

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.1262 OF 2010**

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Mizanur Rahman and others

... Petitioners

-Versus-

Akram Hossain Miah being dead his heirs-Khitary Begum and others

... Opposite parties

Mr. Md. Serajul Haque with

Mr. Abdullah -Al- Masud, Advocate

... For the petitioners.

Mr. AK Shamsuddin Dulal with

Mr. Yeamin Newaz Khan, Advocate

....For the opposite parties.

**Heard on 30.04.2025 and Judgment on 07.05.2025.**

This Rule was issued calling upon the opposite party Nos.1-2 to show cause as to why the impugned judgment and order dated 21.10.2009 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Gopalganj to in Miscellaneous Appeal No.44 of 2007 allowing the appeal and thereby reversing the judgment and order dated 30.09.2007 passed by the Assistant Judge, Kashiani, Goplagonj in Pre-emptio Miscellaneous Case No.34 of 2001 rejecting the application for pre-emption should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as petitioners instituted above case under Section 96 of the State Acquisition and Tenancy Act for pre-emption against registered kabla deed dated 20.05.2021 executed by opposite party No.5 to opposite party Nos.1-4 for 16 decimal land alleging that petitioners are co-share by inheritance and opposite party Nos.1-4 are strangers to above holding. Opposite party No.1-4 transferred above land without any notice to the petitioners and they came to know about above kabla deed on 21.05.2001 and filed this case on 19.09.2001.

Opposite party Nos.1-4 contested above case by filling a joint written statement alleging that before transferring above land to the petitioners opposite party No.5 approached to his brothers opposite party Nos.1-4 who refused to purchase above land due to financial insolvency and the petitioners requested opposite party Nos.1-4 to purchase above land. On 16.05.2001 the petitioners and their brother opposite party No.5 in presence of Hormuj Mollah, Moinul Islam, Shahidul Islam, Nur Islam and others requested opposite party Nos.1-4 to purchase above land and relinquished their right to pre-emption. The petitioners mediated and fixed the price of above land at Taka 99,000/- and above consideration money was paid to opposite party No.5 through the petitioners. As such above case of the petitioners for pre-emption is barred by the principle of waiver, acquiescence and estoppel.

At trial petitioner examined one witness and documents of the petitioners were marked as exhibit Nos.1 and 2. On the other hand opposite party examined 3 witnesses and documents of the opposite party were marked as Exhibit No.s "Ka" - "Ga".

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge dismissed above case.

Being aggrieved by above judgment and order of the trial Court above petitioners as appellants preferred Miscellaneous Appeal No.44 of 2007 to the District Judge, Gopalganj which was heard by the learned Joint District Judge, 2<sup>nd</sup> Court who allowed above appeal, set aside the judgment and order of the trial court and allowed above case for pre-emption .

Being aggrieved by above judgment and order of the Court of Appeal below above respondents as petitioners moved to this court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this rule.

Mr. Md. Serajul Hoque, learned Advocate for the petitioners submits that in their written objection opposite party Nos.1-4 has made specific claims that opposite party No.5 before transferring above land to the opposite party Nos.1-4 approached the petitioners who were his full brothers to purchase above land but due to financial insolvency they refused to purchase and requested the opposite party Nos.1-4 on 16.05.2001 in presence of Hormuj Mollah, Moinul, Shahidul and others to purchase above land and assured that they would not file any case

for pre-emption. Petitioners also fixed price of above land to Taka 99,000/- and opposite party Nos.1-4 paid above consideration money through the petitioners. By the consistent and mutually supportive evidence of three competent opposite party witnesses the opposite party has succeeded to prove above claims. The petitioners waived there right to pre-emption and mediated the sale of above land by opposite party Nos.5 to opposite party Nos.1-4 and fixed the price of the above land and paid consideration money to opposite party No.5 for the opposite party Nos.1-4. On a detail analysis of evidence on record the learned Judge of the trial Court rightly held that the instant case for pre-emption was barred by the principle of waiver, acquiescence and estoppel and accordingly dismissed the case. But the learned Judge of the Court of Appeal below without reversing any materials findings of the trial Court most illegally allowed above appeal, set aside the lawful judgment and order of the trial Court and allowed pre-emption which is not tenable in law.

On the other hand Mr. AK Shamsuddin Dulal, learned Advocate for the opposite parties submits that the claim of opposite party Nos.1-4 that before sale of above land opposite party No.5 approached his brothers opposite party Nos.1-4 to purchase above land not be substantiated by legal evidence. Opposite party No.5 did not come to Court to give evidence that opposite party Nos.1-4 refused to purchase above land. In the written objection opposite party Nos.1-4 did not mention the venue of meeting of 16.05.2001 were the petitioners

abandoned their right to pre-emption or mediated above sale and fixed the price or paid the price.

In support of above claims opposite parties has examined three witness but they have given materially contradictory evidence as to the venue of meeting, role of the petitioners and waiver of right of pre-emption. The opposite party Nos.1-4 could not prove their claim of waiver, acquiescence and estoppel by consistent and mutually corroborative evidence of competent witnesses.

On consideration of above materials on record the learned Judge of the Court of Appeal below rightly held that opposite party Nos.1-4 could not prove the claim of waiver, acquiescence and estoppel against the petitioners and accordingly allowed the appeal, set aside the flawed judgment and order of the trial Court and allowed the appeal which calls for no interference.

I have considered the submissions of the learned advocates for respective parties and carefully examined all materials on record.

It is admitted that opposite party No.5 transferred 16 decimal land to opposite party Nos.1-4 by registered kabla deed No.2041 dated 20.05.2001 and petitioners are two brothers of above opposite party No.5 and co-shares by inheritance and opposite party Nos.1-4 are strangers to above holding. It is also admitted that above case for pre-emption was instituted within the statutory period of limitation.

At Paragraph No.9 of the written objection opposite party Nos.1-4 alleged that before transfer of above land by impugned kabla deed

opposite party No.5 approached to the petitioners to purchase above land but they refused to purchase due to financial crisis and on 16.05.2001 the petitioners in presence of local elders namely Hormuj, Moinul and Shahidul requested the opposite party Nos.1-4 to purchase above land and they relinquished their right to pre-emption. It has been further stated that petitioners mediated above sale and fixed the price of above land at Taka 99,000/- and above consideration money was paid through petitioner No.2. Petitioner No.2 Chan Miah gave evidence as OPW No.1 he consistently denied all claims made by opposite party Nos.1-4 in their written statement. He denied that he and his brother petitioner No.1 refused to purchase above land to opposite party No.5 and in presence of local elders requested opposite party Nos.1-4 to purchase above land and abandoned their right to pre-emption or he fixed the price of above land and handed over above consideration money to opposite party No.5. Above OPW No.1 was subjected to cross examination by the opposite parties but he was not cross examined as to his evidence that he assured opposite party Nos.1-4 that he would not file any case for pre-emption. He denied that he handed over consideration money to opposite party No.5 after receiving the same from opposite party No.1-4.

Opposite party No.1 gave evidence as PW1 and stated that on 16.05.2001 in presence of Moinul, Shahidul and Hormuj petitioners requested them to purchase above land and assured that they would not file any case for pre-emption. OPW2 Moinul stated in his evidence

that PW1 Chan Miah declared that they would not file any case for pre-emption. This witness did not say that both the petitioners assured that they would not file any case for pre-emption. Above witness did not mention that PW1 Md. Mizanur Rahman received consideration money from opposite party Nos.1-4 and handed over the same to opposite party No.5. As to the venue of above meeting PW1 Md. Mizanur Rahman stated that above meeting was held in the courtyard of petitioners but PW2 Shahidul Islam stated that above meeting was held on 16.05.2001 in the courtyard of petitioner No.1 and opposite party No.1.

In this regard the learned Advocate for the petitioners stated that the courtyard of the petitioner and opposite party No.1 are same since they were full brothers. But there is nothing on record to show that the petitioners and opposite party No.1 shared an identical courtyard.

Above witness also stated that the PW1 Chan Miah alone stated that they would not file any case for pre-emption. Above witness did not mention that consideration money of above kabla deed was paid by petitioner No.1 Md. Mizanur Rahman to opposite party No.5 after receipt of the same from opposite party Nos.1-4.

On consideration of above evidence adduced by the opposite party Nos.1-4 I hold that the learned Judge of the Court of Appeal below rightly held the opposite party could not prove by mutually supportive, consistent and credence inspiring evidence their claim of waiver, acquiescence and estoppel against the petitioners.

In above view of the facts and circumstances of the case and evidence on record I am unable to find any illegality or irregularity in the impugned judgment and order passed by the learned judge of the Court of Appeal below nor I find any substance in this Civil Revisional application under Section 115 of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, this Rule is discharged.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER.*