

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

Civil Revision No. 4648 of 2016

IN THE MATTER OF

Md. Jahangir Hossain Mollah

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

-Versus-

1. Md. Samsur Rahman (Bachhu)

.....Pre-emptee-Respondent-Opposite party

2. Md. Khobor Ali Mollah and others

..... Pro-forma opposite parties

Mr. Selim Reza Chowdhury with

Mr. M.A. Gaffar, Advocates

.....For the petitioner

Mr. Mohammad Kafil Uddin, Advocate

.....For opposite party No. 1

**Heard on 11.10.23, 22.11.23, 29.11.23, 06.12.23, 07.12.23, 12.12.23,
08.01.24 and judgment passed on 10.01.2024**

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following terms-

“Records be called for and let a Rule be issued calling upon opposite party No. 1 to show cause as to why the judgment and order dated 28.08.2016 passed by the learned

Joint District Judge, 2nd Court, Bogura in Miscellaneous Appeal No. 184 of 2015 affirming the judgment and order dated 18.10.2015 passed by the learned Senior Assistant Judge, Adamdighi, Bogura in Miscellaneous Pre-emption Case No. 12 of 2011 should not be set aside and/ or pass such other or further order or orders as to this Court may seem fit and proper.”

The present petitioner as the pre-emptor instituted the present case before the learned Assistant Judge, Adamdighi, Bogura imp leading the present opposite parties as the pre-emptees for pre-emption of the case land under section 24 of the Non-Agricultural Tenancy Act, 1949. After hearing the case the learned Trial Judge by his judgment and order dated 18.10.2015 dismissed the case on the contest against pre-emptee No. 1 and ex-parte against the rest without cost. Against which the pre-emptor as the appellant preferred an appeal before the learned District Judge, Bogura, and the same was numbered Miscellaneous Appeal No. 184 of 2015. Thereafter, the appeal was transferred to the Court of learned Joint District Judge, 2nd Court, Bogura for hearing and after

hearing the same the learned Judge by his judgment and order dated 28.08.2016 disallowed the appeal by affirming those of the Trial Court. Being aggrieved by the same the pre-emptor as the petitioner had preferred this civil revision before this Court.

Anyway, Mr. Selim Reza Chowdhury, the learned Advocate appearing with Mr. M.A. Gaffar, Advocate on behalf of the petitioner at the time of hearing the Rule by filing an application prayed for sending back the case to the Court below for taking additional evidence for the reasons stated in the application and submits that the learned Trial Judge dismissed the case of the pre-emptor on the grounds that the co-sharer ship of the petitioner ceased to exist due to the separation of khatian by the seller before the sale and the case has been filed after 2 years of the sale and as such, the case is barred by limitation. But on appeal, the learned Judge of the Appellate Court below held that the petitioner is a co-sharer of the case land but disallowed the appeal on the ground of limitation.

He further submits that the case is not barred by limitation because the impugned deed has been registered under section 60 of the Registration Act and endorsed in the concerned volume book

on 06.12.2012 during the pendency of the case and this fact ought to have been presented before the Court as per law. Unfortunately, the conducting learned Advocate of the pre-emptor inadvertently did not notice it before the Court, and as such both the Courts below decided the case accordingly which has resulted in an error of law occasioning failure of justice.

He also submits that in the facts and circumstances of the case, additional evidence in respect of the copy of the kabala is required to be taken and to mark it as an exhibit for proper adjudication of the case. He lastly submits that the petitioner regrets not taking proper steps at the time of trial or in appeal to file the copy of kabala as per law.

Conversely, Mr. Mohammad Kafil Uddin, the learned Advocate appearing for opposite party No. 1 submits that both the Courts below considering the facts and circumstances of the case and the evidence on record rightly dismissed the case of the pre-emptor-petitioner as the case was barred by limitation because the petitioner filed the case on 12.07.2011 beyond time and thereby committed no illegality occasioning failure of justice.

Heard the learned Advocates of the contending parties and perused the materials on record. It appears that the present petitioner as the pre-emptor filed the instant case for pre-emption of the case land under section 24 of the Non-Agricultural Tenancy Act, 1949. The learned Trial Judge dismissed the case holding that the pre-emptor is not the co-sharer of the case land and the case is barred by limitation. But on appeal, the learned Judge of the Appellate Court below disallowed the appeal only finding that the case is barred by limitation. But during the hearing of the Rule, the learned Advocate for the petitioner submits that the pre-emptor filed the case after knowing about the same on 12.07.2011 after obtaining a certified copy of the deed in question on 11.05.2011 within time because, during the pendency of the case, the deed has been endorsed in the concerned volume book on 06.12.2012 from which it appears that the pre-emptor filed the case in time but as per the submission of the learned Advocate for the petitioner it appears that the learned conducting Advocate of the pre-emptor inadvertently did not raise the issue before the Trial Court as well as before the Appellate Court and as such, the learned Judge of the

Appellate Court below on an erroneous view passed the impugned judgment and order disallowing the appeal of the pre-emptor by affirming those of the Trial Court and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

Given the above, I find substance in the submissions made by the learned Advocate for the pre-emptor-petitioner. In the premises, it appears to us that justice will better be served if the case is sent back on remand to the Appellate Court below for proper adjudication of the matter by giving the parties equal opportunity. Accordingly, the application for sending back the case on remand is allowed.

As a result, the Rule is disposed of without cost.

Status-quo vacated.

The impugned judgment and order dated 28.08.2016 passed by the learned Joint District Judge, 2nd Court, Bogura in Miscellaneous Appeal No. 184 of 2015 disallowing the appeal by affirming the judgment and order dated 18.10.2015 passed by the learned Senior Assistant Judge, Adamdighi, Bogura in

Miscellaneous Pre-emption Case No. 12 of 2011 dismissing the case is hereby set-aside.

Accordingly, the case is sent back on remand to the Appellate Court below for a fresh hearing in view of the observations so made herein by giving the parties equal opportunity in accordance with the law.

Send a copy of this judgment along with Lower Court Records to the Court of Appeal below at once.

(TUHIN BO)