

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 1239 OF 2019

IN THE MATTER OF:

An application under section 115(1) of the
Code of Civil Procedure.

(Against Order)

-And-

IN THE MATTER OF:

Md. Emadul Haque Khan and another

--- Preemptee-Appellant-Petitioners.

-Versus-

Md. Shah Jamal Akon and another

---Preemptor-Respondent-Opposite Parties.

Mr. Humayun Kabir Sikder, Advocate

--- For the Preemptee-Petitioners.

Mr. Muhammad Moshiul Alam (Sayem),

Advocate

---For the Preemptor-Opposite Parties.

**Heard on: 27.03.2023, 28.03.2023 and
30.04.2023.**

Judgment on: 09.05.2023.

At the instance of the present preemptee-appellant-petitioners, Md. Emadul Haque Khan and another, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and order dated 19.11.2018 passed by the learned Additional District

Judge, Pirojpur in the Miscellaneous Appeal No. 20 of 2007 dismissing the appeal and thereby affirming the judgment and order dated 28.02.2007 passed by the learned Senior Assistant Judge, Mathbaria, Pirojpur in the Miscellaneous Case No. 89 of 2003 against the defendant-appellant-petitioners should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present preemptor- opposite party Nos. 1 and 2 filed the Miscellaneous Case No. 89 of 2003 under section 96 of The State Acquisition and Tenancy Act, 1950 claiming a right as preemptors upon the suit land comprising at Mouza- Kumarimara, J. L. No. 33, S. A. Khatian No. 77, Dag No. 1, and other Dags land measuring 3.06 acres which was originally owned by Abdul Majid and others. Abdul Majid died leaving behind his legal heirs. The vendor- opposite party No. 3 Md. Firoz Miah sold 35 decimals of land on 09.10.2003 to the present preemptee- opposite party Nos. 1 and 2 without giving any notice to the preemptor- opposite parties. However, the preemptors came to know about the said sale on 14.11.2003 through other persons. The present preemptee- petitioners as the opposite parties contested the suit by contending, *inter alia*, that

they are in possession by constructing a house and planting trees as they have been living on the land for more than 30 years without any disturbance. The heirs of Abdul Majid sold other lands to different persons but no one filed any case and the present opposite parties are strangers to the land.

This miscellaneous case was heard by the learned Senior Assistant Judge, Mathbaria, Pirojpur where both the parties adduced and produced evidence in support of their respective cases. The learned Judge allowed the miscellaneous case in favour of the preemptors by his judgment and order dated 28.02.2007. Being aggrieved the present preemptee- petitioners preferred the Miscellaneous Appeal No. 20 of 2007 which was heard by the learned Additional District Judge, Pirojpur who after hearing the parties dismissed the appeal by affirming the judgment of the learned trial court.

Being aggrieved by the impugned judgment passed by the learned appellate court below this revisional application was filed and the Rule was issued thereupon.

Mr. Humayun Kabir Sikder, the learned Advocate, appearing for the preemptee-appellant-petitioners submits that the preemptee- petitioners purchased the suit land with full

knowledge of the present opposite party Nos. 1 and 2 but they have been suppressing all the material facts and circumstances obtained the judgment and order, however, the learned appellate court could not consider the same and hence made no comment about the application and hence the learned appellate court below, as well as the learned trial court, have committed an error of law resulting in an error occasioning failure of justice.

The learned Advocate further submits that there was mediation between/among the parties as to the sale of the property in question, therefore, there was service of notices to the preemptor- opposite parties, thus, the suit is not maintainable.

The Rule has been opposed by the present preemptor-respondent-opposite party Nos. 1 and 2.

Mr. Muhammad Moshiul Alam (Sayem), the learned Advocate, appearing on behalf of the preemptor-opposite party Nos. 1 and 2 submits that the present preemptee-petitioners contested the miscellaneous case filed under section 96 of The State Acquisition and Tenancy Act, 1950 but the learned trial court passed the judgment in favour of the preemptors as the opposite parties could prove its right upon the above law and the preemptee- petitioners failed to prove their cases by adducing

and producing sufficient evidence, as such, the learned trial court allowed the case and upon an appeal the learned appellate court below also concurrently found that the preemptors could prove their case by adducing and producing sufficient documents as per the requirement of section 96 of the Act.

The learned Advocate also submits that the preemptor-opposite parties claimed that there was a mediation about the sale of the suit land but both the learned courts concurrently found that preemptee-petitioners failed to prove any evidence as to the mediation for selling the land to the preemptors by the vendor-co-owners of the land, as such, this Rule was obtained by the petitioners by misleading the court, thus, the Rule should be discharged.

Considering the above submissions made by the learned Advocates appearing on behalf of the respective parties and also considering the revisional application filed by the present preemptee-appellant-petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, particularly, the concurrent judgment passed by the learned appellate court below and also perusing the relevant and required documents available in the lower courts records, it appears to me that Abdul

Majid and others were the owners of the total land measuring 3.06 acres who died leaving behind his legal heirs. One of the legal heirs as the vendor sold .35 acres of land on 09.10.2003 without serving any required notices upon the preemptors for selling this property on 09.10.2003. However, preemptor-opposite parties could know about the said sale from other persons and ensured them as to the sale on 14.11.2003 and by obtaining a certified copy on 22.11.2003 the Miscellaneous Case No. 89 of 2003 was filed under section 96 of The State Acquisition and Tenancy Act, 1950 (amended) a case must be obliged to file within 2 (two) months from the date of sale or from the date of obtaining knowledge. In the instant case, the preemptor-opposite parties could prove before the learned courts below that the property in question measuring 35 decimals sold by the co-sharer-vendor to the present preemptee-petitioners on 09.10.2003 and the preemptor-opposite parties filed the suit within the limitation period of time of 2 (two) months from the date of knowledge after getting a certified copy of the said sale.

Regarding the service of notices required under section 89 of the Act, 1950 but that was not complied with by the seller and even without serving any notices which is a violation of the right

of the preemptors. The preemptee-petitioners claimed that there was a mediation by the local people but the preemptee could not prove any mediation regarding the sale of the land in question which created a right of preemption in favour of the present preemptor-opposite parties. As such, the learned courts below committed no error of law by passing the concurrent judgments in favour of the preemptor-opposite parties.

Now, I am going to examine the concurrent findings of the judgments passed by the learned courts below:

The learned trial court came to a lawful conclusion by the following findings:

...“That is the OPs. did not mention any person witnessing such mediation. Therefore it is hardly possible to prove such mediation by adducing evidence relevant. However, the transferee OP- 3 examined only the single witness one Alomgir Hosen- 24 as the OPW- 2. Who deposed nothing about the alleged mediation? That the Ld. Counsel for the transferee OP. typically escaped the question of mediation while it examined the OPW- 2. That is the sole corroborative witness of the transferee OP- 3 being the OPW- 2 deposed. That the petitioner was asked to purchase the case land.”...

The learned appellate court below also found in favour of the preemptors on the basis of the following lawful findings which reads as follows:

...“এমতাবস্থায় যেহেতু দরখাস্তকারী পক্ষ জমায় খরিদ সূত্রে শরীক ও তামাদি নির্ধারিত মেয়াদের মধ্যে অগ্রক্রয়ের দরখাস্ত আনয়ন করেছেন এবং ছায়েলের মোকদ্দমায় পক্ষদোষ নেই। তাই বিচারিক আদালত ছায়েলের অগ্রক্রয়ের দরখাস্ত মঞ্জুর করে যে আদেশ প্রচার করেছে তা যথাযথ ও আইনানুগ বিধায় বিচারিক আদালতের আদেশ বহাল রাখা যায়।”...

In view of the above concurrent findings of the learned courts below I consider that there is no irregularity or infirmity or any error of law committed by the learned courts below by passing the above decision passed concurrently in favour of the preemptor-opposite parties. The preemptors are entitled to get the property sold by the vendor-opposite party No. 3 because they could prove right under section 96 of The State Acquisition and Tenancy Act, 1950.

In view of the above concurrent findings of the learned courts below, I am of the opinion that the learned courts below committed no error of law by passing the judgments in favour of the co-sharer opposite party Nos. 1 and 2, particularly, the learned appellate court below by passing the impugned judgment by dismissing the appeal and thereby affirming the judgment and order of the learned trial court.

In view of the above discussions, I am not inclined to interfere upon the impugned judgment passed by the learned

appellate court below, as such, this Rule does not require any further consideration.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and order dated 19.11.2018 passed by the learned Additional District Judge, Pirojpur in the Miscellaneous Appeal No. 20 of 2007 dismissing the appeal and thereby affirming the judgment and order dated 28.02.2007 passed by the learned Senior Assistant Judge, Mathbaria, Pirojpur in the Miscellaneous Case No. 89 of 2003 against the defendant-appellant-petitioners is hereby upheld.

The interim order was passed by this court at the time of issuance of the Rule staying the proceeding of the judgment and order dated 19.11.2018 passed by the learned Additional District Judge, Pirojpur in the Miscellaneous Appeal No. 20 of 2007 dismissing the appeal and affirming the judgment and order dated 28.02.2007 passed by the learned Senior Assistant Judge, Mathbaria, Pirojpur in the Miscellaneous Case No. 89 of 2003 and subsequently the same was extended are hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower courts' records along with a copy of this judgment and order to the learned courts below immediately.