

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.217 OF 2020**

In the matter of:

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

And

Mosa. Rokeya Aktar Doly

... Petitioner

-Versus-

Mou: Md. Moinuddin and others

... Opposite parties

None appears

.... For the petitioner.

Mr. Shishir Kanti Mazumder, Advocate

.... For the opposite party No.1.

**Heard and Judgment on 24.10.2024.**

This Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and order dated 13.10.2019 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Netrakona in Miscellaneous Appeal No.33 of 2010 dismissing the appeal and thereby affirming the judgment and order dated 25.04.2010 passed by the learned Assistant Judge, Mohongonj, Netrakona in Pre-emption Miscellaneous Case No.23 of 2001 allowing the pre-emption case should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as petitioner instituted above case under Section 24 of the Non Agricultural Tenancy Act, 1949 for pre-emption against the registered kabala deed dated 13.06.2001

executed by opposite party No.3 in favour of opposite party Nos.1 and 2 transferring disputed 4 decimal land appertaining to plot No.93 and Khatian No.591.

It was alleged that the petitioner was a co-sharer by purchase in the above joma. But opposite party Nos.1 and 2 were strangers and the petitioner had no knowledge about above transfer. On 29.08.2001 the petitioner came to know about above transfer and filed above case.

Opposite party Nos.1 and 2 contested above case by filling a joint written objection alleging that they purchased disputed 4 decimal land by registered kabala deed dated 13.06.2001 from opposite party No.3 and possessing the same by constructing a dwelling house. The petitioner is neither a co-sharer in the disputed joma nor he has any land contiguous to the disputed land.

At trial petitioner examined 2 witnesses and documents produced and proved by the petitioner were marked as Exhibit Nos.1-3. On the other hand opposite party Nos.1 and 2 examined 1 witness but did not produce and prove any document.

On consideration of the facts and circumstances of the case and evidence on record the learned Senior Assistant Judge allowed the case and granted pre-emption.

Being aggrieved by above judgment and order of the trial Court opposite party Nos.1 and 2 as appellants preferred Miscellaneous Appeal No.33 of 2010 to the District Judge, Netrakona which was heard

by the learned Joint District Judge, 1<sup>st</sup> Court, Netrakona who dismissed above appeal and affirmed the judgment and order of the trial Court.

Being aggrieved by and dissatisfied with the above judgment and order of the Court of appeal below the appellants as petitioners moved to this Court and obtained this Rule.

No one appears on behalf of the petitioner when the Rule was taken up for hearing

Mr. Shishir Kanti Mazumder, learned Advocate for the opposite party No.1 submits that in this case for pre-emption of 4 decimal land petitioner has succeeded to prove by production of relevant documentary evidences which were marked as Exhibit No.1-3 and consistent and mutually corroborative oral evidence of competent witnesses that the petitioner was a co-sharer by purchase in the disputed khatian and petitioners-opposite party Nos.1-2 were strangers to the same and above case was filed within the statutory period of limitation. On the other hand opposite parties could not prove by legal evidence that the petitioner was not a co-sharer of the disputed khatian. On consideration of above materials on record the learned Judges of the Courts below concurrently held that the petitioner was a co-sharer in the disputed khatian and the case was filed within the period of limitation and allowed the case and dismissed the appeal respectively. Above findings of fact arrived at by the learned Judges of the Courts

below being based on evidence on record this Court cannot in its revisional jurisdiction interfere with the same.

I have considered the submissions of the learned Advocate for the opposite party No.1 and carefully examined all materials on record.

It turns out from the schedule attached to the petition of this case for pre-emption under Section 24 of the Non Agricultural Tenancy Act, 1949 that disputed 4 decimal land appertains to khatian No.591. There is no mention of the name of above khatian but the learned Advocate for the petitioner repeatedly stated that khatian No.591 was C.S. khatian and the opposite party Nos.1-2 purchased land from S.A. Khatian No.147 by the impugned registered kabala deed dated 13.06.2001 (Exhibit No.2).

It turns out from Exhibit No.2 the impugned kabala deed that the petitioner purchased 1.18 decimal land from Khatian No.147 on 22.07.1996 from opposite party No.3. There is no mention in the above deed that Khatian No.147 was S.A. Khatian. Nor there is any mention that above S.A. Khatian No.147 came out of C.S. Khatian No.591.

The petitioner himself gave evidence as PW1 but in his evidence he did not mention that he was a co-sharer of S.A. Khatian No.147 or C.S. Khatian No.591 or the disputed land belonged to C.S. Khatian No.591 which was subsequently recorded in S.A. Khatian No.147. PW1 has repeatedly stated in his evidence that he purchased 6 decimal land out of the disputed plot but he did not mention the plot number.

Learned Advocate for the opposite party submits that Plot Number 93 is the disputed plot of this case and in the relevant khatian there was only one plot. But above submissions of the learned Advocate for the opposite party is beyond the pleadings.

The petitioner has miserably failed to make out a proper case for pre-emption in respect of disputed 4 decimal land which was purchased by the opposite party Nos.1 and 2 by the impugned kabala deed. The petitioner could not prove by legal evidence that the disputed land appertains to S.A. Khatian No.147 or the petitioner is a co-sharer in the above joma by way of purchase by legal evidence.

On the other hand opposite party No.2 Rokeya Akter Dholi while giving evidence as DW1 has clearly stated that the petitioner is not a co-sharer by purchase in the disputed khatian and opposite party Nos.1-2 have constructed their dwelling house in the disputed land.

On consideration of above facts and circumstances of the case and evidence on record I hold the learned Judges of the Courts below totally failed in appreciating the true meaning of the evidence on record and erroneously held that the petitioner was a co-sharer in the disputed khatian and accordingly allowed the case and dismissed the appeal respectively which is not tenable in law.

Accordingly, I find merit in this revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, this Rule is hereby made absolute. The impugned judgment and order dated 13.10.2019 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Netrakona in Miscellaneous Appeal No.33 of 2010 dismissing the appeal and confirming the judgment and order of the trial Court is set aside. Pre-emption Miscellaneous Case No.23 of 2001 is dismissed on contest.

However, there is no order as to costs.

Send down the lower Court's record immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*