

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Jahangir Hossain.

Civil Revision No.2779 of 2009

Sree Debaru Barman

.....Petitioner.

Vs.

Anlaka Bala Barmani and others

..... Opposite-Parties.

Mr. Md. Taherul Islam, Advocate.

..... For the petitioner.

Mr. Abul Kalam Azad, Advocate

.....For the opposite parties.

Heard on 24.04.2024; 28.04.2024; 06.05.2024 and
07.05.2024 Judgment on 12th May-2024.

This Civil Revision No. 2779 of 2009 has been filed under Section 115(1) of the Code of Civil Procedure.

The Rule was issued on 09.08.2009 which was as bellows:

“Let a Rule be issued calling upon the opposite party No. 01 to show cause as to why the judgment and order complained of in the petition moved in Court today should not be set aside and /or such other or further order or orders passed as to this court may seem fit and proper.”

At the time of issuance of the Rule the operation of the judgment and order dated 27.03.2007 was stayed.

The least fact of the application for revision to disposal the Rule is that Kamini Barman and Jamini Barman were the owner of 2.18 acres of land in Khatian No. 920 and 1040 and 1.34 acres of land in Khatian No. 68 in equal share and being dead of Kamini Barman her son Baishagu Barman

Became owner in her land properties as her only heirs. Thereafter Baishagu dead leaving his wife Kanchanisari and 03 daughter namely Promila, Samila and Alakabala inherited in his land properties and accordingly the Pre-emptor Aloka is a co-sharer, during her life opposite party Nos. 2 and 3 transferred the case land and the Pre-emptee purchased the land beyond Pre-emptors knowledge on 28.03.2005 vide kabala deed No. 1416 on 29.03.2005 it has come to her knowledge when the possession was hand over. The pre-emptee is not the co-sharer of the land. On 03.04.2005 Pre-emptor collected the certified copy of the alleged deed and filed the pre-emption case.

On the other hand the Pre-emptee-petitioner contested the case by filed written objection denying the all allegation made in the plaint by the pre-emptor. In the written objection stated that the pre-emption case is a fictitious and the case is barred by section 96 of the State Acquisition and Tenancy Act and by limitation act. Pre-emptor-petitioner vide different kabala purchased some other land from the other co-sharers up to 23.08.1986 and 24.12.2001. At last the opposite party No. 2 and 3 proposed the pre-emptor and her husband to purchase the schedule land but the pre-emptor agree to purchase at the price of taka 25,000/- which was less than market value then the Vendors asked them to buy at taka 45,000/- which they refused to do so. Thereafter the opposite party No. 2 and 3 (vendors) transferred the suit land to the petitioner vide kabala deed No. 1416 dated 28.03.2005 and handed over the possession of the same and thereafter the petitioner mutated his name. As such the petitioner became the co-sharer of the purchased land. After full hearing the Trial Court allowed the pre-emption case. Thereafter petitioner preferred an appeal which was also

dismissed by the appeal court on 04.05.2009. After that the pre-emptee-petitioner filed this revision against the judgment of lower court.

The learned Advocate for the pre-emptee-petitioner in his submission contended that in this suit pre-emptee examined O.P.W.2 Majendro Nath who deposed that “প্রার্থীর মাতা কাঞ্চন বালু আমার সহোদর বোন আমার উপস্থিতিতে কবলা ক্রেতার প্রার্থীকে নালিশী জমি ক্রয়ের প্রস্তাব দিয়েছিল। প্রার্থী কম দাম বলায় এবং উহার ক্রয় করিতে অনাগ্রহ প্রকাশ করায় ক্রেতা ১নং প্রতিপক্ষ উহা ক্রয় করেন।” and in his cross examination, the prosecution could not find out otherwise, except the date of proposal which he could not say. The said evidence was corroborated by the P.W.1 Khitis Chandra Borman who admitted in his cross examination that “নালিশী বিক্রয়ের বিষয়ে মধ্যস্থতা করেছেন আমার মামা শশুর মাজেন্দ্র নাথ।” In such corroboration proved the facts of acquiescence by the pre-emptor side. In support of the agreement the learned Advocate relied the decision of Akhlaur Rahman Vs Safar Ullah reported 42 DLR (AD) 1990 where it is held that Waiver and acquiescence in pre-emption:

“Facts proved in a particular case may give rise to waiver and acquiescence and a pre-emptor may be held to be estopped from enforcing his right of pre-emption. It will be a question of proper inference from the facts provided in each particular case as to whether the plea of waiver and acquiescence exists or not.”

Further he submits considering the aforesaid facts and circumstance the conduct of the pre-emptor was not reasonably sufficient to give rise to waiver, acquiescence and the estoppel in the operated but the appellate court below without considering the aforesaid views in a perfunctory manner

passed the impugned judgment. Lastly he prayed for absolute the Rule and set aside the lower court judgment.

On the other hand learned Advocate for the opposite party pre-emptor-respondent submits that the learned court of trial in his judgment discussed on point of pre-emptor's previous knowledge about sale of the property wherein learned court discussed that O.P.W.1 admitted that the sellers proposed to the pre-emptor at Mariya Bazar but O.P.W.2 admitted in his cross examination that discussion was held in his house but he could not mention date of discussion. The learned court of trial with meticulous discussion finds out that the pre-emptee specifically did not prove his claim and his statement of written objection were not prove by adducing evidence and the learned court of appeal admit in his judgment that the case is not barred by plea of consent of the pre-emptors. Lastly he submits the pre-empties plea of waiver acquiesce and estoppels was not proved and established. Lastly he submits for discharged the Rule.

I have carefully examine the record and the submission of the learned Advocate and other relevant papers annexure with the record it transpired from the judgment of the learned trial court discussed on point of pre-emptor's previous knowledge about sale of the property wherein learned court discussed that O.P.W.1 admitted that the sellers proposed to the pre-emptor at Mariya Bazar but O.P.W.2 admitted in his cross examination that discussion was held in his house but he could not mention the date of discussion. It is found that the learned trial court found the contradiction in the statement of the O.P.W.2 regarding the place of discussion and the trial court correctly finds out the point that the pre-emptee specifically did not

prove his claim and his statements of written objection and which was not proved by adducing sufficient evidence.

Further it appears from the judgment of the learned lower courts that the pre-emptee's plea or previous knowledge of the pre-emptor was not established by cogent evidence.

In this particular case it is transpired and admitted that the pre-emptor is the co-shearer by inheritance in the said property. Secondly the pre-emptor as female co-sharer of the holdings has a right in the said property legal heirs during her life time which is also decided by our court in the case of Rai Krishna Shaha Vs. Abdul Aziz and others where it is held that:

“A Hindu widow having life interest in the property is entitled to pre-emption under section 96(1) of the S. A. T. Act.

Notwithstanding the fact that a Hindu widow has life interest in the property in question during her life time, she remains a full owner thereof with complete right of acquisition and dispensation subject to law. Such a widow can be safely said to be a co-sharer of any holding or of any property as contemplated under section 96 of the State Acquisition and Tenancy Act. (2)

Hindu widows Rights to the Property Act (XVIII/37)

During her life time a Hindu widow is the owner and co-sharer of any property.”

In this particular case the pre-emptor is a female co-sharer as per Hindu law she is the owner of life time in the said property as per the right of the widow it is decided by the court as per life time ownership. She will

be the absolutely co-sharer of inheritance for her life time. As such as per Hindu law it appears as a daughter for a female heirs the right of inheritance for the life time is similar as female right of inheritance in life time for the widow and the heirs as a female for inheritance in life time.

Upon such it appears in this case the case was not barred in the plea of waiver, acquiesce and estoppel. Secondly the pre-emptor's right has been proved as legal heirs in her life time in the said property. Though it appears the pre-emptee-petitioner found co-sharer purchase in the Joth and property but the co-sharer of inheritance is the first priority in the preemption.

Moreover in this suit the pre-emptee did not proved by adducing any paper how he claim as co-sharer of purchase in the said land.

I do not find mistake in both the lower courts judgment. It has been established the learned appeal court and trial court both Trial Court meticulously examine the witnesses statement and other relevant papers.

I do not find any reason to inter fair in the lower court judgment, thus there is no merit in this Rule.

So, this Rule is discharged.

The judgment of the lower court is up hold.

Send down the judgment and the lower court record be transmitted to the concern court below.