

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4619 of 2008

In the matter of:

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

And

Md. Osman Goni

.... Petitioner

-Versus-

Abu Taher and others

.... Opposite parties

Mr. M Belayet Hossain, Senior Advocate with

Mr. M Mahmudul Hasan, Advocate

Mr. Shubho Shatha Rafiq, Advocate

.... For the petitioner.

Mr. Md. Saifur Rahman, Advocate

.... For the opposite parties.

Heard on 14.08.2025 and Judgment on 17.08.2025.

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 07.10.2008 passed by the learned Joint District Judge, Paribesh Adalat, Chattogram in Miscellaneous Appeal No.38 of 2004 dismissing the appeal and thereby affirming the judgment and order dated 17.02.2004 passed by the learned Senior Assistant Judge, Fatikchhari, Chatotgram in Pre-emption Miscellaneous Case No.39 of 2000 allowing the said pre-

emption Miscellaneous Case should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the opposite parties as petitioners instituted above case under Section 96 of State Acquisition and Tenancy Act, 1950 for pre-emption of 8 decimal land transferred by registered kabla deed dated 14.02.2000 by opposite party Nos.2 and 3 to opposite No.1.

It was alleged that the petitioner is a co-sharer by purchase by registered kabla deed dated 22.03.1983 and opposite party No.1 is a stranger to above holding. The petitioner did not receive any notice of transfer of above land and he filed above case within a statutory period for limitation.

Opposite party No.1 contested above case by filing a written objection alleging that opposite party Nos.2 and 3 approached the petitioner to purchase above land but he refused and mediated the sale of above land to opposite party No.1. It was further stated that opposite party No.1 constructed dwelling huts in above land pending taka 25,000/-.

At trial petitioners examined one witness and opposite party No.1 examined two. Documents of the petitioner were marked as Exhibit No.1 and the opposite party did not exhibit any document.

On consideration of the facts and circumstances of the case and evidence on record the learned Senior Assistant Judge allowed above case.

Being aggrieved by above judgment and order of the trial Court opposite party Nos.1 as appellant preferred Miscellaneous Appeal No.38 of 2004 to the District Judge, Chattogram which was heard by the learned Joint District Judge, Paribesh Adalat, Chattogram who dismissed above 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 petitioners moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. M Belayet Hossain, learned Advocate for the petitioners submits that opposite party No.1 is the owner of the land contiguous to the disputed land and after purchase of above land he has erected dwelling huts by spending Taka 25, 000/-. He further submits that opposite party Nos.2 and 3 approached the petitioner to purchase above land but he refused to buy and he requested opposite party No.1 to purchase above land. Above facts have been proved by consistent evidence of OPW1 and OPW2. But the learned Judge of the Court of

Appeal below utterly failed to appreciate above materials on record and most illegally dismissed the appeal and affirmed the flawed judgment and order of the trial Court which is not tenable in law.

On the other hand Mr. Md. Saifur Rahman, learned Advocate for the opposite party No.1 submits that admittedly petitioner is a co-sharer by purchase in above holding and opposite party No.1 is a stranger. The impugned kabla deed dated 14.02.2000 (Exhibit No.1) was registered under Section 60 of the Registration Act on 03.01.2001 and this case was filed on 13.06.2000. On consideration of above facts and circumstances of the case the learned Judges of both the Courts below concurrently held that opposite party could not prove that opposite party Nos.2 and 3 approached the petitioner to purchase above land and he refused to purchase the same by legal evidence and the petitioner could not prove by legal evidence that he made improvement of above land or erected dwelling huts spending Taka 25,000/-. Above concurrent findings of the Courts below that being based on evidence on record this Court cannot in its revisional jurisdiction interfere with above concurrent findings of fact.

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

It is not disputed that the petitioner is a co-sharer by purchase by registered kabla deed dated 10.08.1983 in above holding and opposite party No.2 is a contiguous land owner. As such the petitioner has locus standi to maintain above case for pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950.

This case was filed on 13.06.2000 and Exhibit No.1 shows that impugned kabla deed was registered under Section 60 of the Registration Act, 1908 on 03.01.2001. As such above case was filed within the statutory period of limitation.

At Paragraph No.11 of the written objection opposite party No.1 has been stated that his dwelling house is situated in a different land which is contiguous to the disputed land. OPW2 Mohammad Hossain has stated in cross examination that there is a road between the disputed land and the dwelling huts of opposite party No.1.

In above view of the evidence on record I hold that the concurrent findings of the learned Judges of the Courts below that the dwelling house of OPW1 is not on the disputed land and this case was filed within the statutory period of limitation.

It has been alleged in the written objection that opposite party Nos.2 and 3 approached the petitioner to purchase above land but he refused to purchase and he requested opposite party No.1 purchase

above land. But above claim remains vague and unspecific due to absence of the date, time and venue when above offer was made to the petitioner and he refused to purchase nor the name of any witness who was present at the time of above occurrence has not been mentioned in the written objection. Opposite party No.2 gave evidence as OPW2 and reiterated above claim of opposite party No.1 that he approached the petitioner to purchase above land who refused to purchase and requested the petitioner to purchase above land. But he could not mention the time, date and venue of event nor his evidence was corroborated by any other witness.

On consideration of above evidence on record the learned Judges of both the Courts below rightly held that opposite party No.1 could not prove by legal evidence that opposite party Nos.1 and 2 approached the petitioner to purchase above land but he refused to purchase and the petitioner requested opposite party Nos.1 and 2 to purchase above land.

In above view of the facts and circumstances of the case and evidence on record I am unable to find any illegality or irregularity in the impugned judgment and order passed by the learned Joint District Judge 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, this Rule is hereby discharged.

However, there is no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER