

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No.1086 of 2010

Sharupjan Bibi being his legal heirs Md. Nur  
Islam Sheikh ..... petitioner

-Versus-

Md. Abdul Salam Gazi and others  
..... opposite parties

Mr. Md. Nasir Uddin Khan, Advocate  
..... for the petitioner

No one appears for the opposite parties

Judgment on 11.06.2024

A miscellaneous case for pre-emption under section 96 of the State Acquisition of the Tenancy Act, 1950 (SAT Act, 1950) was rejected by the trial Court and affirmed by the lower appellate Court against which the pre-emptor approach this Court and obtained this rule with an *interim* order of *status quo*.

The pre-emptor filed Miscellaneous Case No. 25 of 2001 in the Court of Assistant Judge, Talash, Satkhira under the aforesaid section of the Act, 1950 for getting pre-emption of the *kabala* described in the schedule to the case. In the case she stated that Alem Gazi was the recorded owner of the land of CS khatian 45. He died leaving behind his 2 sons Kader Gazi and Hazra Gazi. Hazra Gazi died leaving his wife Nurjahan, daughter Amena and brother Kader Gazi. Amena sold her share to opposite party 2. Kader Gazi died leaving behind opposite parties 3-8 and the pre-emptor. Nurjahan sold out .12 acres to the pre-

emptor by a *kabala* dated 03.10.1983. Thus the pre-emptor is a co-sharer in the suit land by inheritance and purchase. The vendor-opposite party 2 very secretly sold the suit land to the pre-emptee opposite party 1 without serving any notice upon her. She collected certified copy of the *kabala* on 16.03.2001 and filed the case for pre-emption within the stipulated period of limitation.

The pre-emptee contested the case by filing written objection denying the facts stated in the case. He contended that Alem Gazi during his possession and enjoyment in the suit land of CS khatian 45 sold out it to Amena Khatun and opposite parties 3 and 4 through a registered *kabala* dated 21.04.1956. SA khatian in respect of the land has been recorded in the name of the purchasers. Amena Khatun also sold his share to opposite party 2 through a *kabala* dated 29.12.1959. The pre-emptee subsequently purchased the remaining part of land from opposite party 2 through registered *kabala* dated 11.01.2001. He has been possessing the suit land with the full knowledge of the pre-emptor. The pre-emptor is not a co-sharer in the suit *jote*. The documents dated 03.10.1983 has not been acted upon. Under the circumstances, the case for pre-emption would be rejected.

The Assistant Judge framed 5 issues to adjudicate the matter in dispute. Among them the vital issue was whether the pre-emptor is a co-sharer in the suit *jote*. In the trial the pre-emptor examined 2 witness and their documents were exhibits 1 and 2 series. On the

contrary the pre-emptee examined 3 witnesses and their documents were exhibits-‘Ka’, ‘Kha’ and ‘Ga’ series. However, the trial Court decided the material issue as to whether the pre-emptor is a co-sharer in the suit *jote* against her and rejected the case for pre-emption by its judgment order passed on 27.10.2004. Against the aforesaid judgment and order the pre-emptor filed Miscellaneous Appeal No. 13 of 2005 before the District Judge, Satkhira. The Joint District Judge, Court No. 1, Satkhira heard the said appeal on transfer and by the judgment and order passed on 24.09.2009 dismissed the appeal which prompted the pre-emptor to approach this Court and the rule was issued.

Mr. Nasir Uddin Khan, learned Advocate for the petitioner takes me through the judgments passed by the Courts below and submits that both the Courts below failed to assess the evidence of PW 2 in respect of the transfer by Alem Gazi to the opposite parties through *kabala* dated 21.04.1956 and failed to appreciate that the pre-emptor is still a co-sharer in the suit *jote* by way of inheritance and she is entitled to the pre-emption. He further submits that the evidence of DWs proves that the pre-emptee created the deed of 1956 taking advantage of burning of concerned Sub-registry office only to disqualify the pre-emptor as a co-sharer. Therefore, the judgment and order passed by the Courts below based on the deed of transfer in the year 1956 cannot be sustained in law. The Courts below further committed error of law in not taking into account that a pre-emptor

can file a case for pre-emption only on the CS record or on the basis of SA and RS records. Therefore, the impugned judgments passed by the Courts below is to be interfered with by this Court in revision and the rule would be made absolute.

No one appears for the opposite parties although the notices of this rule are seen to have been served upon them. I have considered the submissions of Mr. Khan, gone through judgments passed by the Courts below and other materials on record.

It transpires that the pre-emptor claimed her as co-sharer in the suit *jote* by way of inheritance. She further claimed to be a co-sharer by way of gradual purchase from the heirs of Alem Gazi. The pre-emptee asserted the fact that Alem Gazi sold out his total land measuring 1.22 acres to Amena Khatun and others through a registered *kabala* dated 21.04.1956 exhibit-‘Kha 1’. It is found from registered *kabala* exhibit-Kha dated 29.12.1959 that Amena sold his share to Sakhina Bibi. SA khatian 63 exhibit-Ka proves that the record in respect of the suit land has been prepared in the names of Amena Khatun, Shajahan and Yeakub Gazi according to their shares. Therefore, it is clear that the sale dated 21.04.1956 through which Alem Gazi transferred his land has been duly acted upon. To get an order of pre-emption under section 96 of the Act (before amendment of 2006) or under section 24 of Non Agricultural and Tenancy Act, the pre-emptor is to prove that he is a co-sharer in the suit *jote* either

by way of inheritance or by purchase. But here the pre-emptor failed to prove the case that she is a co-sharer in the *jote* in any one of the manner as stated hereinabove. The trial Court correctly assessed the evidence of witnesses and the documents submitted by the parties and rejected the case for pre-emption holding that the pre-emptor is not a co-sharer in the suit *jote* either by inheritance or by purchase which has been affirmed by the Court of appeal below. I find no error of law in the impugned judgments for which those can be interfered with by this Court in revision.

Therefore, this rule bears no merit and accordingly it is discharged. However, there will be no order as to costs. The order of *status quo* stands vacated.

Communicate the judgment and send down the lower Court records.