

Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 710 of 2017
Md. Babul Islam....Petitioner
-Versus-
Md. Alimuddin and others....Opposite parties
Mr. Lutfor Rahman, Advocate
....For the petitioner
Mr. Md. Mojibur Rahman, Advocate
....For the opposite party No. 1
Heard on 21.04.2026, 30.04.2026, 09.06.2026, 14.06.2026,
16.06.2026, 23.06.2026, 07.07.2026, 15.07.2026 and 21.07.2026
Judgment delivered on 22.07.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 06.02.2017 passed by the Joint District Judge, Court No. 1, Thakurgaon in Miscellaneous Appeal No. 12 of 2015 (Pre-emption) reversing those dated 18.02.2015 passed by the Assistant Judge, Ranisankail, Thakurgaon in Miscellaneous Case No. 12 of 2011 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The relevant fact for disposal of the Rule is that the opposite party No. 1, Md. Alimuddin filed Pre-emption Miscellaneous Case No. 12 of 2011 in the Court of Assistant Judge, Ranisankail, Thakurgaon for the pre-emption of 4 decimals of land appertaining to S.A. Khatian No. 77, S.A. Dag No. 3057 of Mouza Bongaon, Thana- Ranisankail, Thakurgaon sold by deed No. 1667 dated 10.03.2011 by opposite party No. 2 Md. Ader Baksha to the petitioner, Md. Babul Islam, stating that Kalimuddin, Batas Mahmud, Firjan Bibi, Budaru Mohammad, Samiruddin, Khurshed Ali and Ader Mohammad were the S.A. recorded tenants. Samiruddin died, intestate leaving behind Md. Alimuddin as heir, and Khurshed Ali and Ader Baksha are possessing the suit land in ejmali. On 18.09.2011, Md. Babul and Md. Kader Baksha were measuring the suit land, and on query, Md. Babul informed that he purchased the suit land from Ader Baksha. Thereafter, on 19.09.2011, he collected the certified copy of the said deed and came to know about the sale of the suit land. The house of the pre-emptor is attached to the suit land. Ader Baksha and Khurshed Ali are using the case property as a courtyard. The purchaser is a stranger, and the pre-emptor is the co-sharer of the land.

The opposite party No. 1 contested the suit by filing a written objection denying the statement made in the plaint, stating that he is not a stranger to the suit khatian. The vendor is the cousin of his grandfather. He has been possessing the land for more than 60 years and is now residing in the suit land, constructing a

house. There is one bedroom, one room, one kitchen, one cowshed, one firewood room, one tube-well, and a latrine of the pre-emptee on the suit land.

During trial, the plaintiff examined 2 P.Ws and the defendants examined 3 D.Ws. After concluding the trial, the Assistant Judge, Ranisankail, Thakurgaon, by judgment and order dated 18.02.2015 dismissed the miscellaneous case on contest against the opposite party No. 1 and ex parte against other opposite parties, against which the pre-emptor filed Miscellaneous Appeal No. 12 of 2015 (Pre-emption) in the Court of District Judge, Thakurgaon. The Joint District Judge, Court No. 1, Thakurgaon heard the appeal and, by impugned judgment and order dated 06.02.2017, reversed the judgment and order passed by the trial Court against which the pre-emptee obtained the Rule.

Learned Advocate Mr. Lutfor Rahman, appearing on behalf of the pre-emptee-petitioner, submits that the suit land is the homestead of the Ader Baksha, which is not preemptable under section 96(16) of the State Acquisition and Tenancy Act, 1950, and the appellate Court failed to consider that the suit filed for pre-emption of the homestead is not maintainable in law. He further submits that the pre-emptor failed to prove the cause of action for filing the suit and the appellate Court below committed an error of law, resulting in an error in the decision, occasioning failure of justice. He prayed for making the Rule absolute.

Learned Advocate Mr. Md. Mojibur Rahman, appearing on behalf of the pre-emptor-opposite party No. 1 submits that the pre-emptor is the co-sharer of the suit land and as per C.S. record, the suit land is danga and the defendants failed to prove that the suit land is a homestead and therefore, the pre-emption case under section 96 of the State Acquisition and Tenancy Act, 1950 is maintainable and the appellate Court below on correct assessment and evaluation of the evidence adduced by the parties legally passed the impugned judgment and order. He prayed for discharging the Rule.

I have considered the submissions of the learned Advocate Mr. Lutfor Rahman, who appeared on behalf of the pre-emptee-petitioner, and the learned Advocate Mr. Md. Mojibur Rahman, who appeared on behalf of the pre-emptor-opposite party No. 1, perused the evidence adduced by both the parties, the impugned judgments and orders passed by the Courts below, and the records.

The issue involved in the Rule is as to whether the suit land is a homestead or not.

In the application under section 96 of the State Acquisition and Tenancy Act, it has been asserted that the parties are using the suit land as their outer courtyard and the pre-emptor had no other land to use as outer courtyard. Admittedly, in the C.S. khatian, the suit land is mentioned as danga. It appears

that after preparing the C.S. khatian, more than 100 years elapsed. Therefore, relying on the C.S. khatian, the nature of the land cannot be ascertained. To determine whether the suit land is homestead or not, the last khatian prepared immediately before selling the suit land is relevant and should be considered to ascertain whether the suit land is a homestead or not. The pre-emptee claimed that the suit land is the homestead, but the khatian prepared immediately before the disputed sale deed was not proved during trial of the case to ascertain the nature of the land. Therefore, I am of the view that the parties should be allowed to adduce further evidence to ascertain whether the suit land is homestead or not, and the case should be sent back on remand to the trial Court allowing the parties to adduce evidence regarding the nature of the suit land.

In view of the above findings, observations and the proposition, the impugned judgments and orders passed by the Courts below are hereby set aside.

The miscellaneous case is sent back on remand to the trial Court. Both the parties are at liberty to adduce evidence to ascertain the nature of the land.

In the result, the Rule is made absolute, sending the case on remand to the trial Court.

The order of stay granted earlier by this Court at the time of issuance of the Rule on 13.03.2017 is hereby vacated.

The trial Court is directed to dispose of the suit within 6(six) months positively.

However, there will be no order as to costs.

Send down the lower Court's records at once.