

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 1642 of 2014

In the matter of:

Noor Mohammad

Pre-emptee-Appellant-Petitioner

-Versus-

Md. Jane Alam and another

Pre-emptor-respondent-opposite parties

None

...For the petitioner

Mr. N.A. Chisty, Advocate

... For the opposite party Nos. 1 and 2

Heard on: 28.10.2024 and 03.11.2024

Judgment on: 10.11.2024

In the instant civil revision, the pre-emptee has challenged the order dated 13.02.2014 passed in Miscellaneous Appeal No. 30 of 2004 by the Special District Judge, Chattogram. This Court issued a Rule on 27.04.2004.

None appeared for the petitioner when the Rule was taken up for hearing. Mr. N. A. Chisty, the learned Advocate appearing for the opposite party Nos. 1 and 2 made submissions opposing the Rule.

The relevant facts, in brief, are that the present opposite parties as pre-emptor filed 6 (six) pre-emption cases being Nos. 13 of 1991, 12 of 1991, 16 of 1991, 17 of 1991, 22 of 1991 and 14 of 1991 in the Court of Senior Assistant Judge, 3rd Court, Chattogram imploding the present petitioner as pre-emptee opposite party. The cases were heard and disposed of analogously. All the cases were allowed by judgment and order dated 19.09.1993. The pre-emptee filed 06 (six) miscellaneous appeals being Nos. 30 of 2004, 25 of 2004, 08 of 2004, 22 of 2004, 19 of 2004 and 02 of 2004 in the Court of Special District Judge, Chattogram. All the appeals were heard analogously and disallowed by a common judgment dated 05.06.2007. Thereafter, the pre-emptee filed 06 (six) civil revision being Nos. 3743 of 2007, 3744 of 2007, 3745 of 2007, 3746 of 2007, 3747 of 2007 and 3748 of 2007 before this Division and obtained Rules. All the Rules were heard together. This Division, vide a single judgment and order dated 10.03.2011 disposed of the Rules with the following observations and directions:

“2 PWS and 1 DW were examined who deposed supporting their respective sides. The trial Court framed 5 issues and very meticulously decided those after consideration of the materials on record and sifting of the evidence both oral and documentary though made an observation that একমাত্র প্রমাণ ছিল বি,এস, খতিয়ান কিন্তু উক্ত খতিয়ান প্রতিপক্ষ দাখিল করে নাই। তাই নালিশী দাগ খন্ডিত হয় নাই তাহাই ধরিয়া লইতে হইবে। denoting that if B.S. Khatian could be available the judgment would be otherwise. The

appellate Court in the same manner affirmed the judgment where there is no error except the opinion in respect of the B.S. Khatian as the trial Court opined. The learned Counsel of the petitioner by filing supplementary affidavit submitted that the B.S. Khatian as Annexure-A and prayed to remand the case to the trial Court to prove the same by adducing evidence. This particular argument of the learned Counsel of the petitioner can be taken into consideration positively and accordingly it is considered. But as the case is very old one starting from 1991 so it is reasonable to remand the case to the appellate Court to pass fresh judgment bringing into consideration the instant B.S. Khatian and pass a fresh judgment and if necessary by recording the evidence afresh as the appellate Court is empowered like the trial Court. In above backdrop I am of the view that the judgment impugned should be set aside. The Rules have merit.

In the result, the Rules are made absolute and judgment impugned dated 05.06.2007 is set aside and the case is sent back on remand to the appellate Court to pass a fresh judgment in compliance to my observation given above with a direction to conclude the hearing of the appeal positively within 2 (two) months of the receipt of this order.”

On receipt of the case records on remand, while the appellate Court below was proceeding with the appeal, the pre-emptee-appellant filed an application for submitting additional written objection under Order VIII rule 9 of the Code of Civil Procedure (CPC) on the grounds stated therein. The appellate Court below

rejected the said application by the impugned order and hence, the instant Rule. The appellate Court below observed as follows:

“On perusal of the judgment of the lower Court and Hon’ble High Court, it appears that both the Courts were in agreement that the case is not bad for defect of parties and not barred by limitation. Only point was whether holding was separated and whether B.S. Khatian was prepared in the name of the appellant. Considering this aspect, the Hon’ble High Court directed this Court to consider only B.S. Khatian and to write a fresh judgment within 2 months from the date of receipt of the order. So, taking into consideration of the judgment of the Hon’ble High Court I am of the view that the proposed amendment is not all necessary for the disposal of the appeal. The appellant filed B.S. Khatian of the case schedule property. This khatian will serve the purpose of the order of Hon’ble High Court. As such the amendment petition is hereby disallowed.”

Mr. N. A. Chisty, the learned Advocate appearing for the opposite parties submits that the appellate Court below rightly rejected the pre-emptee-appellant’s application for the reason that there is no scope under Order XLI rule 23 of the CPC to consider the said application. In support of the argument, Mr. N. A. Chisty refers to the case of *Konappa vs. Kusalaru*, AIR 1970 Mad 328 wherein it is held that on remand it is not open to the trial Court to do anything but to carry out the terms of the remand order even if it considers it to be not in accordance with law.

I have perused the materials on record and the decision cited by Mr. N. A. Chisty. I have no hesitation to hold that the appellate Court below rightly rejected the application of the pre-emptee-appellant on the ground that it had no scope to travel beyond the terms of the remand order and entertaining the said application would violate the terms of the said remand order. Hence, the Rule fails.

In the result, the Rule is discharged. Since this is an old case, the appellate Court below is directed to dispose of the appeals expeditiously.