

Bench :  
Mr. Justice Bhishmadev Chakrabortty  
And  
Mr. Justice A.K.M. Zahirul Huq  
**First Miscellaneous Appeal No. 67 of 2019**  
Md. Mahbubul Alam Danesh ...appellant  
-Versus-  
Alamgir Mahmud and others ...respondents  
Mr. Abdullah Al Mamun with Mr. A.S.M.  
Sharif Newaz, Advocates  
...for the appellant  
Mr. Mozammel Haque Bhuiya, Advocate  
...for respondents 4-10

Judgment on 02.06.2025

A.K.M. Zahirul Huq, J :

This appeal at the instance of the pre-emptor is directed against the judgment and order dated 23.09.2018 passed by the Joint District Judge, 1<sup>st</sup> Court, Mymensingh in Pre-emption Case No. 109 of 2009 dismissing the case.

The material facts for disposal of the appeal, in brief, are that 2.86 acres of land in dag No. 1091 under R.O.R khatian No.117 originally belonged to Hafiz Uddin and others and record was correctly prepared in their names. Hafiz Uddin died leaving behind three sons namely Md. Mahbubul Alam Danesh, Md. Kashem Ali, Md. Pashan Ali, one daughter Most. Feroza Begum and wife Saleha Khatun. After the death of Hafiz Uddin,

Saleha Khatun got married with Md. Fazel Uddin. On 09.11.1959, Saleha Khatun made a registered Heba deed No. 10438 in dag No. 1091 measuring 1.01 acres along with other land to Md. Fazel Uddin. But he did not get physical possession in dag No. 1091. Pre-emptor has residential house, yard, pond and different types of fruit trees in dag No. 1091. Despite Fazel Uddin had no possession in the land, he secretly sold it to defendants No. 1-10 to evict the petitioner by creating deeds without serving any notice as required by law. The suit land is very essential for the pre-emptor. Hence, the case for pre-emption.

The pre-emptees contested the suit by filing written statement denying the material allegations made in the case. They contended that Saleha Khatun, wife of defendant No. 11 purchased 1.01 acres of land of dag 1091 from Shree Anil Kumar Dutta on 29.3.1954 through deed No. 2465. She gifted the said land along with some other lands to her husband opposite party Fazel Uddin which was duly registered in his name. Long ago, the petitioner purchased 50 decimals of land from the said land. The remaining 64 decimals of the land were

in the possession of Fazel Uddin. Due to financial problems, he proposed to the pre-emptor to sell the said land. When the pre-emptor refused to do so, he sold it to opposite party Nos. 1-10. The joma of the vendor has been separated through mutation case and as such the case for pre-emptor does not tie. Therefore, the case for pre-emption would be dismissed.

On pleadings the trial Court framed 05(five) issues. In the trial the pre-emptor examined 04(four) witnesses while the pre-emptee examined 01 (one). The documents produced by the pre-emptor were exhibited as 1-4. On the other hand, the documents produced by the pre-emptee were exhibited as A-G. After hearing the parties and on perusal of evidence and materials on record available before him, the the Joint District Judge, 1<sup>st</sup> Court, Mymensingh, rejected the case for pre-emption by judgment and order dated 23.09.2018.

Being aggrieved by and dissatisfied with the judgment and order passed by the trial Court, the pre-emptor as appellant preferred this appeal.

Mr. Abdullah Al Mamun, learned Advocate for the appellant submits that the Court below failed to appreciate the

facts, circumstances, probabilities, merit of the case and the evidence on record in their legal perspective and thereby arrived at a wrong decision in passing the impugned judgment and order.

He further submits that the plaintiff submitted before the trial Court that the C.S. record in respect of the suit land is not available. But without considering that facts the trial Court found that the pre-emptor did not produce any copy of C.S. Khatian No. 68. In the absence of C.S. record, S.A. record would be considered unless contrary is proved. Moreover, the trial Court did not address issue Nos. 2 and 4 as required by the law.

The learned Advocate finally submits that the trial Court failed to consider that joma was not separated as per law. The pre-emptor being the son of original owner is a co-sharer to the jote and the case for pre-emption is well maintainable. The Court below failed to enter into the facts of the case and thereby erred in law in dismissing the case which requires to be interfered with by this Court. The appeal, therefore, should be allowed.

Mr. Mozammel Haque Bhuiya, learned Advocate for the respondents, on the other hand supports the judgment and order passed by the trial Court. He submits that the appellant is not the

co-sharer of the suit jote. The pre-emptor has no relation with the opposite party No.11 who sold out the land to pre-emptees 1-10. Moreover, defendant Nos. 1-10 are not the strangers, they bought land besides the petitioner's plot and they occupy the land. The petitioner cannot get the pre-emption after separation of joma by opening different khatians. The appeal, therefore, having no merit would be dismissed.

We have considered the submissions of both sides and gone through the materials on record. It appears from the record that Md. Mahbubul Alam Danesh, son of Hafiz Uddin and Saleha Begum, is the pre-emptor. Though Md. Mahbubul Alam Danesh is the son of Saleha Khatun but she married Md. Fazel Uddin after the death of Hafiz Uddin. The petitioner claims that her father Hafiz Uddin was the owner of 2.86 acres of land in Khatian 1091. The petitioner also claims that Saleha Khatun donated 1.01 acres of property in Khatian 1091 to Fazel Uddin. But the petitioner does not mention how she became the owner of this land. Whereas, pre-emptee-opposite parties stated that Saleha Khatun purchased the said property from one Shree Anil Kumar Dutta on 29.03.1954. To prove this, the opposite parties

produced registered deed No. 2465. The petitioner claims that the land was recorded in dag 1091 of R.O. R khatian 117. But in the exhibited documents it is found that three separate Khatians are related to dag 1091; such as, S.A. khatian 171, S.A. khatian 117 and S. A. khatian 119. According to the documents exhibited there are 1.01 acres of land in S.A. Khatina 117, 51 decimals of land in S.A. khatian 117 and 50 decimals of land in S. A. khatian 119. It is not mentioned that in which khatian the claimed land attracts. The above mentioned Khatian shows that the land is already separated in different khatian numbers. Moreover, the property which Fazel Uddin received through donation on 09.11.1959 got Khareeja Khatian 340 on 05.11.1985 after separating the original one. In such a situation, the petitioner cannot get pre-emption after the Khatian is separated. Although the name of the pre-emptors father Hafez Uddin is in the S.A.Khatian 119, but it is a separate Khatian. The petitioner has failed to prove him a co-sharer in the jote by inheritance. In such a situation, we find no error in the impugned judgment and order passed by the trial Court for which it may be interfered with by us.

Therefore, we find no merit in this appeal. Accordingly, the appeal is dismissed without any order as to costs. The judgment and order of the Joint District Judge, 1<sup>st</sup> Court, Mymensingh passed on 23.09.2018 in Pre-emption case No. 109 of 2009 is hereby affirmed.

Communicate the judgment and order to the concerned Court and send down the lower Court records.

Bhismadev Chakrabortty, J :

I agree