

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 79 of 2011

In the matter of:

Al Hajj Mostafizur Rahman Miah

Pre-emptee-appellant-petitioner

-Versus-

Radhe Sham Datta and others

Pre-emptor-respondent-opposite parties

Mr. Saifur Rashid, with

Mr. Md. Maksud Alam, Advocates

...For the petitioner

None

... For the opposite parties

Heard on: 23.02.2025

Judgment on: 04.03.2025

Pre-emption Miscellaneous Case No. 16 of 1997 was allowed by the learned Joint District Judge, 2nd Court, Bhola, vide judgment and order dated 20.07.2006. Pre-emption Miscellaneous Appeal No. 18 of 2006 was dismissed by the learned Additional District Judge, Bhola, vide judgment and order dated 09.06.2010. Challenging the same, the pre-emptee as petitioner filed the instant revision and obtained the Rule.

None of the opposite parties including the pre-emptor has entered appearance in the Rule.

The opposite party No. 1 Radhe Sham Datta as pre-emptor filed the pre-emption miscellaneous case on 15.09.1997 claiming to be a co-sharer in the S.A Khatian No. 822. The area of land in question is 1.20 acre appertaining to the S.A Khatian No. 822 of Mouza-Golokpur under Police Station- Tajumuddin, District- Bhola. The land was purchased by the pre-emptee Mostafizur Rahman Miah, who is a stranger in the said jote, vide sale deed No. 461 dated 22.03.1997. Learned Joint District Judge, 2nd Court, Bhola allowed the pre-emption case. The pre-emptee filed pre-emption miscellaneous appeal which was dismissed by the Additional District Judge, Bhola.

Mr. Saifur Rashid, the learned Advocate appearing for the pre-emptee-petitioner took a single ground in support of the Rule. He submits that the pre-emptor is not a co-sharer because of the fact that after purchasing 108 decimals of land appertaining to the S.A. Khatian No. 822 which was initially part of the case jote, the pre-emptor mutated the said 108 decimals of land in his name long before filing of the pre-emption case and thus, ceased to be a co-sharer in the case jote as per the provisions of Section 117(1)(c) of the State Acquisition and Tenancy Act, 1950. Mr. Saifur Rashid submits that this fact was not reflected in the judgments and orders passed by the Courts below who wrongly treated the pre-emptor as a co-sharer by purchase. Mr.

Saifur Rashid refers to exhibit-1 which was tendered in evidence by the pre-emptor (PW 1). In support of the argument, the learned Advocate refers to the cases reported in 18 DLR 281, 33 DLR (AD) 305, 33 DLR (AD) 309 and 55 DLR 214.

I have perused the deposition given by the pre-emptor as PW.1 and exhibit-1 tendered in evidence by the PW.1. Exhibit-1 is a mutation khatian although PW. 1 described the same as part of the S.A. Khatian. It appears from the exhibit-1 that vide order dated 21.10.1989 passed in Mutation Case No. 61 (part 2) of 1989-90 a separate mutation khatian was opened in the name of the pre-emptor in respect of 108 decimals of land which was earlier purchased by him.

In *Kafizan Bibi and others vs. Haji Farid Kazi and others*, 18 DLR (1966) 281, the Courts below allowed the pre-emption case filed under Section 26F of the Bengal Tenancy Act, 1885. The then High Court of East Pakistan made the Rule absolute and dismissed the pre-emption case holding that admittedly the original jama comprising the disputed subject matter had been subdivided at the instance of the pre-emptor himself by the Revenue Officer on 13.06.1961. Thus, the pre-emptors ceased to be co-sharers of the pre-emptee's vendors in respect of the jama in question with effect from 13.06.1961. As such, the pre-emptors had no *locus standi* to come under Section 26F and seek pre-emption in respect of the disputed transfer.

The case of *Md. Mafizuddin Patwari and others vs. Abdul Hakim Miazi and others*, 33 DLR (AD) 305 arose out of a pre-emption case under Section 26F of the Bengal Tenancy Act. In this case, the trial Court rejected the pre-emption case on the ground that there had been a valid subdivision of the jama and the pre-emptor was no longer a co-sharer. Appeal was allowed holding that the subdivision was not done legally. The High Court discharged the Rule. Leave was granted to consider the question whether an order of sub-division of tenancy under Section 88A of the Bengal Tenancy Act without proper compliance with the proviso (a) to sub-section (1) of the said section is without jurisdiction and can be treated to be so by a Civil Court in a collateral proceeding. The answer was in negative and the appeal was allowed. 18 DLR 281, which was approved in 26 DLR (SC) 64, was referred to in 33 DLR (AD) 305.

In *Mohd. Javed Ali and others vs. Rakhai Chandra Mondal and others*, 33 DLR (AD) 309, the pre-emption case was filed under Section 96 of the State Acquisition and Tenancy Act, 1950. In respect of subdivision of the jama under Section 117 of the Act, 1950, the Appellate Division observed:

“When an order is passed by a competent Revenue Officer under section 117 of the Act, and the order is in conformity with the statutory requirements and the order has been given effect by the co-sharer tenants of the holding, the holding stands separated under the law. If any of the tenants is

aggrieved by the order he can take recourse to appeal as provided in this section itself. In the absence of such an appeal the order becomes final and binding upon all the co-sharer tenants.”

In *Md. Shah Alam vs. Alhaj Md. Shahidur Rahman and others*, 55 DLR 214, the pre-emption case was filed under Section 24 of the Non-agricultural Tenancy Act, 1949. It was held:

“In the aforesaid decision reported in BCR 1984 (AD) 243 reference was also made to another decision in the case of *Mafizuddin Patwari vs. Abdul Hakim Miazi* reported in 33DLR(AD) (1981) at page 305 wherein it was held that an original co-sharer who ceased to be a co-sharer of the jama cannot apply for pre-emption. It was further held that a co-sharer seeking pre-emption must have a subsisting interest in the holding at the time when he files an application for pre-emption and must continue to hold such interest until the case is finally disposed. It will not be out of place to mention here that separation of jama or sub-division of a holding or tenancy distributing rents, whether in the case of agricultural land under State Acquisition and Tenancy Act or in the case of Non-agricultural land under Non-Agricultural. Tenancy Act, takes place under section 117(1)(c) of State acquisition and Tenancy Act and the original co-sharers on such separation cease to be co-sharers as such and cannot apply for pre-emption on the ground of co-sharership. The principle is equally applicable in both the cases of agricultural and non-agricultural land.”

In the instant case, the jama in question was subdivided at the instance of the pre-emptor before filing of the pre-emption case which is evident from the exhibit-1. In view of the ratio laid down in the above-discussed reported cases, the pre-emptor had no *locus standi* to file the case as co-sharer for the reason that he had ceased to be a co-sharer after subdivision of the jama. Both the Courts below failed to consider this aspect of the case and thus, committed an error of law resulting in an error in the orders occasioning failure of justice in allowing the pre-emption case. Hence, the Rule succeeds.

In the result, the Rule is made absolute. The judgments and orders passed by the Courts below are set aside. The pre-emption case is rejected.

Send down the L.C.R.