a sale deed in favour of a stranger, and that the subsequent reconveyance, especially after certified knowledge, cannot defeat the statutory right already accrued. He further submits that the pre-emptor claimed to be the sole heir and his testimony was not challenged in cross-examination. Hence, the appellate Court erred in dismissing the case on the ground of defect of parties.

Mr. Md. Faizullah, learned Advocate appearing for the pre-emptee-opposite party No.2 (vendor), supports the appellate decision and submits that on the date of filing the case, the impugned sale no longer subsisted due to the reconveyance on 02.09.2004. Referring to the decision in 37 DLR (AD) 325, he argues that when land is reconveyed to the original vendor, the sale ceases to exist and no cause of action for pre-emption remains. On the second issue, he refers to 42 DLR (AD) 1, and submits that impleading all co-sharers, whether by inheritance or purchase, is mandatory under section 96 of the SAT Act. Failure to do so renders the case liable to dismissal for defect of parties.

This Court has carefully examined the judgments of the Courts below, the pleadings, and the evidence on record. It is not disputed that the sale deed was executed on 26.08.2004, and the reconveyance deed was executed on 02.09.2004. It is also undisputed that the pre-emptor obtained certified knowledge of the sale deed on 01.09.2004 but instituted the pre-emption application on 19.10.2004, that is, after the execution of the reconveyance.

The legal question, therefore, is whether a statutory right of pre-emption survives once the land is reconveyed to the vendor before the institution of the case. In 37 DLR (AD) 325, the Appellate Division held that where the land has been reconveyed to the original vendor,

the sale no longer subsists, and as such, the right of pre-emption does not exist. The cause of action for pre-emption is based on the existence of a transfer to a stranger. Once the land reverts to the vendor before the application is filed, there is no longer any stranger purchaser in possession and hence, no enforceable right remains.

Where, prior to the institution of a pre-emption case under Section 96 of the SAT Act, the land is reconveyed by the purchaser to the original vendor through a valid registered deed, the impugned sale no longer subsists in law, and as such, no cause of action for pre-emption survives. Furthermore, in a pre-emption proceeding, all co-sharers in the holding, whether by inheritance or by purchase, must be impleaded as parties. Omission to do so renders the application liable to dismissal for defect of parties.

It is evident that the sale deed, though initially valid and giving rise to a preemptable right, was neutralized by the reconveyance before the institution of the pre-emption case. The petitioner neither challenged the reconveyance nor sought any declaratory relief in respect of it. Accordingly, following the ratio in 37 DLR (AD) 325, the cause of action ceased to exist.

As to the defect of parties, this Court finds merit in the submissions of Mr. Faizullah. The Appellate Division in 42 DLR (AD) 1 has categorically held that a co-sharer of any plot within a holding is a co-sharer of the entire holding, and that impleading all such co-sharers, whether by inheritance or by purchase, is mandatory under section 96. Omission to do so renders the case liable to dismissal for defect of parties.

In the present case, the pre-emptor claimed to be the sole heir but produced no certified khatian or succession certificate to substantiate that claim. The history of the jote shows multiple co-sharers

descended from several predecessors. In this context, his uncorroborated statement cannot be treated as conclusive. The burden lay upon the pre-emptor to bring all necessary co-sharers on record. His failure to do so offends the mandatory requirement laid down in *42 DLR (AD) 1*.

A pre-emption proceeding, being of a special nature affecting rights of others in the holding, cannot proceed without proper representation of co-sharers. The learned District Judge rightly held that the case suffered from fatal defect of parties.

In view of the above discussion, and guided by the settled principles of law enunciated by the Appellate Division in *37 DLR (AD) 325* and *42 DLR (AD) 1*, this Court finds no illegality or error in the appellate judgment that warrants interference under section 115 of the Code of Civil Procedure.

Accordingly, **the Rule is discharged.**

The **judgment and order dated 15.03.2017** passed by the learned District Judge, Gaibandha in Miscellaneous Appeal No. 74 of 2014, **stands affirmed.**

There will be no order as to costs.

Let a copy of this judgment be sent to the trial court for information and action at once. The lower court's records be sent back forthwith.

(Justice Md. Toufiq Inam)