

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Revisional Jurisdiction)

**Present:**

**Mr. Justice S.M. Masud Hossain Dolon**

**Civil Revision No. 702 of 2009**

Md. Majibar Rahman and others.  
.... Pre-emptee-petitioners.

-Versus-

Mafizal Haque and others  
.... Pre-emptor Opposite parties.

None appears for the petitioner.

Mrs. Sarker Tahmeena Begum, Advocate  
... for the opposite party No. 1

**Heard & Judgment on: 20.08.2024.**

This Rule has been issued calling upon the opposite-party No. 1 to show cause as to why the impugned judgment and order dated 19.11.2008 passed by the learned Additional District Judge, Kurigram in Miscellaneous Appeal No. 25 of 2007 disallowing the appeal and thereby affirming the judgment and order dated 12.03.2007 passed by the learned Senior Assistant Judge, Ulipur, Kurigram in Miscellaneous Case No. 29 of 2005 allowing the pre-emption should not be set-aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Short facts for disposal of the Rule, are that opposite party No. 1 as pre-emptor filed Miscellaneous Case No. 29 of 2005 under section 96 of the State Acquisition and Tenancy Act, 1950 before the Senior

Assistant Judge, Ulipur, Kurigram against the pre-emptee-purchaser for pre-emption of the land in the case as a co-sharer by inherence stating alleging inter-alia that C.S. khatian No.3 was published in the name of Azim Uddin, Jahur Uddin, Gafur Uddin Sheikh, Karful Bibi, Sabiron Bibi, Najiron Bibi. After death of Karful Bibi her son A. Gafur got share. After death of Majiron Nesa her full brother Azim Uddin, Jahur Uddin and full sister Basiron Nesa, Sabiron Nesa got share. After death of Basiron Nesa her 1 daughter Fulbanu Begum and full brother Azim Uddin, Jahur Uddin and full sister Sabiron got share. After death of Jahur Uddin his wife Mahiron Nesa 2 sons the pre-emptor Md. Mafijol Haque, pre-emptee No.4 Md. Mozammel Haque, 4 daughters Most. Jamila Khatun, Most. Jobeda Khatun, Most. Jarina Khatun, Most. Jayeda Khatun got share. After death of Mahiron Nesa her 2 sons the pre-emptor Mafijol Haque, pre-emptee No.4 Mozammel Haque who sold the schedule property, 4 daughters Most. Jamla Khatun, Most. Jobeda Khatun, Most. Jarina Khatun, Most. Jayeda Khatun got share Accordingly the pre-emptor is co-sharer by inherence in the case land. Pre-emptee No. 4 purchased 785 decimals on 06-10-1976, 23 decimals on 26-09-1977, 03 decimals on 28-12-1978 and 07 decimals on 28-01-1980 from Gafur Uddin Pre-emptee No. 5 purchased 30 decimals on 04-03-1992 from Gafur Uddin Fulbanu transferred 81 decimals on 02-11-1977, 08 decimals on 1-02-1986 to the pre-emptee No. 4. Sabiron Nesa transferred 82 decimals on 06-10-1976, 40 decimals on 12-05-

1978 to pre-emptee No. 4. Jamila Khatun transferred 08 decimals on 15-11-1984 and Jarina and Jayeda jointly transferred 15 decimals on 16-11-1985 to pre-emptee No.4. The pre-emptee No. 4 and 5 transferred 50 decimals to pre-emptee Nos. 1-3 on 20-06-2004. The pre-emptor did not know the transfer and no notice was served upon him. The pre-emptor did not know the transfer after knowing from people on 14-05-2005 and collected certified copy of the deed and fully came to know the impugned kabla.

The petitioner as pre-emptee Nos. 1-3 contested the case by filing written objection denying all the material allegations made in the plaint alleging inter alia that the case is false, collusive, not maintainable and the case is bad for defect of parties. The case in short is that the CS tenant Jahur Uddin gave pattan of 2.20 decimals of land to Sakiron Bibi and Piarzan Nesa by patta deed No. 7392 dated 03-12-1955. Thereafter S.A. record was published in the name of Sakiron Bibi and Piarzan Nesa. Accordingly the CS tenants are not sharer in the pattani land of Sakiron and Piarzan. Piarzan Nesa sold her 1.10 pattoni land to Most. Shonavan Nesa registered kabla deed on 1-12-2002. The pre-emptee Nos. 4/5 Most. Shonavan Nesa and her husband Mozammel Haque filed other suit No. 2 of 1994 partition and obtained decree of separate saham on 08-08-1996. Accordingly, the pre-emptor is not co-sharer in the case joth. There after the pre-emptee Nos. 4/5 proposed to sale the case land and the pre-emptor

and others sharer disclosed their disability. On 18-06-2004 at about 8/9 hours Mozammel Haque and the pre-emptor went to the house of the pre-emptee Nos. 1-3 and requested to purchase the case land. The pre-emptee Nos. 1-3 agreed with them and wished to purchase, In presence of all the price of the land was fixed at Taka 1,50,000/- and on that day the pre-emptor gave oral agreement not to preempt the case land. The deed was executed and registered on 20-06-2004 mentioning Taka 90,000/- instead of Taka 1,50,000/-. AT the time of deed the pre-emptor was present. It is to mention that the deed writer wrongly did not write Samsul Haque and Shahidul Haque as minor.

The learned Senior Assistant Judge, Ulipur, Kurigram after scrutinizing oral and documentary evidences submitted by the parties in support of their respective claims allowed the pre-emption case. Against this order pre-emptee opposite party filed Miscellaneous Appeal No. 25 of 2007 before the learned District Judge, Kurigram who transferred the same to the Court of learned Additional District Judge, Kurigram for disposal. After hearing the parties the learned Additional District Judge affirmed the judgment and order passed by the learned Senior Assistant Judge, Ulipur, Kurigram against which the petitioner pre-emptee filed the instant Revisional application and obtained Rule.

None appears for the petitioner.

On the otherhand Mrs. Sarker Tahmeena Begum, the learned Advocate on behalf of the opposite parties submits that both the courts below concurrently found that the pre-emptors are the co-sharer by inheritance, the pre-emption application is not barred by limitation, Thus, the present case of pre-emption is maintainable and both the courts below on considering this proposition of law allowed the pre-emption application and accordingly there is nothing to interfere with the concurrent findings of the courts below by this Division in a revisional jurisdiction and as such the Rule may be discharged.

I have heard the learned Advocate for the opposite party, perused the judgment and order of the courts below and all other relevant papers appended thereto. It appears that the property was transferred on 26.10.2004 and he obtained the certified copy of the said deed and filed the pre-emption case on 17.05.2005 under section 96 of the State Acquisition and Tenancy Act. The settled principle of law is that unless the transfer deed is registered under section 60 of the Registration Act or the pre-emptor came to know about the said transfer, cause of action of pre-emption does not arise. Admittedly the pre-emption case was filed on 17.05.2005, immediately after coming to know about the transfer upon obtained the certified copy of the transfer deed and filed the pre-emption case within 4 months of the statutory period of limitation from the date of knowledge of such

transfer. So, it is clear that the pre-emption case was not barred by law.

In respect of other contention as to whether the pre-emptor is a co-sharer or not, the trial court and lower appellate court upon discussed all the facts and circumstances of the case came to a conclusion that the petitioner and seller are full brother and also co-sharer by inheritance.

Section 96 of the State Acquisition and Tenancy Act which runs as follows:-

Section 96 (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:

Here, section 96 of the State Acquisition and Tenancy Act required only inherent owner can filed an application under section 96 of the State Acquisition and Tenancy Act, 1950. In the case in hand the pre-emptor is a co-sharer by inherent. Moreover, all the witnesses of P.Ws and O.P.Ws that the seller Mozammel Haque did not discuss about the sale of case land to his brother Mofizal Haque. On the

otherhand pre-emptee appellant is not a co-sharer, he is stranger in the schedule land.

After careful examination of the evidences and other materials on record I do not find any illegality in the impugned judgment and order of the courts below and as such it is tenable in law.

In view of the discussion made above, I do not find any merit in this Rule.

Accordingly, the Rule is discharged.

Send down the L.C.R along with a copy of this judgment to the concerned court for information and necessary action.