Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 3933 of 2018

With Civil Revision No. 3934 of 2018.

Md. Abdus Sattar Pramanik.

……Petitioner.

Versus-

Md. Bander Ali Sheikh and others.

……Opposite parties.

Mr. Md. Asad Miah, Advocate.

---------For the petitioner.

Mr. Md. Shameem Sardar, Advocate

--------For the opposite parties.

Heard on 28.04.2024 and

Judgment on 29.04.2024.

A.K.M. Asaduzzaman, J.

These 02(two) rules were arisen out of same judgment dated 26.07.2018 passed by the Additional District Judge, 2nd Court, Pabna in Other Class Appeal No. 19 of 2017 and Other Class Appeal No. 20 of 2017 affirming those dated 14.02.2017 passed by the Assistant Judge, Sujanagar, Pabna in Other Class Suit No. 10 of 2007 and Other Class Suit No. 09 of 2007

decreeing the suit and as such heard together and disposed of by this single judgment.

Facts relevant for disposal of the rule are that opposite parties as plaintiffs filed above suit for pre-emption under the Mahomedan Law.

Plaint case in short inter alia is that One Madhu Sheikh was the original owner of the scheduled land. Madhu Sheikh had died leaving behind his three sons namely Moyez Uddin Sheik, Bahadur Sheik, Jomjir Uddin Sheik alias Dahi Sheik and one wife Nekjan, who became the owner of the property by way of warishian. Warishians name became recorded on D.S. record in D.S. khatian No. 361(ka). After dead of Neaksan Nesa, her three sons Moyez Uddin Sheik, Bhadur Sheik, Jomjir Uddin Sheik alias Dahi Sheik became owner of the warishian property by way of inheritance. Johir Uddin sheik died leaving behind his one daughter Solejan Nesa and 02 brothers Moyej Uddin Sheik and Bahadur Sheik as warishian. Moyej Uddin Sheik died leaving behind his one daughter Sukjan and one son Hakim Uddin as warishan. Hakim Uddin Sheik died leaving behind his wife Futijan Nesa, one daughter Maleka Khatun and one sister Sukjan

as his warishian. Solejan Nesa died leaving behind one son Harej, two daughters Vanu Khatun and Johura Khatun and 2nd husband Torab Ali as warishian. Sukjan had died leaving behind his cousin brother Polan Sheik as warishian. Maleka Khatun and Futijan Begum sold out their portion of land in favor of Polan Sheik. Accordingly from Sabek Dag No. 238, Hal Dag No. 153 out of total 38 decimals land, Polan Sheik got 0.31-2/3 decimals of land and Solejan Nesa got 0.06-1/3 decimals of land. Polan Sheik became the owner of 0. 31-2/3 decimals out of 38 decimals of land corresponding to Sabek Dag No. 238, Hal Dag No. 153 and 0.45 decimals of land out of 0.13-1/3 decimals of land corresponding to Sabek Dag No. 220 and Hal Dag No. 137. Harej Ali became the owner of .06-1/3 decimals of land corresponding to Sabek Dag No. 238, Hal Dag No. 153 and .09 decimals of land out of .02-2/3 decimals of land corresponding to Sabek Dag No. 220, Hal Dag No. 137. Harej Ali transferred .09 decimals of land in favor of Poland Sheikh. R.S. khatian No. 481 has been recorded in the name of Polan Sheik. Harej Ali secretly sold out .06-1/3 decimals of land each corresponding to Sabek Dag No. 238, Hal Dag No. 153 in favour of the defendant vide two Registered Sale Deed No.

1204 and 1205 dated 13.03.2001. Defendant No. 1 registered .10 decimals of land instead of .06-1/3 decimals of land. Defendant No. 1 is not a sharer of rayat of the disputed land. Defendant No. 1 on 01.10.2006 first time express about purchasing of the disputed land and the plaintiff also first time learned above the matter. Immediately, after knowing about the matter, the plaintiff came over the disputed land and sought to file suit to recover the disputed land. Subsequently, plaintiff collected the certified copy of the registered sale deed no. 1204 and 1205 dated 13.03.2001 and came to know that his blood related relative defendant no. 2-5 sold out the land to the defendant no. 1 on cosideration of Tk. 90,000/- and hence the suit.

Petitioner as defendant contested the suit by filing written statement denying the plaint case, alleging, inter alia, that Duhi alias Johir Uddin, Bahadur Ali and Moyej Uddin were the original owner of the disputed land. Duhi and others while being the owner and possessing the land Duhi Sheik died leaving behind his wife Fojetan Nesa, three daughters namely Dunijan Nesa alias Solejan Nesa Fotejan Nesa. Fotejan Nesa died leaving behind her sole warishian Dulijan Nesa and thereafter Dulijan Nesa died leaving

behind her husband Md. Torai Pramanik, son Harej Ali, two daughters Vanujan and Jahura Khatun as her warishian. Accordingly as mention on the above Md. Torai Sheikh and others have the title and possession of the disputed land. During the S.A. record their name had been rightly recorded in the S.A. khatian. In the R.S. record plaintiff name had been mistakenly included. In the disputed land, the plaintiff have no title and possession. Earlier the plaintiff filed Other Suit No. 138 of 1997 for claiming some portion of disputed land, occupied through baynanaman which has been rejected by the learned court as contested. Against the rejection order, an appeal had been filed before the District Judge, which was dismissed on contest. Thereafter plaintiff filed Civil Revision before the Hon'ble High Court Division of the Bangladesh Supreme Court, which was also been rejected by the Hon'ble Court after hearing. Plaintiff have the knowledge about the selling of the disputed land since earlier, he has falsely filed the instant suit.

Learned Assistant Judge, Sujanagar, Pabna decreed the suit on contest by it's judgment and decree dated 14.02.2017.

Challenging the said judgment and decree, defendant petitioner preferred 02(two) appeals being Other Class Appeal No. 19 of 2017 and another is Other Class Appeal No. 20 of 2017 before the Court of District Judge, Pabna, which were heard on transfer by the Additional District Judge, 2nd Court, Pabna, who by the impugned judgment and decree dated 26.07.2018 dismissed both the appeals and affirmed the judgment of the trial court.

Challenging the said judgment and decree defendant-petitioner obtained the instant 02(two) rules.

Mr. Md. Asad Miah, the learned advocate appearing for the petitioner drawing my attention to the provision as laid down under section 236 of the Mahomedan Law submits that suit was filed without complying the legal requirements as provided under section 236 of the Mahomedan Law, which is without making a proper demand of talab-i-mowasibat and talab-i-ishhad. The court below totally failed to consider this aspect of this case and allowed the pre-emption under Mahomedan Law most illegally. The impugned judgment is thus not sustainable in law, which is liable to be set aside and the rule may be made absolute.

On the other hand Mr. Md. Shameem Sardar, the learned advocate appearing for the opposite parties submits that the court below upon proper analyzing the evidence on record correctly found that talab-i-mowasibat and talab-i-ishhad, the two legal requirements under section 236 of the Mahomedan law were been complied with properly and as such correctly decreed the suit. Since the judgment of the court below contains no illegality, he finally prays for discharging the rule.

Heard the learned advocate of both the sides and perused the impugned judgment and the lower court' record.

This is a pre-emption case filed under section 231 and 236 of the Mahomedan Law. In an unreported case, this court delivered a judgment on 28.02.2024 in the case of AKM Shafiqul Islam Vs. Md. Faijul Haque and others in Civil Revision No. 4608 of 2014. Wherein upon discussing the relevant provision as well as some decisions of the Indian Supreme Court, it has been decided that

> 'Talab-i-Mowasibat and Talab-i-Ishhad are condition precedent for the exercise of the

right of pre-emption. Talab-i-Mowasibat, which is the first condition precedent i.e. the demand for pre-emption is to be made immediately on receiving information of the sale as per Clause 1 of section 236 of the Mahomedan Law and this assertion of demand can be made confirm thereafter after having done the Talab-i-Ishhad either in the presence of the buyer or the seller, or on the premises which are the subject of sale, and in presence of at least two witnesses.'

Now let us see how this legal requirement has been complied with in the instant case.

In the plaint of the suit, plaintiff has asserted that

'১নং বিবাদী সর্বপ্রথম ০১/১০/০৬ তারিখে নালিশী ভূমি খরিদ বিষয়ে প্রকাশ করিয়া আদালতের ও.সি-১৯৭/৯৭ নং মামলার বাদী শ্রেনী ভুক্ত হইয়া কনটেষ্ট করার জন্য আবেদন করেন। উক্ত ০১/১০/০৬ তারিখে নালিশী ভূমির খরিদা দলিল আদালতে দাখিল করিয়া বাদী শ্রেণীভুক্ত হওয়ার জন্য ১নং বিবাদী উক্ত মামলার আবেদন করার পর এই

বাদী নালিশী ভুমির খরিদ বিষয়ে তখনই সর্বপ্রথম জানিত পরিয়া মর্মাহত ও আশ্চার্য্যান্বিত হইয়া পড়েন। অত:পর বাদী উক্ত দিনেই আদালত হইতে বাড়ীতে ফিরিয়া বিকাল ৪.০০ ঘটিকার সময় উক্ত বিক্রীত পৈত্রিক সম্পত্তির উপর যাইয়া বুক চাপড়াইয়া তাহার সর্বনাশ হইয়াছে বলিয়া বিলাপ ও আর্তনাদ করিতে থাকিলে পার্শ্ববর্তী ও প্রতিবেশী লোকজন বাদীকে ধরাধরি করিয়া পৈত্রিক বাড়ীতে আনিয়া মাথায় পানি দিয়া সুস্থ্য করেন। সে সময় বাদী বলেন যে নালিশী ভূমির বিক্রয় বিষয় জানিতে পারলে তিনি যে কোন মূল্যে তপশীল বর্ণিত পৈত্রিক সম্পত্তি অবশ্যই খরিদ করিয়া নিতেন এবং উক্ত সময়ে বাদী আর ও প্রকাশ করেন যে, তিনি নালিশী নিম্ন তপশীল বর্ণিত সম্পত্তি প্রিয়েমশন মূলে পাওয়ার জন্য মামলা করিবেন। ইহার পূর্বে বাদী নালিশী ভূমি বিক্রয় বিষয় কিছুই জানিতেন না। ইহার পর বাদী সুজানগর সাব রেজিষ্ট্রারী অফিসে যাইয়া অনুসন্ধান করিয়া ১নং বিবাদীর নামীয় দলিলের সন্দান পাইয়া নালিশী দলিলে জাবেদা নকল উঠাইবার জন্য আবেদন করেন। অত:পর ০৮.০১.০৭ তারিখে ১নং বিবাদীর নামীয় গত ইং ১৩/০৩/২০০১ তারিখের ১২০৫ ও ১২০৪ নং কবলা দলিলের জাবেদা নকল পাইয়া তাহা অন্যের দ্বারা পাঠ করাইয়া সঠিকভাবে জানিতে পারিয়াছেন যে বাদীর রক্তের সম্পর্কীয় আত্মীয় ২-৫ নং বিবাদীগন গত ইং ১৩/০৩/২০০১ তারিখে ১২০৫ ও ১২০৪ নং দলিল মূলে ৯০,০০০/- টাকায় নালিশী নি

নিম্ন (ক) তপশীল সম্পত্তি জোত বহির্ভূত মৌজার ১ নং বিবাদীর নিকট বিক্রয় করিয়াছেন। ’

While deposing in court this plaintiff deposed in court as P.W.1 said that

‘হারেজ আলী দিং ও/সি ১৯৭/৯৭ নং মোং করে। ১৯৭/৯৭ মোং চলাবস্থায় তারা .০৯ শং জমি ১ নং বিবাদীর নিকট বিক্রী করে আমার বাবার অজান্তে । ১নং বিবাদী ১৩/০৩/২০০১ তাং ১৯৭/৯৭ নং মোকদ্দমায় বাদী হবার দরখাস্ত দিলে তার সাথে খরিদা দলিল দাখিল করে। উক্ত দিন বাবা আদালতে জমি বিক্রির বিষয় জানতে পারে। ১৩/০৩/০১ তাং ১২০৫ নং দলিল করে গোপন করে ও ০১/১০/০৬ তাং দলিল আদালতে দাখিল করা হয়। ০১/১০/০৬ তাং এর পূর্বে জমি খরিদের বিষয় প্রকাশ হয়নি। না: দাগে হারেজ আলী ও তার বোন .২ ২/৩ শং প্রাপ্ত হওয়া সত্বেও ১নং বিবাদী .৪ শতকের দলিল করে।

০১/১০/০৬ তাং বিকাল ৪.০০ ঘটিকায় বাবা না: জমিতে যেয়ে আর্তনাদ করে ও মনির“দ্দিন, এনায়েত, মানু ও আমি না: জমিতে যাই ও বাবাকে মাথায় পানি দিই। বাবা এরপর বলে যে, তোমরা সাক্ষি থাক আমি ঐ জমি প্রিয়েমশন করব। বাবা তখন ১নং বিবাদীকে টাকা নিয়ে জমি ফেরত দিতে বললে সাত্তার অস্বীকার করে। ১ নং বিবাদী না:

জোতের শরীক প্রজা নয়। ০১/১০/০৬ এর পূর্বে খরিদ বিষয় প্রকাশিত হয়নি। বাবা এজন্য এই মুসলিম প্রিয়েমশন মোকদ্দমা করেছে। নাঃ জমি মুসলিম আইনে প্রিয়েমশন বাবদ ডিক্রি চাই।'

Upon going through the plaint it appears that plaintiff disclosed about the compliance of talab-i-mowasibat that in the suit being no. O.C. 197/97, when defendant no. 1 appeared in court on 01.10.2006 and disclosed the purchase of the suit land by the impugned sale deed, plaintiff firstly came to know about the said transfer and then afternoon at 4.00 P.M returning back to home, he cried and disclosed that he has been ruined, when the neighbours took him back to his dwelling house and pour water on his head and treat him. After recovery, he disclosed that if he got to know about the said transfer, he could have purchase the same and he further disclosed that he will file a case for pre-emption. Then he went to collect the certified copy of the sale deed and getting the certified copy on 08.012007, he became confirm of the said sale and then he filed the instant case for pre-emption. Although while deposing in court as P.W.1 he disclosed a different story not inconfirmity in the statement as made in the plaint but making some embellishment he disclosed a different

story and said that one Moniruddin, Enayet, Manu and plaintiff were present and pour water on the head of his father at 4.00 P.M on 01.10.06, when his father started crying on the suit land and his father further disclosed before them that he asked defendant no. 1 to return back the suit land to him after receiving a consideration money from him. In fact getting the news of the sale in the court, petitioner did not demand Talab-i-Mowasibat immediately. Rather he returned back in home and then went to the suit land in afternoon at 4.00 P.M, where he started shouting.

Upon going through the plaint as well as the discloser of the fact as P.W.1 by the plaintiff no where it is found that either talab-i-mowasibat or talab-i-ishhad has been complied with properly as per the two essential pre-condition of the exercise of the right of the pre-emption under section 236 of the Mahomedan Law. Since the pre-requirements of law of the condition precedents as being revealed under section 236 of the Mahomedan Law before claiming the pre-emption were not been complied with, plaintiff is not entitled to get a pre-emption under Mahomedan Law. It can be a good case for pre-emption under State Acquisition and Tenancy Act but not a case under section 231 and 236 of the Mahomedan

Law and accordingly pre-emption can not be allowed in the absence of legal requirements under law but the courts below failed to consider this legal aspect of this case and allowed the pre-emption most illegally.

Having regards to the above law and facts and circumstance of the case, I am of the opinion that both the courts below concurrently committed error of law in allowing the pre-emption under Mahomedan Law. Accordingly the impugned judgment of the court below are liable to be set aside.

In that view of the matter, I find merit in these rules.

Accordingly both the rules are made absolute and the judgment and decree passed by the court below are hereby set aside and suits are dismissed.

Let the order of status-quo granted earlier by this court is hereby recalled and vacated.

Send down the L.C. Records and communicate the judgment to the court below at once.