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

Present:
Mr. Justice Zafar Ahmed

Civil Revision No. 4915 of 2010

Most. Sufia Sultana and others
..... Petitioners

-Versus-

Md. Abdul Mazid being dead his legal heirs Md. Nurunnabi Islam and others
.... Opposite parties

None.
..... For petitioner
Mr. Md. Musharraf Hussain, with
Mr. Kazi Shoayeb Hasan, Advocate
.... For opposite party No. 1

Heard on: 27.10.2024 and 03.11.2024
Judgment on: 06.11.2024

Farid Uddin Akand as sole pre-emptor-petitioner filed Preemption Case No. 9 of 1997 in the Court of Senior Assistant Judge, 2nd Court, Sadar, Bogura. The preemption case was allowed on 14.03.2005. Miscellaneous Appeal No. 79 of 2005 filed by the opposite party was allowed on 12.03.2008 and the case was sent back on remand to the trial Court. Thereafter, the trial Court rejected the pre-emption case, vide judgment and order dated 11.11.2008. Before filing the appeal, the sole pre-emptor-petitioner died and his legal heirs (wife, son and 2 daughters) filed Miscellaneous Appeal No. 24

of 2009 which was dismissed on 08.09.2010 by the learned Additional District Judge, 2nd Court, Bogura. Challenging the same, the legal successors of the sole pre-emptor filed the instant revision and obtained Rule on 15.12.2010.

None appeared for the pre-emptor-petitioners when the Rule was taken up for hearing. The pre-emptee-purchaser opposite party No. 1 entered appearance in the Rule.

Both the Courts below concurrently found that the pre-emptor ceased to be a co-sharer of the case jote before sale of the case land to the pre-emptee-purchaser and as such, the right of pre-emption failed. No other issues have been raised in the instant civil revision. Now, let us examined whether concurrent finding of fact arrived at by the Courts below is correct and whether the pre-emption case was rightly disallowed.

The case land was sold to the pre-emptee-purchaser by the co-sharer of the case jote on 09.06.1991. Both the Courts below found that the pre-emptor-petitioner Farid Uddin Akand (since deceased) was a co-sharer in the case jote by inheritance. However, prior to sale of the case land to the pre-emptee-purchaser, the pre-emptor transferred portion of his shares in the case jote to his two sons namely, Abu Raihan (present petitioner No. 2) and Borhan Ali on 15.02.1987 by a registered deed of gift. Thereafter, on 03.12.1989 the pre-emptor again transferred potion of his shares in the case jote to his

above mentioned two sons by a registered deed of heba-bil-awaj. Thereafter, on 21.04.1993 the pre-emptor-petitioner transferred remaining portion of his shares in the case jote to one Momtaz Uddin Fakir by a registered sale deed. Thus, before filing of the pre-emption case the pre-emptor Farid Uddin Akand had no share in the case jote and he ceased to be a co-sharer in the case jote.

The learned Advocate appearing for the pre-emptee-opposite party No. 1 referred to the case of ***Md. Abbas Ali vs. Md. Osman Ali and others***, 6 BLD 130 and submits that in view of the ratio laid down in the reported case the pre-emptor-petitioner had lost his interest in the case jote and thus, the pre-emption case became infructuous. It is held in the reported case that the right of pre-emption and the sale giving rise to cause of action will subsist till the final order is made-if the pre-emptor's interest in the holding is lost the proceeding for pre-emption case becomes infructuous.

In ***Ershad Ali vs. Rampada Das***, 58 DLR 593 it is held that it is now well settled by good authorities that the pre-emptor must not only have a subsisting interest in the holding when he makes the application for pre-emption but he must continue to hold such interest until disposal of the proceeding for pre-emption.

In view of the principle laid down in above-mentioned reported cases, I have no hesitation to hold that the pre-emptor had no subsisting interest in the case jote when he filed the case.

It is settled principle of law that right of pre-emption is a heritable right. In a pending proceeding, the heirs are entitled to be substituted in the place of the deceased pre-emptor so as to proceed with the case [45 DLR (AD) 171]. In the instant case, admittedly the deceased sole pre-emptor transferred portion of his shares in the case jote to his two sons prior to sale of the case land to the pre-emptee-purchaser. However, those two sons were not added as co-pre-emptor during pendency of the pre-emption case in the trial Court under Section 96(4) of the State Acquisition and Tenancy Act, 1950 as it stood prior to substitution of Section 96 in 2006. The sole pre-emptor-petitioner died after pronouncement of the judgment by the trial Court. His legal heirs filed the miscellaneous appeal and prosecuted the same on behalf of the deceased pre-emptor, not as co-sharer of the case jote. Since the deceased sole pre-emptor had no subsisting interest in the case jote, the appeal was rightly rejected. Hence, the Rule fails.

In the result, the Rule is discharged.

Send down the LCR.

Mazhar, BO