

**District-Jhenaidah.**

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

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No. 3093 of 2016.**

Md. Mofazzal Hossain.

----- Pre-emptor-Appellant-Petitioner.

-Versus-

Md. Monirul Islam.

----- Pre-emptee-Respondent-Opposite Parties.

Md. Altaf Hossain and others.

----- Non-Contesting-Opposite-Parties.

Mr. Md. Amir Hossain, Advocate.

----- For the Pre-emptor-Appellant-Petitioner.

Mr. Shaheen Ahmed Khan, Advocate.

----- For the Pre-emptee-Respondents-Opposite Parties.

**Heard and Judgment Delivered On: 19.11.2025.**

**Md. Toufiq Inam, J.**

This Rule was issued calling upon opposite party No. 1 to show cause as to why the impugned judgment and order dated 15.06.2016 passed by the learned Additional District Judge, 1st Court, Jhenaidah in Miscellaneous Appeal No. 36 of 2013, dismissing the appeal and thereby affirming the judgment and order dated 21.08.2013 passed by the learned Senior Assistant Judge, Sadar, Jhenaidah in Miscellaneous (Pre-emption) Case No. 131 of 1998, should not be set aside and/or

why such other or further order should not be passed as may seem fit and proper to this Court.

The petitioner, as pre-emptor, filed Miscellaneous Case No. 131 of 1998 under section 24 of the Non-Agricultural Tenancy Act seeking pre-emption of the land described in the schedule to the application. The case of the pre-emptor, in essence, is that the suit land was originally recorded in the SA Khatian in the names of Adil Uddin Sheikh and Sabad Ali Sheikh in equal shares. The recorded owners transferred 25 decimals of the suit plot to Mrs. Hasina Akter through several registered sale deeds dated 04.07.1973, 17.07.1973 and 28.07.1973.

It is an admitted position on the record that the pre-emptor (Md. Mofazzal Hossain) and opposite-party No. 2 (Altaf Hossain) each purchased 3 decimals of land from Hasina Akter under two separate registered sale deeds. On the same date, Hasina Akter also transferred other portions of the land to different purchasers. The pre-emptor thereafter went abroad to Saudi Arabia on 08.06.1992 and returned on 15.07.1998. Upon his return, he noticed structures on the suit land, obtained a certified copy of the impugned deed, and came to know that opposite-party No. 2 Altaf Hossain had transferred his 3 decimals of land to opposite party No. 1 Monirul Islam through a registered

sale deed dated 05.08.1993. The present pre-emption case was then filed.

Opposite-party No. 1 contested the case asserting, inter alia, that Altaf Hossain had already mutated his purchased 3 decimals through lawful mutation and separation proceedings, resulting in an independent Khatian No. 118/9 in his name, thereby severing the co-sharership between the brothers. It was also contended that the pre-emptor had full knowledge of the sale due to their close relationship and their joint financial dealings regarding overseas employment, and that the case was filed belatedly only after the value of the land increased.

The learned Senior Assistant Judge dismissed the pre-emption application upon finding that the pre-emptor was no longer a co-sharer in the khatian where the transferred land was situated, and that the case was hopelessly barred by limitation as the petitioner failed to prove absence of knowledge of the sale. The appellate Court affirmed those findings. Aggrieved, the pre-emptor obtained the present Rule.

Mr. Md. Amir Hossain, learned Advocate for the petitioner, submits that a co-sharer retains the right of pre-emption under section 24 even if a separate khatian is opened, unless there is physical partition of the plot. The Courts below failed to properly appreciate the legal principles regarding co-sharership. The pre-emption application was

filed within limitation from the date of actual knowledge. The decisions in 7 ADC 569 and 65 DLR 82 were incorrectly applied or distinguished.

Per Contra, Mr. Shaheen Ahmed Khan, learned Advocate for opposite-party No. 1, submits that once Khatian No. 118/9 was opened in the name of Altaf Hossain after separation proceedings, the pre-emptor ceased to be a co-sharer. A person who is not a co-sharer cannot maintain a pre-emption application under section 24. The pre-emptor and vendor being full brothers, it is untenable to suggest lack of knowledge of the sale. The application, filed after nearly five years, is barred by limitation.

Upon hearing the learned Advocates and examining the records, this Court finds that it stands proved that the pre-emptor purchased 3 decimals, opposite-party No. 2 separately purchased 3 decimals, and opposite-party No. 2 subsequently completed lawful mutation and opened Khatian No. 118/9 exclusively in his own name. Opening of a separate khatian through a mutation-and-separation proceeding is a formal severance of the joint holding. Thereafter, the land under that khatian becomes an independent jote.

Thus, at the time of the impugned sale in 1993, the pre-emptor was not a co-sharer in Khatian No. 118/9. Co-sharership is a mandatory

statutory requirement under section 24 of the Non-Agricultural Tenancy Act. In its absence, no right of pre-emption accrues. Both the Courts below were therefore correct in holding that the application was not maintainable.

As regard to limitation, the transfer took place on 05.08.1993. The pre-emption case was filed only in 1998, roughly five years later. The pre-emptor failed to produce any convincing evidence of his alleged lack of knowledge of the sale or any date on which he came to know of the sale so as to compute limitation. The parties being full brothers, the pre-emptee's evidence that the pre-emptor had knowledge of the transfer stands unshaken. Moreover, the alleged foreign employment does not automatically suspend limitation. Thus, the Courts below rightly found that the application was hopelessly barred by limitation.

The concurrent findings of the Courts below are founded on proper appreciation of evidence, follow settled legal principles, are neither perverse nor arbitrary, and do not suffer from any material irregularity warranting interference in revisional jurisdiction. This Court, therefore, sees no legal infirmity requiring correction.

In view of the above discussions, this Court finds no merit in the Rule. The concurrent findings of the Courts below are affirmed.

Accordingly, **the Rule is discharged.**

There shall be no order as to costs.

The interim order of status quo granted at the time of issuance of the Rule is hereby vacated.

The office is directed to send down the lower Court's record together with a copy of this judgment at once.

**(Justice Md. Toufiq Inam)**

**Saved. B.O.**