

District-Faridpur.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Toufiq Inam**Civil Revision No. 106 of 2011.**

Haidar Mollah.

---- Pre-emptee-Appellant-Petitioner.

-Versus-

Abdul Halim Mollah.

---- Pre-emptor-Respondent-Opposite Party No.1.

Motahar Mollah and others.

---- Opposite Parties.

Mr. Gazi Md. Mamunur Rashid, Advocate

---- For the Pre-emptee-Appellant-Petitioner.

None appears.

---- For the Opposite Parties.

Heard On: 31.07.2025, 13.08.2025.And**Judgment Delivered On: 27th Day of August 2025****Md. Toufiq Inam, J:**

This Rule was issued upon the opposite party to show cause as to why the judgment and order dated 12.5.2009 passed by the learned Special District Judge, Faridpur in Miscellaneous Appeal No. 59 of 2006, affirming the judgment and order dated 11.3.2003 passed by the learned Senior Assistant Judge, Faridpur in Miscellaneous Case No. 70 of 2000 allowing pre-emption, should not be set aside.

The pre-emptor, opposite party, instituted the Miscellaneous Pre-emption Case, registered as Miscellaneous Case No. 70 of 2000 under

Section 96 of the State Acquisition and Tenancy Act, before the learned Senior Assistant Judge, Faridpur.

In brief, the case of the pre-emptor is that the land measuring 9.18 acres belonged to the vendor, the pre-emptor, and opposite party Nos. 15 to 18. The pre-emptor was enjoying and possessing his share of the case khatian. The vendor, opposite party No. 2, allegedly sold his share of the same khatian to the pre-emptee behind the pre-emptor's back and without his knowledge. For the land described in Schedule No. 2 under the disputed kabala dated 7.12.1998, the pre-emptor filed the instant case. It is claimed that the pre-emptee, opposite party No. 1, never obtained right, title, or possession over the case land, and no sale notice was given prior to the execution and registration of the said kabala. Upon becoming aware of the transaction, the pre-emptor instituted this Miscellaneous Pre-emption case within time, which, in his submission, ought to be allowed.

The pre-emptee, opposite party, contested the case by filing a written objection, denying the material allegations in the pre-emption application. It was stated that the pre-emptor is not a co-sharer of the case khatian. Following the death of Faijuddin, the father of the pre-emptor, the pre-emptor and opposite party Nos. 15 to 18 became his legal heirs and sold 29 decimals of land of S.A. Plot 188 by way of registered kabala dated 28.1.1977. Further, the pre-emptor, along with his mother, sister, and brothers, sold their entire shares in the case

khatian on different dates by way of registered kabala. Consequently, the pre-emptor had no right, title, interest, or possession over any portion of the case khatian and had been living elsewhere after selling his entire property. It was also submitted that the pre-emptor was fully aware of the sale in question. On these grounds, it was contended that the pre-emption case is liable to be rejected with costs.

The learned Senior Assistant Judge, Faridpur, upon considering the materials and evidence on record, allowed the pre-emption case by judgment and order dated 11.3.2003. Aggrieved, the petitioner preferred Miscellaneous Appeal No. 14 of 2003 before the learned District Judge, Faridpur, which was disposed of by the learned Additional District Judge, Faridpur, by judgment and order dated 23.6.2004, remanding the case for retrial.

On retrial, the learned Senior Assistant Judge, Faridpur, again decided the case in favour of the pre-emptor by judgment and order dated 11.6.2006. Being aggrieved by this decision, the petitioner preferred Miscellaneous Appeal No. 59 of 2006 before the learned District Judge, Faridpur, which was dismissed by impugned judgment and order dated 12.5.2009.

Mr. Gazi Md. Mamunur Rashid, learned Advocate for the petitioner, submits that both courts below erred in failing to consider that the pre-emption case was barred by limitation. The case was filed on

12.10.2000, whereas the certified copy of the disputed kabala was withdrawn on 3.10.1980. Both courts, according to the petitioner, committed an error in law by deciding the case in favour of the pre-emptor, resulting in failure of justice.

He further submits that the pre-emptor and his siblings had sold their entire shares by way of registered kabalas dated 28.1.1977, thereby losing all title, interest, and possession in any part of the case khatian. Despite this, the courts below erroneously held that the pre-emptor had a share in the disputed khatian, resulting in a manifest error of law and miscarriage of justice.

Finally, he contends that the pre-emptor failed to establish the date of knowledge of the kabalas in question, which is central to the case, and that the pre-emptee petitioner has clearly demonstrated that the pre-emption case is barred by limitation.

None appears to oppose the Rule.

Having considered the submissions of the learned Advocates for the petitioner and perused the materials on record, this Court is of the opinion that the petitioner has failed to make out a case for interference under Section 115(1) of the Code of Civil Procedure. The impugned orders of the courts below, which allowed the pre-emption claim in favour of the pre-emptor, are based on a careful appraisal of

the materials and evidence on record and do not suffer from any legal or procedural infirmity warranting interference.

It is well-settled that a pre-emption claim under Section 96 of the State Acquisition and Tenancy Act is subject to the strict rules of limitation and the requirement of establishing co-sharership and possession in the disputed property. In the present case, the petitioner contends that the pre-emption case is barred by limitation and that the pre-emptor had already sold his entire share in the khatian prior to filing the case. However, the courts below examined the documentary evidence, including the registered kabala and ownership records, and concluded that the pre-emptor had a valid claim over the disputed property and the pre-emptor filed the case within four months from the date of knowledge, as no notice under Section 89 of the Act was issued.

Although a deed may be executed earlier, for purposes of accrual of the pre-emptive right the relevant date is the date of registration of the sale; but when no notice under Section 89 is served, limitation begins to run from the date of knowledge of the transfer. The burden lies on the pre-emptor to establish that the application was filed within four months from the date of knowledge, and once this is shown, the claim is not barred.

The petitioner has also alleged that the pre-emptor failed to establish the date of knowledge of the disputed sale, which is a critical element

in limitation. While this point was raised, it is essentially a question of fact, and the courts below have considered it in light of the submissions and documents presented. As held in the above authorities, questions relating to date of knowledge are mixed questions of law and fact, and the concurrent findings of the trial and appellate courts deserve deference in revisional jurisdiction unless shown to be perverse or unsupported by evidence. No such perversity has been demonstrated before this Court.

Furthermore, the courts below rightly took into account the principle that pre-emption is a statutory right intended to prevent the intrusion of strangers into the homestead and to preserve the integrity of co-sharers' holdings. Denying such right on hyper-technical grounds, when the substantive ingredients of co-sharership and timely application are established, would defeat the very object of Section 96 of the Act.

The petitioner has not pointed to any specific illegality, material irregularity, or perversity in the findings of the lower courts. The concurrent judgments reveal due consideration of both oral and documentary evidence and a reasoned application of statutory provisions. In such circumstances, interference would amount to substituting the view of this Court for that of the courts below, which is impermissible under settled principles of revisional jurisdiction.

Accordingly, having considered the entire record, the submissions of the petitioner, the applicable statutory provisions, and the authoritative pronouncements of the superior Courts, this Court finds no sufficient ground to interfere with the concurrent judgments of the courts below. The petitioner has not established that the impugned judgment and orders occasioned failure of justice or were otherwise legally erroneous.

In these circumstances, the Rule fails.

Consequently, **the Rule is discharged**. The judgment and order dated 12.5.2009 passed by the learned Special District Judge, Faridpur in Miscellaneous Appeal No. 59 of 2006, and the judgment and order dated 11.3.2003 passed by the learned Senior Assistant Judge, Faridpur in Miscellaneous Case No. 70 of 2000 are hereby affirmed.

Let the LC Records be sent back and a copy of this judgment be communicated at once for compliance.

(Justice Md. Toufiq Inam)