

District-Kushtia.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 2580 of 2018.

Md. Amir Ali and others.

---- Preemptees-Appellants-Petitioners.

-Versus-

Md. Shamsuzzaman and others.

---- Preemptors-Respondents-Opposite Parties.

Mr. Tushar Kanti Roy, Advocate

---- For the Preemptees-Appellants-Petitioners.

Mr. Md. Sirajul Islam, Advocate

----For the Preemptors-Respondents-Opposite Parties.

Heard On: 05.11.2025, 03.12.2025.

And

Judgment Delivered On: 08.03.2026.

Md. Toufiq Inam, J:

At the instance of the petitioner, this Rule was issued calling upon the pre-emptor to show cause as to why the judgment and order dated 11.07.2018 passed by the learned District Judge, Kushtia in Miscellaneous Appeal No. 10 of 2017, affirming the judgment and order dated 09.03.2017 passed by the learned Assistant Judge, Daulatpur, Kushtia in Miscellaneous Case No. 03 of 1997 allowing the pre-emption, should not be set aside.

The father of opposite party Nos. 1–8, as pre-emptor, instituted Pre-emption Case No. 3 of 1997 before the Court of the Assistant Judge,

Daulatpur, Kushtia, alleging that 0.45 acres of land under S.A. Khatian No. 1878 originally belonged to Golapi Bibi. Upon her death, she left two sons- Atar Ali (the pre-emptor) and Abdul Gafur- and two daughters, Ana Khatun and Khukijan Nessa, who inherited the property. Khukijan Nessa transferred 0.0750 acres to Moksed Ali. The pre-emptor also transferred portions of his share to Moksed Ali but retained the remainder. During R.S. operation, the land was recorded in R.S. Khatian No. 230 in the names of the heirs and Moksed Ali.

Subsequently, Moksed Ali transferred 0.0875 acres to Abdus Sattar, who, by Deed Nos. 12622 and 12623 dated 24.12.1996, sold the same to pre-emptee Nos. 1 and 2 behind the back of the pre-emptor. Claiming to be a co-sharer and asserting that pre-emptee Nos. 1 and 2 were stranger purchasers, the pre-emptor instituted the case within 18 days of the impugned transfer.

Pre-emptee Nos. 1 and 2 contested the case by filing written objection, denying the material allegations and contending that the case was not maintainable, barred by limitation and defective for non-joinder of necessary parties. They traced earlier transfers in favour of Moksed Ali and others and claimed that Abdus Sattar had first offered the land to the pre-emptor, who allegedly refused and advised him to sell it to them. They further relied upon an unregistered bainapatra dated 01.04.1995 and asserted that they had been possessing the land

upon part payment and had spent substantial amounts for development.

At trial, five issues were framed relating to maintainability, limitation, defect of parties, waiver and acquiescence, and entitlement to pre-emption. The pre-emptor examined two witnesses and produced documentary evidence in support of his case. The pre-emptees examined three witnesses and submitted several documents in defence. An Advocate Commissioner was also examined.

Upon consideration of the evidence, the trial Court allowed the pre-emption. Being aggrieved, the pre-emptees preferred Miscellaneous Appeal No. 10 of 2017 before the learned District Judge, Kushtia. The appellate Court dismissed the appeal and affirmed the judgment and order of the trial Court, against which the present Rule was obtained.

Mr. Tushar Kanti Roy, learned Advocate appearing on behalf of the pre-emptee-petitioner, submits that the impugned judgment and order passed by the appellate court affirming the order of pre-emption suffer from serious legal infirmities and misappreciation of evidence. He contends, at the outset, that the pre-emption case was not maintainable either in law or on facts. According to him, the pre-emptor failed to establish his status as a co-sharer in the case holding at the relevant point of time, and the courts below erroneously relied upon revenue

records without proper proof of title. He further submits that mere recording of a name in the R.S. Khatian does not conclusively establish co-sharership in the absence of supporting title documents.

He next argues that the pre-emption application was barred by limitation. Although the registered kabalas were executed on 24.12.1996, the pre-emptee-petitioner asserts that possession had been delivered much earlier pursuant to an agreement for sale dated 01.04.1995, and that the pre-emptor had full knowledge of the transaction long before registration. It is contended that the courts below failed to consider the surrounding circumstances demonstrating prior knowledge and, therefore, erroneously computed limitation from the date of registration alone.

He further submits that the pre-emption case suffered from defect of parties, inasmuch as all necessary co-sharers and transferees were not impleaded at the initial stage. Though one party was subsequently added after remand, the defect, according to him, was fundamental and rendered the proceeding incompetent from the outset. He argues that the appellate court did not properly address this jurisdictional objection.

On the issue of waiver and acquiescence, Mr. Roy contends that the vendor had offered the land to the pre-emptor prior to sale, which

offer was refused, thereby disentitling him from claiming pre-emption subsequently. He submits that such conduct amounts to relinquishment of a known right. It is further argued that the pre-emptor did not challenge earlier transfers within the same holding and thereby acquiesced in fragmentation, which militates against equitable relief.

Learned Advocate also assails the findings regarding development cost. He submits that the pre-emptee–petitioner invested substantial sums in developing the land after purchase and that the courts below failed to assess such improvements in accordance with law. According to him, the Advocate Commissioner’s report and oral testimony sufficiently indicated development, and at the very least, compensation ought to have been awarded.

In reply, Mr. Md. Sirajul Islam, learned Advocate appearing for the pre-emptor, supports the concurrent findings of the courts below and submits that the Rule is devoid of merit. He contends that the pre-emptor’s status as a co-sharer in the holding has been clearly established by documentary evidence, including the R.S. Khatian and admitted genealogy, and further corroborated by the testimony of O.P.W.–01, who acknowledged the pre-emptor’s co-sharership. Such concurrent findings of fact, he argues, cannot be reopened in revisional jurisdiction in the absence of perversity.

On limitation, Mr. Islam submits that under section 96 of the State Acquisition and Tenancy Act, 1950, limitation runs from the date of registration of the transfer, not from the date of any unregistered agreement for sale. Since the kabalas were registered on 24.12.1996 and the pre-emption case was filed on 12.01.1997, the application was well within the statutory period. He contends that an unregistered bainapatra does not create or transfer title and cannot trigger limitation for pre-emption.

With regard to defect of parties, learned Advocate submits that the pre-emptee-petitioner failed to specify any indispensable party at the earliest opportunity. After remand, the only named person was duly impleaded. No prejudice has been shown to have been caused by any alleged omission. Therefore, the objection is merely technical and rightly rejected.

On the plea of waiver, Mr. Islam argues that waiver must be strictly proved and cannot be inferred from vague allegations. The vendor, who was the most competent witness to prove any prior offer and refusal, was not examined. There is no documentary evidence of any such offer. Mere inaction in respect of earlier transfers does not amount to abandonment of a statutory right arising from a subsequent transfer.

Regarding development cost, learned Advocate submits that the pre-emptee–petitioner failed to produce any reliable documentary proof of expenditure. No accounts, vouchers, or independent evidence were adduced. The claim was exaggerated and inconsistent, and the courts below, upon proper appreciation of evidence, found the same unproved. He finally submits that the judgments under challenge reflect proper consideration of law and evidence, and no jurisdictional error or material irregularity has been demonstrated warranting interference by this Court. Accordingly, he prays for discharge of the Rule.

The submissions of the learned Advocates and the materials on record have been carefully considered.

At the outset, it is to be noted that both the courts below have concurrently found that the pre-emptor is a co-sharer in the disputed holding and that pre-emptee Nos. 1 and 2 are stranger purchasers. Such findings are essentially findings of fact based upon oral and documentary evidence, including the S.A. and R.S. records, the admitted genealogy, and the clear admission of O.P.W.–01 that the pre-emptor is a co-sharer whereas the pre-emptees are not. In revisional jurisdiction, this Court does not ordinarily interfere with concurrent findings of fact unless the same are shown to be perverse,

based on misreading of evidence, or resulting in failure of justice. No such infirmity has been demonstrated.

On the question of limitation, the impugned deeds were executed and registered on 24.12.1996, and the pre-emption case was instituted on 12.01.1997, i.e., within 18 days thereof. Section 96 of the State Acquisition and Tenancy Act, 1950 prescribes a specific period within which an application for pre-emption must be filed from the date of registration of the transfer. The courts below rightly held that the case was instituted well within the statutory period. The plea that limitation should run from the date of the alleged bainapatra dated 01.04.1995 is misconceived, since the said document was admittedly unregistered and did not effect any transfer of title. A right of pre-emption arises only upon completion of a transfer by a registered instrument. Thus, no cause of action accrued on the basis of the unregistered agreement.

The contention regarding defect of parties has also been examined. The pre-emptees failed to specify at the initial stage which necessary parties were omitted. After remand, one alleged necessary party was named, who was subsequently impleaded. No other omission was substantiated by evidence. A vague plea of non-joinder without identification of indispensable parties cannot defeat a statutory right of pre-emption, particularly when no prejudice has been shown. The

concurrent finding that the case does not suffer from defect of parties calls for no interference.

The plea of waiver and acquiescence has been rightly rejected. Waiver is not to be presumed; it must be clearly proved by cogent evidence showing intentional relinquishment of a known right. The pre-emptees asserted that the vendor had first offered the land to the pre-emptor and that he refused. However, the best possible witness on that point was the vendor himself, who was not examined. There is no documentary evidence of any such offer, nor any reliable oral testimony establishing that the pre-emptor consented to or encouraged the sale in favour of the pre-emptees. Mere non-filing of pre-emption cases against earlier transfers does not, by itself, amount to waiver of a distinct and fresh right arising out of a subsequent transfer. Each completed transfer gives rise to a separate cause of action. The courts below, therefore, committed no error in holding that waiver and acquiescence were not proved.

The argument that mutation in favour of the vendor or pre-emptees renders the pre-emption case not maintainable is equally untenable. Mutation neither creates nor extinguishes title; it is merely for fiscal purposes. The right of pre-emption depends upon status as co-sharer and the character of the transferee, not upon entries in revenue records alone. The courts below correctly appreciated this settled principle.

With regard to development costs, the pre-emptees initially claimed expenditure of Tk. 60,000/-, and after remand enhanced the claim to Tk. 2,00,000/-. However, no detailed account, supporting vouchers, independent witnesses, or reliable evidence was produced. The Advocate Commissioner's report did not conclusively establish the nature, extent or value of development attributable to the specific portion sought to be pre-empted. Even after being afforded opportunity upon remand, the pre-emptees failed to discharge the burden of proof. The concurrent finding that the alleged development expenditure was not proved cannot be termed perverse or illegal.

It is also significant that the pre-emptor's status as recorded co-sharer stands established by documentary evidence, including R.S. Khatian, and by admission of the pre-emptees' witness. Conversely, pre-emptee Nos. 1 and 2 admittedly do not derive title as co-sharers but as purchasers from a co-sharer's transferee. Their position is, therefore, that of stranger purchasers vis-à-vis the holding. In such circumstances, the statutory right of pre-emption squarely operates.

In revisional jurisdiction, this Court is concerned with jurisdictional error, material irregularity, or illegality resulting in failure of justice. The petitioners have not been able to show that the courts below misdirected themselves in law, excluded admissible evidence, relied on inadmissible evidence, or arrived at conclusions so unreasonable

that no prudent court would have reached them. On the contrary, the judgments of the courts below reflect proper appreciation of evidence, correct application of section 96 of the State Acquisition and Tenancy Act, 1950, and sound reasoning on each of the issues framed.

Accordingly, no ground has been made out for interference.

The Rule is, therefore, discharged without any order as to costs.

The Judgment and order of the Appellate Court in Miscellaneous Appeal No. 10 of 2017 is hereby upheld.

The interim order of *status-quo* stands vacated.

The office is directed to send down the LCR together with this Judgment for information and compliance.

(Justice Md. Toufiq Inam)