

District: Satkhira

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:-

Mr. Justice Md. Zakir Hossain

Civil Revision No. 2196 of 2019

Avi Ram Mondal

.....Pre-emptor-Petitioner

-Versus-

Shib Shekhar Mondal and others

..... Pre-emptee-Opposite Parties

Mr. Bivash Chandra Biswas, Advocate

..... For the petitioner

Mr. Mohammad Eunus with

Mr. Md. Lutfar Rahaman, Advocates

....For the opposite parties

**Heard On: 28.02.2023, 11.07.2023, 25.07.2023 &
08.08.2023**

Judgment On: 24.01.2024

Md. Zakir Hossain, J:

At the instance of the petitioner, the Rule was issued by this Court with the following terms:

“Records need not be called for.

Let a Rule be issued calling upon the opposite party Nos. 1 & 2 to show cause as to why the judgment and order dated 08.07.2019 passed in Miscellaneous Appeal No. 18 of 2018 by the learned Joint District Judge, 1st Court, Satkhira affirming the judgment and order dated 06.05.2018 passed in Miscellaneous Case No. 01 of 2017 (pre-emption case) by the learned Senior Assistant Judge, Tala, District-Satkhira should not be set aside and/or pass such other or further

order or orders as to this Court may seem fit and proper.”

Pre-emption Miscellaneous Case No. 01 of 2017 was dismissed for default. Thereafter, the pre-emptor preferred Miscellaneous Appeal No. 18 of 2018 before the Court of the learned District Judge (Satkhira). After admitting the appeal and observing all the formalities, the learned District Judge was pleased to transmit the record of the same to the learned Joint District Judge, First Court, Satkhira for disposal. Upon hearing, the learned Joint District Judge was pleased to dismiss the appeal and thereby affirmed the judgment and order of the learned Senior Assistant Judge. Impugning the judgment and order of the Appellate Court, the petitioner moved this Court and obtained the aforesaid Rule.

Mr. Bivash Chandra Biswas, the learned Advocate for the petitioner submits that the learned Joint District Judge held that the petitioner has got no *locus standi* and thereby touched the merit of the case and as such, committed an error of law in the decision occasioning failure of justice. He further submits that the petitioner is a co-sharer holding of S.A and R.S khatian and the pre-emption case was filed within the statutory period of limitation of the State Acquisition and Tenancy Act, in short, the SAT Act. He further submits that the Court below has ample jurisdiction in setting aside the dismissal order of the pre-emption case for default. But unfortunately, the learned Joint District Judge without considering the facts and circumstances of the case most

illegally dismissed the appeal and without setting aside the order of the learned Senior Assistant Judge affirmed the same entering to the merit of the case. Therefore, the same is liable to be turned to secure the ends of justice.

Per contra, Mr. Mohammad Eunos, the learned Advocate along with Mr. Md. Lutfar Rahaman appearing for the opposite parties submits that the Pre-emption Case is not maintainable in view of Section 96(16) of the SAT Act, 1950; therefore, the learned Joint District Judge rightly touched the merit of the case in view of the decision of the judgment of the Apex Court of the country. He further submits that in the impugned deed, it was clearly spelt out that 07 decimals of land are homestead and ditch kind of land. He further submits that even if there is no pleading from the side of the defendant alleging non-genuineness of the document on the basis of which the plaintiff is claiming the relief in the suit. The Court has duty in the interest of justice to scrutinize the document relied upon by the plaintiff and if on such scrutiny, the Court notices elements in the document that make the same non-genuine in the instant case as noticed by the Appellate Court and stated herein before, then in that situation, the Court in spite of the absence of the pleading of the defendant as to the non-genuineness of the document of the plaintiff is quite competent to make its decision on the basis of the result obtained upon scrutiny of the document. In this respect, he has referred to the decision reported in 59 DLR (AD) 105.

Heard the submissions advanced by the learned Advocates of the parties and perused the materials on record with due care and attention and seriousness as they deserve. The convoluted question of law embroiled in this case has meticulously been waded through.

It is conceded by the learned Advocate of the petitioner that the homestead is not pre-emptionable in view of the Section 96 (16) of the SAT Act. But it is undisputed that the total case land is 7 decimals out of them on 5 decimals of land are homestead and the rest is a ditch (doba) kind of land. It appears from the Annexure 'Ga-1' of the supplementary affidavit filed by the petitioner on 05.03.2023 that the case land appertaining to latest plot No. 977 is homestead, therefore, the pre-emption case is not maintainable in respect of 5 decimals of land and the land appertaining to plot No. 987 is a ditch (doba) kind of land, therefore, the pre-emption case is maintainable in respect of 2 decimals of land. The co-sharership of the petitioner and other issues are disputed question of facts, which cannot be settled down without taking evidence. In the above backdrop, the pre-emption case shall proceed in respect of 02 decimals of land and thus, the Rule deserves to be made absolute in part.

In the result, the Rule is made absolute in part, however, without passing any order as to costs. The impugned judgment of the learned Joint District Judge is hereby set aside so far it relates to land as mentioned in the case plot No. 977 in respect of 02 decimals of land, it shall proceed. Considering the facts and circumstances of the case and

legal position involved in this case, the dismissal order of the pre-emption case is absolutely illegal and as such, liable to be set aside. The learned Senior Assistant Judge is directed to dispose of the original pre-emption case within 06 (six) months from the date of receipt of the copy of this judgment positively. If necessary, the Court shall hear the case by fixing consecutive dates for hearing. No unnecessary adjournment petition shall be entertained from either side.

The earlier order of *status quo* dated 28.01.2020 granted by this Court, thus, stands recalled and vacated.

Let a copy of this judgment be sent down to the Courts below at once.

(Md. Zakir Hossain, J)

Naser.
P.O