

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

Present:

Mr. Justice Rezaul Karim

Civil Revision No. 633 of 2009

Abdur Rashid Patwri and others

..... Petitioners

-Versus-

Mst. Raihana Begum and others

..... opposite parties

Mr. Ali Imam Khaled Rahim, Advocate

.....For the petitioners

None.

.....For the opposite parties

Heard on: 13.09.2026

Judgment on: 14.09.2026

On an application under section 115(4) of the Code of Civil Procedure, 1908 (the Code), this Rule was issued calling upon the preemptor opposite party No. 1 to show cause as to why the judgment and order dated 28.1.2009 of the District Judge, Laxmipur passed in Civil Revision No. 4 of 2008 reversing the judgment and order dated 13.2.2008 of the Assistant Judge, Ramganj, Laxmipur passed in Miscellaneous Case No. 89 of 2007 rejecting the plaint 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, all further proceedings of Miscellaneous Case No. 89 of 2007, now pending before the Assistant Judge, Ramganj, Laxmipur, was stayed for a period of 3 (three) months. Subsequently, the order of stay was extended from time to time, and it is still in force.

The Rule was obtained by Abdur Rashid Patwari, the pre-emptee. He died on 07.11.2012, and his heirs were substituted as petitioners Nos. 1(a) to 1(k) by order dated 30.07.2013. Thereafter, petitioner No. 1(h), Billal Hossain, died on 01.01.2014, and his heirs were substituted as petitioners Nos. 1(h)(I) and 1(h)(II) by order dated 21.04.2015.

The facts relevant for disposal of the Rule, in brief, are that on 17.06.2007 opposite party No. 1, Mst. Raihana Begum, filed Miscellaneous Case No. 89 of 2007 before the Assistant Judge, Ramganj for pre-emption of 24 decimals of land. Her husband, opposite party No. 2, had transferred the land to Abdur Rashid Patwari by registered deed of exchange No. 2168 dated 18.04.2007. The parties and the courts below treated her application as one under section 96 of the State Acquisition and Tenancy Act, 1950 (the SAT Act). In the application, she stated that she had acquired her share in the holding by two registered sale deeds of 1996 and 1998 and by a registered deed of exchange of 2002. She described herself as a co-sharer of the holding by purchase and by exchange, and the pre-

emphree as a stranger. She alleged that the deed of exchange was in truth a sale, made in collusion to defeat her right of pre-emption.

The pre-emptor contested the case and, on 14.01.2008, filed an application under Order VII, rule 11 of the Code for rejection of the plaint. He stated that the deed was a genuine deed of exchange, that under section 96 of the SAT Act as substituted in 2006 only a co-sharer by inheritance may apply for pre-emption, and only against a sale, and that the required deposit had not been made. By order dated 13.02.2008, the Assistant Judge allowed the application. He held that only a co-sharer by inheritance may apply under section 96(1) of the SAT Act and only a sale can be pre-empted, whereas the pre-emptor had described herself as a co-sharer by purchase and the deed was a deed of exchange. He rejected the case and allowed the pre-emptor to withdraw her deposit.

The pre-emptor then filed Civil Revision No. 4 of 2008 before the District Judge, Laxmipur under section 115(2) of the Code. By the impugned judgment and order dated 28.01.2009, the learned District Judge allowed the revision. After recording the submissions of both sides, he observed, in two short sentences, that the trial court had passed the order without properly understanding the legal question and that the order was not correct. He set aside the order and directed the trial court to proceed according to law.

The learned Advocate for the petitioners made submissions in terms of the grounds taken in the revision petition. It was submitted that the pre-emptor's own application shows that she is not a co-sharer by inheritance, so that her application is barred by the first proviso to section 96(1) of the SAT Act, and that the learned District Judge set aside a reasoned order without discussing the law.

No one appeared for the opposite parties when the Rule was taken up for hearing, and no counter-affidavit was filed. The Rule has, therefore, been heard ex parte. Records were not called for. The questions arising in this Rule are questions of law, and they can be decided on the certified copies annexed to the revision petition.

To appreciate the submission of the learned Advocate for the petitioners, section 96(1) of the SAT Act, as substituted by section 2 of the State Acquisition and Tenancy (Amendment) Act, 2006 (Act No. XXXIV of 2006), is reproduced below:

"96. Right of pre-emption.- (1) If a portion or share of a holding of a raiyat is sold to a person who is not a co-sharer tenant in the holding, one or more co-sharer tenants of the holding may, within two months of the service of the notice given under section 89, or, if no notice has been served under section 89, within two months of the date of the knowledge of the sale, apply to the Court for the said portion or share to be sold to himself or themselves:

Provided that no application under this section shall lie unless the applicant is-

(a) a co-sharer tenant in the holding by inheritance; and

(b) a person to whom sale of the holding or the portion or share thereof, as the case may be, can be made under section 90:

Provided further that no application under this section shall lie after expiry of three years from the date of registration of the sale deed."

The deed was registered, and the application was filed, in 2007, after the substituted section came into force. Both sides proceeded on that footing. The quoted provision shows that, after the amendment, the right of pre-emption under section 96(1) of the SAT Act arises only where a portion or share of a holding is sold, and that only a co-sharer tenant in the holding by inheritance may seek it. The words "shall lie unless" in the first proviso create a statutory bar.

Under Order VII, rule 11(d) of the Code, the court looks only at the statements in the plaint and assumes them to be true for the limited purpose of that rule. In her own application, the pre-emptor claims to be a co-sharer by purchase and by exchange. She nowhere claims to be a co-sharer by inheritance. On her own statements, therefore, the application is ex facie barred by the first proviso to section 96(1) of the SAT Act.

The main contention of the pre-emptor before the learned District Judge was that the deed of exchange was a sale in disguise. Whether the deed is a genuine exchange or a sale is a question of fact which could not be decided under Order VII, rule 11. But even if her allegation is accepted for the limited purpose of the rule, it does not

remove the independent bar arising from her own pleaded status. It is, therefore, not necessary to decide whether the deed is a sale or an exchange. Her reliance on section 96(2) of the SAT Act is also misplaced. That sub-section deals with the persons who must be made parties to an application. It does not decide who may apply.

The trial Court, therefore, rightly held that the pre-emption application is not maintainable in law, since the pre-emptor is not a co-sharer by inheritance. The learned District Judge failed to appreciate the law in this regard. He set aside the order of the trial Court without dealing with its findings and without assigning any cogent reason. The impugned judgment does not disclose any consideration of the first proviso to section 96(1) of the SAT Act.

It should also be mentioned that the revision before the learned District Judge was itself incompetent. The petitioners did not raise this point. However, it is a question of jurisdiction which appears on the face of the record, and a court cannot assume a jurisdiction which the law does not give it. Under section 115(2) of the Code, the District Judge may revise an order of an Assistant Judge only where it is an order from which no appeal lies. The order dated 13.02.2008 was appealable on either of two footings. First, the courts below treated the pre-emption application as a plaint and the order as one rejecting the plaint. Section 2(2) of the Code provides that a "decree" "shall be deemed to include the rejection of a plaint", and section 96(1) of the

Code provides for an appeal from every decree passed by a court exercising original jurisdiction. Secondly, section 96(15) of the SAT Act provides: "An Appeal shall lie to the ordinary Civil Appellate Court from any order of the Court under this section." The order rejecting the pre-emption application was an order of the Court under section 96 of the SAT Act. On either view, the remedy of the pre-emptor was an appeal, not a revision. The learned District Judge ought to have found that the revision was incompetent, and it was liable to be rejected in limine. Instead, he entertained it without jurisdiction. This is an independent ground, and it would by itself be sufficient to dispose of the Rule.

Regard being had to the above, I find that the learned District Judge committed an error of an important question of law resulting in an erroneous decision occasioning failure of justice within the meaning of section 115(4) of the Code, on two independent grounds. First, he entertained and allowed a revision which did not lie, and thereby set aside an appealable order in a proceeding which was not maintainable. Secondly, even if the revision had been maintainable, he reversed a legally sustainable order without considering the first proviso to section 96(1) of the SAT Act, and thereby revived an application which, on the pre-emptor's own statements, is barred by law. On the other hand, the trial court rightly rejected the pre-emption application in so far as it held the application to be barred by the first

proviso to section 96(1) of the SAT Act. I have not considered the question of deposit under section 96(3) of the SAT Act, which neither of the courts below decided.

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

The judgment and order dated 28.01.2009 passed by the learned District Judge, Laxmipur in Civil Revision No. 4 of 2008 is hereby set aside, and the order dated 13.02.2008 passed by the Assistant Judge, Ramganj, Laxmipur in Miscellaneous Case No. 89 of 2007 is restored.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate the judgment at once.