

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 1732 of 1994

Menajuddin Shaikh

... Petitioner

-Versus-

Abdul Haq Shaikh and five others

... Opposite parties

Mr. Shaheed Alam, Advocate

...for the petitioner

No one appears for the opposite parties

Judgment on 31.10.2024

This rule was issued on an application under Section 115 (1) of the Code of Civil Procedure challenging judgment and order dated 26.06.1993 passed by the Additional District Judge, Faridpur in Miscellaneous Appeal Number 22 of 1985 dismissing the same on affirming those dated 31.12.1984 passed by the Munsif (now Assistant Judge), Faridpur Sadar in Miscellaneous Case Number 72 of 1979 rejecting the same that was filed under Section 96 of the State Acquisition and Tenancy Act, 1950 for preemption of a piece of land as described in the schedule of the preemption application.

The preemptor-petitioner's case, in brief, was that he was a co-sharer of the case land through purchase by registered sale deed

dated 20.06.1969. Opposite party number 3 being another co-sharer transferred the case land by registered sale deed dated 10 Falgun 1382 Bangla (corresponding to 14.04.1975) to opposite parties number 1 and 2. He came to know about the transfer from the Circle Officer (Revenue), Kotwali, Faridpur and filed the case on 14.04.1978.

Opposite parties number 1 and 2 contested the case by filing a joint written objection contending, *inter alia*, that the preemption case was barred by limitation. Since the petitioner's sale deed was not acted upon and he was never in possession thereof, he was not a co-sharer of the case land.

Opposite parties number 7-11 were added in the preemption case by filling an application claiming that they were purchasers of the case land and were in possession thereof. The preemptor-petitioner was never in possession over the case land. They (opposite parties number 7-11) mutated the record and were paying rent to the Government office.

On the aforesaid pleadings, the trial court framed issues and proceeded with trial. Both the parties recorded oral evidence and adduced some documents in support of their respective cases. On conclusion of trial, learned Judge of the trial court found that the preemptor-petitioner was never in possession of the case land and his sale deed was not acted upon. Learned trial Judge thus rejected the preemption case by judgment and order dated 31.12.1984. Being

aggrieved, the petitioner filed Miscellaneous Appeal Number 22 of 1985 in the Court of District Judge, Faridpur. Learned Additional District Judge, Faridpur ultimately heard the appeal and dismissed the same by the impugned judgment and order giving rise to the instant civil revision.

Mr. Shaheed Alam, learned advocate for the petitioner submits that in a summary proceeding under Section 96 of the SAT Act, validity of a registered sale deed cannot be decided. The courts below were, therefore, wrong in making adverse finding about the sale deed of the petitioner that it was not acted upon basing on the evidence of the added opposite parties number 7-11. The courts failed to consider that the petitioner's sale deed being a registered instrument was presumed to be valid unless declared otherwise. In the facts and circumstances of the present case, the decision cited by the learned Assistant Judge had no manner of application. Learned Additional District Judge made no reference to the case, but passed the impugned judgment and order in a mechanical manner and thereby committed error of law resulting in an error in the decision.

I have considered the submissions of the learned advocate and gone through the record including the judgments of the courts below. It appears that the learned Munsif in passing the original judgment and order of rejection of the preemption case based on *Ashwini Kumar Karmaker being dead his heirs: Sree Radha Karmaker and*

*others vs Hari Mohan and others*, 36 DLR (AD) 1, where the Appellate Division held:

*“... if a pre-emption is sought to, be resisted on the ground that no transfer took place under the relevant kabala and that the vendor did not part with his possession but simply made a show of transfer for any purpose such as to put way his creditors, as in the case reported in 51 C.W.N. 644, then such a transaction, whether it is called ‘Benami’ or colourable may be gone into.”*

The lower appellate court in dismissing the miscellaneous appeal took similar view and dismissed the appeal by the impugned judgment and order.

The question raised by the petitioner’s learned advocate is, whether the validity of a sale deed can be decided in a preemption case. In fact, validity and effectiveness of a sale deed is a question which determines the standing of a co-sharer by purchase. Since in the present case, the preemptor-petitioner claimed himself as a co-sharer by purchase, it was a material issue to determine his standing as a co-sharer, which the courts below rightly decided. I do not find any error of law on their part.

The rule having no merit, is, therefore discharged.

Send down the records.