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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 4355 of 2018

In the matter of:

Md. Rafiqul Islam
...Pre-emptee-petitioner
-Versus-
Dr. Abul Kalam Azad and others
…Pre-emptor-opposite parties

None.
...For the petitioner

Mr. Mahiuddin, Advocate
.....For the opposite party No. 1

Heard on: 12.01.2026
Judgment on: 18.01.2026

In the instant revisional application filed under Section 115 of the Code of Civil Procedure (CPC), this Court on 18.12.2018 issued a Rule calling upon the opposite party No. 1 to show cause as to why the judgment and order dated 24.09.2018 passed by the learned Additional District Judge, Court No. 5, Chattogram in Miscellaneous Appeal No. 72 of 2017 dismissing the appeal and affirming the judgment order dated 22.11.2016 passed by the learned Senior Assistant Judge, 1st Court, Chattogram, in Pre-emption Miscellaneous

Case No. 13 of 2005 allowing the pre-emption case should not be set aside.

The present opposite party No. 1 as pre-emptor filed the pre-emption case against the present petitioner and others under Section 96 of the State Acquisition and Tenancy Act, 1950 as it stood before amendment of the Section made in 2006. The case was contested by the pre-emptee. The trial Court allowed the pre-emption case. Miscellaneous Appeal preferred by the pre-emptee was dismissed on contest. Hence, the instant civil revisional application and the Rule.

None appeared for the pre-emptee-petitioner when the Rule was taken up for hearing. Mr. Mahiuddin, learned Advocate appearing for the pre-emptor opposite party No. 1, took me through the judgments passed by the Courts below and other materials on record.

Mr. Mahiuddin submits that the juridical concept of preemption, etymologically derived from the Latin *prae emptio*, denotes a right of prior purchase. While its ingress into English jurisprudence is traceable to around 1600 AD, its foundations in Islamic law are far more ancient, originating from the 6th century and rooted in the Prophetic traditions. The authoritative basis for this right is established, *inter alia,* in Hadith No. 2257 of *Sahih al-Bukhari,* which records the Prophet (SM) stating, (narrated by Jabir bin Abdullah) "Preemption is valid in every joint property, but if the

boundaries are demarcated and the ways are made, then there is no preemption." Under above circumstances legislature enacted State Acquisition and Tenancy Act, 1950 containing provisions regarding pre-emption in Section 96 which was subsequently amended in the year 2006 (Act No. XXXIV of 2006) and in 2023 (Act No. XXIV of 2023).

Learned Advocate further submits that it is settled in the case of ***Mohar Ali Bhuiyan vs. Michir Ali Bhuiyan and others,*** 15 MLR (AD) (2010) 500 and in the case of ***Abdul Gafur and others vs. Abdur Razzak and others,*** 62 DLR (AD) (2010) 242 that unless there is a case of misreading or non-consideration of material evidence on record, the concurrent finding of the trial Court as well as the appellate Court are binding on the revisional Court. Learned Advocate submits that there is no iota of violation of any law or commission of error of law resulting in an error in the judgment and order occasioning failure of justice and hence, the Rule is liable to be discharged.

The exercise of power under Section 115 of the Code of Civil Procedure is supervisory. A series of judicial decisions has settled the principles that the revisional Court can dispose of a revision on merits even when the petitioners failed to appear to press the Rule. It is no function of the revisional Court to sit in appeal over the findings of

the appellate court. A revisional Court will not, except on limited grounds, interfere with findings of fact arrived at by the trial court and appellate court. It will not also decide a contested question of fact raised for the first time in revision. The revisional Court can interfere with an impugned decision which is vitiated by an error of law.

Judicial decisions have further settled the principles that appreciation of evidence is the function of the trial Court and the appellate Court. A finding of fact, whether concurrent or not, arrived by the lower appellate Court is binding upon the High Court Division in revision, except in certain well defined circumstances such as non-consideration and misreading of material evidence affecting the merit of the case or misconception, misapplication or misapprehension of law or misinterpretation of any material document or manifest perversity. The High Court Division is in error when it reverses the findings of the appellate court without adverting to the reasons given by the appellate Court for its findings. The revisional Court cannot interfere with a finding of fact even though it may differ with the conclusion reached by the court below in the absence of legal infirmities. Legal infirmities occur if the Court below, in arriving at the finding, has misread the evidence, or misconstrued a material document, or failed to consider material evidence, or relied on inadmissible evidence, or based on no evidence, or failed to apply the correct legal principles of law in arriving at the finding of fact, the

finding will not be immune from interference in revision. The revisional Court cannot embark upon re-assessment of evidence. A finding of fact is not immune from interference if it is based on surmise or conjecture, or it is arbitrary or perverse in the sense that on the materials available on record no reasonable judge can arrive at such finding.

Both the Courts below concurrently found that the pre-emption case was not barred by limitation. Based on the evidence on record, the Courts below further observed that the pre-emptor was co-sharer in the case jote and the pre-emptee was a stranger to the case land. The case was maintainable and accordingly, the pre-emption case was allowed.

Grounds taken in the instant revisional application have failed to pinpoint any error of law resulting in an error in the decision passed by the Appellate Court below occasioning failure of justice. The grounds taken are not tenable in law and on facts. Accordingly, I find no merit in the Rule.

In the result, the Rule is discharged.

Send down the L.C.R. at once.

Mazhar, BO