

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1659 OF 2019

In the matter of:

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

And

Salauddin Sikdar and others

... Petitioners

-Versus-

Md. Motaser Billah @ Motasin Billah and others

... Opposite parties

Mr. Md. Shafiqul Islam, Advocate

... For the petitioners.

Mr. Mustafa Emam Hasan, Advocate

... For the opposite party No.1.

Heard and Judgment on 21.06.2023

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite No.1 to show cause as to why the impugned judgment and order dated 23.05.2019 passed by the learned Joint District and Sessions Judge, Charfashion, Bhola, in Miscellaneous Appeal No.18 of 2018 allowing the appeal and reversing those dated 31.07.2018, passed by the learned Senior Assistant Judge, Charfashion, Bhola, in Pre-emption Case No.34 of 2016 dismissing the application for pre-emption should not be set aside.

Facts in short are that the opposite parties as petitioners submitted a petition under Section 96 of the State Acquisition and Tenancy Act for pre-emption of 56 decimals of land transferred by opposite party Nos.2 in favour of the opposite party No.1 vide registered kabala deed No.93 dated 06.06.2016.

It was alleged that the petitioner is a co-sharer by inheritance in the disputed khatian but opposite party Nos.1-8 kabala purchasers are stranger to the same. The petitioners had no knowledge as to the above

impugned registered kabala deed but he came to know for the first time about above impugned kabala deed on 02.08.2016 when the opposite party submitted a petition for addition of party in Land Survey Case No.268 of 2015. Thereafter the petitioner came to know rightly about the impugned kabala deed after obtaining a certified copy of the same on 21.11.2016 and filed this case on 27.11.2016.

Opposite party Nos.1-8 contested the case by filing a joint written statements alleging that above disputed land was purchased by opposite party Nos.1-8 in several sharers and after purchase of the same they partitioned above land among themselves and they are in possession of above land according to their shares. Opposite party Nos.1-8 have mutated their names for the above land vide Case No.3735AF of 2015-16 and paying rent to the Government. The petitioners were aware fully about the transfer of the case by opposite party No.1 to opposite party Nos.2-8. The case is barred by limitation since the same was not filed by 02.10.2016 within 2(two) months from the alleged date of knowledge of the petitioner on 02.08.2016.

At trial petitioners examined 3 witnesses and opposite parties examined 1 witness. Documents produced and proved by the petitioners were marked as Exhibit Nos.1-5 and those of the opposite parties were marked as Exhibit Nos.'Ka' - 'Uma'.

On consideration of facts and circumstances of the case and materials on record the learned Senior Assistant Judge dismissed the case holding that the case is barred by limitation for being not filed within 2(two) months from the date of knowledge.

Being aggrieved by above judgment and order of the Trial Court petitioners as appellants preferred Miscellaneous Appeal No.18 of 2018 to the District Judge, Bhola which was transferred to the Court of Joint District Judge, Charfashion, Bhola who on considering of the submissions made by the learned Advocates for respective parties and

materials on record allowed the appeal and set aside the judgment and order of the Trial court and allowed the case for pre-emption.

Being aggrieved by above judgment and order of the learned Joint District Judge respondent Nos.1-8 as petitioners moved to this Court and obtained the Rule.

Mr. Md. Shafiqul Islam, learned Advocate for the petitioners submits that the case was barred by limitation since the same was not filed within 60 days from 02.08.2016 which is the first the date of knowledge of the petitioner. The learned Judge of the Trial Court rightly appreciated above materials on record correctly and lawfully dismissed the case but the learned Joint District Judge most illegally held that 02.08.2016 was the date of initial knowledge of the petitioner as to the impugned kabala deed and his complete or full knowledge as to above koabla on 21.11.2016 when he obtained a certified copy of the impugned kabala deed which is not tenable in law.

On the other hand Mr. Mustafa Emam Hasan, learned Advocate for opposite party Nos.1 submits that the initial knowledge of the petitioners as to the impugned kabala deed was acquired on 02.08.2016 from the petition filed by the opposite party Nos.1-8 in Land Survey Case No.268 of 2015 but the complete knowledge of the petitioner as to the valuation of the deed and other necessary and material information was acquired only on 21.11.2016. Since the case was filed on 27.11.2016 the case was well within the statutory period of 60 days and on an independent and correct assessment of the evidence on record the learned Joint District Judge has rightly held that the case was not barred by limitation.

It is not disputed that the petitioner is a co-sharer by inheritance and opposite party Nos.1-8 are strangers to the disputed jama. On consideration of above materials on record the learned Joint District Judge has rightly allowed the appeal and set aside the impugned

judgment and order of the Trial Court and allowed the case for pre-emption which calls for no interference.

I have considered the submissions made by the learned Advocates for respective parties and carefully examined all materials on record.

It is admitted that the petitioners is a co-sharer by inheritance in the disputed jama and opposite party Nos.1-8 are strangers to the same. It is also not disputed that the opposite party No.10 transferred disputed 56 decimals land to opposite party No.1-8 by registered kabala deed No.93 dated 06.01.2016 and this case under Section 96 of the State Acquisition and Tenancy Act was filed on 27.11.2016.

As to the date of knowledge about the impugned kabala deed dated 06.11.2016 petitioner has stated at Paragraph-4 of the plaint that the opposite party Nos.2-8 submitted a petition on 02.08.2016 for being added as defendants in Land Survey Case No.268 of 2015 filed by the petitioners as plaintiffs and in above petition opposite party Nos.1-8 disclosed that they had purchased the disputed land by registered kabala deed No.93 dated 06.01.2016 and from above date the petitioners acquired first knowledge about the disputed kabala deed. Thereafter the petitioner acquired full knowledge about the impugned kabala deed on 21.11.2016 when he obtained a certified copy of the impugned kabala deed.

The son of the petitioner namely Md. Muslem Uddin gave evidence as PW1 and in his examination-in-chief he stated that in the Land Survey Case No.268 of 2015 opposite party Nos.1-8 filed a petition for addition of parties on 02.08.2016 and disclosed that they had purchased the disputed land by the impugned kabala deed No.93 dated 06.01.2016 and the plaintiffs became be acquainted with the impugned sale after obtaining a certified copy of the impugned kabala deed. The witness did not say that the petitioners obtained certified copy on 21.11.2016 as has been stated in the plaint. In fact P.W.1 did not mention

any date of knowledge of the petitioner as to the impugned kabala deed in his examination-in-chief. In cross examination PW1 Md. Mosleh Uddin stated that about the impugned kabala deed they first came to know from the petition filed by the opposite party Nos.1-8 in Land Survey Case No.268 of 2015 on 02.08.2016. The witness lastly stated that on that date he came to know about the impugned kabala deed for the first time. PW2 Md. Hanif and PW3 Shafiqul Islam did not say anything as to the date of knowledge of the petitioners as to the impugned kabala deed.

It is crystalline clear from above evidence on record that the petitioners had knowledge about the impugned kabala deed on 02.08.2016 and from that date the limitation for filing of this case started to run. Undisputedly this case was filed on 27.11.2016. As such the case was barred by limitation for being not filed within 60 days from the date of knowledge and on correct analysis of the evidence on record the learned Senior Assistant Judge rightly held that the case was barred by limitation. But the learned Joint District Judge on erroneous view of the materials on record most illegally held that 08.06.2016 was the initial knowledge of the petitioner as to the impugned kabala deed and his complete knowledge as to the same was on 21.11.2016 which is erroneous not tenable in law.

In above view of the evidence on record I find substance in this Civil Revision and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and order dated 23.05.2019 passed by the learned Joint District and Sessions Judge, Charfashion, Bhola, in Miscellaneous Appeal No.18 of 2018 is set aside and those dated 31.07.2018, passed by the learned Senior Assistant Judge, Charfashion, Bhola, in Pre-emption Case No.34 of 2016 is restored.

However, there is no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER