

In The Supreme Court of Bangladesh

High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

Civil Revision No. 432 of 2009

Mosammat Kohinoor Aktar
Pre-emptee-Respondent-Petitioner
Versus

Moulavi Mohammad Shafiullah as pre-emptor
being dead his heirs
1(a) Nurul Absar and others
Pre-emptor-Appellant-Opposite
Parties No. 1(a)-1(e)

Saleh Ahmed and another
Vendors-Opposite Parties

Golaapa Khatun and others
Opposite parties

Mr. Samiran Mallik, Advocate
for the pre-emptee-respondent-petitioner

Mr. Mofizuddin, Advocate
for the pre-emptor-appellant
opposite parties No.1(a)-1(e)

Judgment on: 05.02.2023.

This Rule was issued calling upon the opposite party Nos. 1(a)-1(e) to show cause as to why the impugned Judgment and Order dated 26.10.2008 passed by the Additional District Judge, 1st Court, Chittagong in Miscellaneous Appeal No. 95 of 2007 allowing the appeal by setting aside the Judgment and Order dated 06.05.2007 passed by the Assistant Judge, Sitakunda, Chittagong

in Miscellaneous Case No. 24 of 1997 should not set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Father of the opposite parties No. 1(a)-1(e) Moulavi Mohammed Shafiullah as pre-emptor filed Miscellaneous Case No. 24 of 1997 in the Court of Assistant Judge, Sitakundu District-Chittagong under Section 96 of the State Acquisition Tenancy Act, 1950.

The petitioner's Case, in short, is that the case land originally belonged to Abdul Goni, Moklesur Rahman and Nur Meah. R.S. Khatian Nos. 1065, 1048, 1049 were prepared in their names. Muklesur Rahman left his share to Abdul Gani and Nur Meah. Abdul Gani being owner of the case land died leaving behind wife, two sons namely Hadisur Rahman and Moulavi Shafiullah. Hadisur Rahman being owner and possessor of the case land died leaving behind the opposite party Nos. 4-6 and the pre-emptor as his heirs. Nur Meah died leaving behind wife and two sons opposite party Nos. 2 and 3 as his heirs. P.S. Khatian of the case land was prepared in the name of the above heirs of original owners and B.S. Khatian No. 584 in respect of the case land was prepared in the name of the pre-emptor, his brother and opposite party Nos.2 and 3 and they were in possession of the same. In the above way, the pre-emptor is a co-sharer in the khatian and the

pre-emptee purchaser is a stranger. The pre-emptee-purchaser and opposite party Nos. 2 and 3 did not inform the pre-emptor in respect of the sale of the case land. On 11.09.1997 the pre-emptee purchaser came to the homestead of the pre-emptor and asked him to demarcate the case land by virtue of the purchase. Thereafter, on 22.07.1997 the pre-emptor obtained the certified copy of the impugned sale deed dated 13.11.1992 and came to know the above sale and thus the pre-emptor has been compelled to file the pre-emption miscellaneous case for getting the case land as pre-emption.

The pre-emptee purchaser contested the Case by filing a written objection denying all the material allegation of the petition contending, inter alia, that the pre-emptee purchased the case land at the request of the pre-emptor, vendor pre-emptee Nos. 2 and 3 proposed to sell the case land to the pre-emptor but he refused to purchase the same. The pre-emptee purchaser improved the case land at the cost of Tk.15,000/- and she planted different kinds of trees on the same worth of Tk.20,000/-, without depositing that amount the pre-emptor filed the instant case and hence, the instant case is liable to be dismissed.

The Assistant Judge, Sitakundu Sadar, Chittagong disallowed the pre-emption miscellaneous case on 06.05.2007 and thus the pre-emptor as appellant preferred Miscellaneous Appeal

Case No. 95 of 2007 before the District Judge, Chittagong and on transfer the Additional District Judge, 1st Court, Chittagong vide Judgment and Order dated 26.10.2008 allowed the aforesaid miscellaneous appeal case setting aside the Order of the Trial Court and hence the pre-emptee as petitioner moved this application under section 115(1) of the Code of Civil Procedure before this Court and obtained the Rule.

Mr. Samiran Mollik learned Advocate for the pre-emptee-respondent-petitioner submits that the pre-emptor could not prove his case as such the learned Trial Court rightly disallowed the pre-emption case with holding that the same is barred by defect of parties but the Court of appeal below without considering the same allowed the pre-emption case. The pre-emptor failed to prove that the pre-emptee petitioner is a stranger in the case land but the Court of appeal below without properly considering and discussing the facts allowed the appeal and the learned Appellate Court below has miserably failed to follow Order 41 rule 27 of the Code of Civil Procedure and as such the learned Advocate lastly prays for making the Rule absolute.

Mr. Mofizuddin learned Advocate for the pre-emptor-appellant-opposite parties submits that the pre-emptor is the co-sharer of the case land which has not been denied by the pre-emptee-petitioner and on the other hand the pre-emptee purchaser

is a stranger in the case land. During trial of the aforesaid miscellaneous case the pre-emptor failed to submit R.S. and B.S. Khatian before the Trial Court as such the Trial Court disallowed the said miscellaneous case and at the time of hearing of the appeal the pre-emptor submitted the above mentioned papers and the appellate Court below after considering the same allowed the appeal and thus the Rule may kindly be discharged for ends of justice. He further submits that the pre-emptee as O.P. W.1 stated “২-৩নং প্রতিপক্ষ হলো প্রার্থীকের চাচাত ভাই। প্রার্থীক ও ২-৩ নং প্রতিপক্ষ নালিশী জায়গায় মৌরশীসূত্রে মালিক। প্রার্থীক ও ২-৩নং প্রতি পক্ষের মধ্যে নালিশী জায়গাসহ মৌরশী সম্পত্তি ভাগ হয়।” and another witness Mohammad Ismail as Borgachashi as O.P.W-2 in his cross examination admitted that adjacent sides of the case land is possessed by pre-emptor’s full brother Hadisur Rahman. The Trial Court by misconception of law disallowed the case and O.P.W-2 stated in cross-examination is quoted below:- নালিশ জায়গার পশ্চিমে উত্তরে, দক্ষিণে-সফিউল আলম (অর্থাৎ প্রার্থীক) পূর্বে- হাদিসুর রহমানের এর জায়গা নালিশী জায়গায় পশ্চিমে রেলওয়ে পিলার আছে। In the instant Civil Revision the pre-emptor-opposite parties are the co-sharer of the case land which has not been denied by the pre-emptee petitioner. The records of rights such as R.S and B.S submitted by the pre-emptor in the Court of the Additional District Judge, 1st Court, Chittagong have not been also denied by the pre-emptee petitioner. The Trial Court disallowed the Miscellaneous

Case No. 24 of 1997 due to lack of the records of rights. During hearing of the miscellaneous appeal in the Appellate Court and the Appellate Court below accepted the records of rights as above which carries evidential value as such need not be further proved. Considering the above facts and circumstances the Rule may be discharged.

Heard the learned Advocates for both the parties and perused the materials on record.

It is true that the pre-emptor did not submit the R.S. and B.S. Khatians of the case land before the Trial Court and thus it was not possible to ascertain that the pre-emptor is co-sharer of the case land. Moreso, the opposite party No. 1 by filling written objection did not deny that the pre-emptor is not a co-sharer in the case land. On perusal of the R.S. Khatian Nos. 1048, 1049 it appears that the case land originally belonged to Abdul Gani, Muklesur Rahman and Nur Meah. Abdul Gani died leaving behind one widow, 2 sons Hadisur Rahman and Md. Shafiullah and here, Shafiullah is pre-emptor and during pendency of the instant case the pre-emptor died leaving behind the present petitioners as his heirs and opposite party Nos. 2-3 are the heirs of another R.S. recorded owner Nur Meah. On perusal of the B.S. Khatian No. 584 of the case land it appears that the said khatian has been prepared in the name of Saleh Ahmed son of Nur Meah, Shafiullah and Hadisur Rahman.

So, Shafiullah, father of the present petitioners, is co-sharer of the case land which has been supported by the O.P.W. Nos. 1 and 2.

Considering the facts and circumstances I find no substance in the Rule and hence, the Rule is liable to be discharged.

In the result, the Rule is discharged without any order as to costs.

The impugned Judgment and Order dated 26.10.2008 passed by the Additional District Judge, 1st Court, Chittagong in Miscellaneous Appeal No. 95 of 2007 allowing the appeal by setting aside the Judgment and Order dated 06.05.2007 passed by the Assistant Judge, Sitakunda, Chittagong is hereby upheld and confirmed.

The ad-interim order of stay passed at the time of issuance of the Rule is hereby vacated.

Send down the lower Court records alongwith a copy of this Judgment to the concerned Court below at once.