

District-Brahmanbaria.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 945 of 2017.

Abdur Rashid being dead his legal heirs: 1(a) Md. Sorab Mollah and others.

----- Pre-emptor-Respondent-Petitioners.

-Versus-

Shahajuddin.

----- Pre-emptee- Appellant-Opposite Party No.1.

Omor Faruk and others.

-----Respondent-petitioners-Seller-Opposite Party Nos.2-6.

Mr. Tushar Banik, Advocate

----- For the Pre-emptor-Respondent-Petitioners.

Mr. Mustaque Ahmed Chowdhury, Advocate with

Mr. Md. Golam Faruque Bhuiyan, Advocate

---For the Pre-emptee- Appellant-Opposite Party No.1.

None appears.

---For the Respondent-petitioners-Seller-Opposite Party Nos.2-6.

Heard On: 29.07.2025, 31.07.2025.

And

Judgment Delivered On: 07.08.2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 10.01.2017 passed by the learned Joint District Judge, 2nd Court, Brahmanbaria in Miscellaneous Appeal No. 14 of 2007, reversing the judgment and order dated 17.01.2007 passed by the learned Senior Assistant Judge, Bancharampur in Miscellaneous Case No. 34 of 2004 allowing pre-emption under Section 96 of the State Acquisition and Tenancy Act,

1950, should not be set aside or such other order passed as to this Court may seem fit and proper.

The petitioner, as pre-emptor, filed Miscellaneous Case No. 34 of 2004 seeking pre-emption of 4 decimals of land appertaining to C.S. Dag No. 2197 of Jote No. 486, situated at Mouza Kanainagar, P.S. Bancharampur, District Brahmanbaria, on the ground of co-sharership in Mutation Khatian No. 165/2. The case land was transferred by Sale Deed No. 5529 dated 31.08.2004 to opposite party No. 1, who was described as a stranger purchaser.

The trial court allowed pre-emption by accepting the petitioner's claim of co-sharership in Khatian No. 165/2. However, on appeal, the learned Joint District Judge reversed the decision holding that the pre-emptee is not a stranger purchaser and that the petitioner failed to establish that the land described in the impugned deed appertains to Khatian No. 165/2. Against the Appellate Court judgment and order, the pre-emptor as petitioner moved the revision and obtained this Rule.

Mr. Tushar Banik, learned Advocate for the petitioner, submits that the trial court rightly allowed the case upon appreciation of oral and documentary evidence showing that the land lies within Khatian No. 165/2 and that the pre-emptee is not a co-sharer therein. He contends that the appellate court committed an error in treating the opposite party as a co-sharer without clear evidence of title or mutation in his father's name in the relevant khatian.

He further submits that the statutory right of pre-emption under Section 96 of the SAT Act is a preferential right created to protect co-sharers from intrusion by strangers into a joint tenancy. Once the petitioner has shown that he is an admitted co-sharer in Khatian No. 165/2, the burden shifts upon the pre-emptee to prove his co-

sharership in the same khatian. Since no certified khatian or mutation record in the pre-emptee's name has been produced, the appellate court erred in treating him as a co-sharer merely on the basis of possession.

Mr. Banik also submits that the appellate court overlooked the settled principle that possession without mutation or entry in the record of rights does not create co-sharership in a tenancy. Even if the pre-emptee's father purchased land in the same mouza by a prior deed, unless that land forms part of the same khatian, such purchase cannot confer co-sharership in Khatian No. 165/2. The appellate court, therefore, misapplied the law in treating the pre-emptee as a co-sharer on presumptions rather than concrete evidence.

Per Contra, Mr. Mustaque Ahmed Chowdhury, learned Advocate appearing with Mr. Golam Faruque Bhuiyan, Advocate for pre-emptee-opposite party No. 1, supports the appellate court's findings and argues that the petitioner failed to prove exclusive co-sharership in the specific khatian and that the evidence shows the pre-emptee is not a stranger. The petitioner failed to produce any credible documentary evidence to show that the land transferred under Sale Deed No. 5529 dated 31.08.2004 appertains to Mutation Khatian No. 165/2. Without establishing that the suit land falls within a khatian in which the petitioner is a co-sharer, the claim of pre-emption is legally untenable.

Secondly, he submits that although the pre-emptor heavily relies on Khatian No. 165/2, the impugned sale deed does not even mention this khatian. The land was sold from an unspecified khatian with a different dag number, and the petitioner has not produced any certified copy of the relevant khatian or official map proving that the land in question falls within his co-sharership.

Thirdly, he candidly asserts that the pre-emptee is not a stranger, as his father, Cherag Ali, had previously purchased land in the same mouza under a registered sale deed back in 1984. Though formal mutation may not have been completed in his father's name, the land has been in their possession and family ownership since then, giving rise to an equitable interest and a valid claim of co-sharership.

Fourthly, he submits that the pre-emptee has been in possession of adjacent land as part of his father's estate, and such long-standing possession, coupled with inheritance from a recorded tenant, establishes a prima facie claim of co-sharership. As such, the pre-emption claim fails on the ground that the purchaser is not a stranger to the tenancy. He places reliance on the case reported in 55 DLR (AD) 203.

Finally, Mr. Chowdhury argues that the trial court erred in relying mainly on oral assertions and unverified copies without properly examining the chain of title or verifying the khatian records. The appellate court rightly reversed the decision upon appreciation of the legal requirements for pre-emption and the failure of the pre-emptor to discharge the burden of proof.

Having heard both the parties, this Court is of the considered view that the learned appellate court rightly reversed the trial court's decision upon a proper application of the law governing pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950. It is well-settled that the right of pre-emption is not a matter of course but a statutory right that must be strictly proved. The petitioner, in order to succeed, must conclusively establish that: (i) he is a co-sharer in the holding or in the same khatian in which the transferred land is situated, and (ii) the purchaser is a stranger, not being a co-sharer in the same tenancy.

In the present case, the burden squarely lay upon the pre-emptor to show that the land transferred by Sale Deed No. 5529 dated 31.08.2004 forms part of Khatian No. 165/2, wherein he claims co-sharership by inheritance. However, the petitioner has failed to discharge this burden by producing any certified khatian, dag-to-khatian index, or official mouza map that conclusively identifies the suit land as falling within Khatian No. 165/2. Mere oral assertions or reliance on photocopies without official authentication do not meet the evidentiary standard required for pre-emption.

The petitioner also argued that since the pre-emptee has not produced any mutation record in his name, he cannot be treated as a co-sharer. This contention is misconceived. Mutation, though relevant, is not conclusive proof of title or co-sharership; it only facilitates revenue collection. What is material is whether the purchaser or his predecessor acquired land in the same tenancy by a valid registered deed and remained in possession thereof. In the instant case, the opposite party has shown that his father, Cherag Ali, purchased land in the same mouza by a registered deed in 1984 and that such land has since been in their family's possession. This acquisition, coupled with inheritance from a recorded tenant, establishes a prima facie claim of co-sharership notwithstanding the absence of mutation in his name.

This principle is well-settled in our jurisdiction. The mutation is not proof of title but merely evidence of possession, and that a registered deed coupled with possession creates a presumption of valid acquisition and co-sharership. Non-mutation does not negate title or co-sharership if acquisition is otherwise proved by registered instruments. Possession derived from a valid purchase and inheritance is sufficient to establish co-sharership for purposes of pre-emption. The opposite party cannot be branded as a stranger merely for want of

mutation. On the contrary, the evidence of prior acquisition by registered deed, coupled with long-standing family possession, rebuts the allegation of stranger status.

Moreover, the recital of the impugned sale deed does not refer to Khatian No. 165/2 at all, which casts further doubt on the petitioner's claim. On the other hand, the opposite party has placed credible evidence showing long-standing possession derived from a valid registered purchase and inheritance, which rebuts the allegation of stranger status. The appellate court rightly noted that the pre-emptee's familial possession and acquisition by a registered deed decades earlier negates the allegation of stranger status. Accordingly, the first condition for pre-emption that the purchaser must be a stranger to the tenancy stands unproven.

The appellate court further held that the trial court erred in granting pre-emption on the basis of insufficient and ambiguous evidence, and this Court finds no illegality, material irregularity, or jurisdictional error in such finding. Given that the pre-emptor has not established his co-sharership in the specific khatian of the transferred land, and the purchaser has shown at least a prima facie case of being a co-sharer by inheritance, the essential ingredients for pre-emption are absent.

This Court does not find any illegality, jurisdictional error, or material irregularity in the impugned appellate judgment warranting interference under Section 115 of the Code of Civil Procedure. The revisional jurisdiction is limited, and this Court must refrain from substituting its own findings for concurrent ones unless there is manifest miscarriage of justice.

Accordingly, **the Rule is discharged.**

The judgment and order dated 10.01.2017 passed by the learned Joint District Judge, 2nd Court, Brahmanbaria in Miscellaneous Appeal No. 14 of 2007 is hereby upheld. The interim order of stay granted earlier is hereby recalled and vacated.

There shall be no order as to costs.

Let this copy of the judgment be sent to the court concerned together with the LC Records at once for urgent compliance.

(Justice Md. Toufiq Inam)

Ashraf/ABO.