

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 900 of 2020

IN THE MATTER OF:

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

(Against Judgment And Order)

And

IN THE MATTER OF:

Sree Sotish Chandra Ray

--- Preemptee-Appellant-Petitioner.

-versus-

Sree Hirendra Barmon alias Binod Chandra Ray
and others

--- Preemptor-Opposite Parties.

No one appears

--- For the Preemptee-Petitioner.

Mr. Md. Badsha Alamgir, Advocate

--- For the Preemptor-Opposite Party No. 1.

**Heard on: 27.07.2023, 01.08.2023 &
07.08.2023.**

Date of Judgment: 07.08.2023.

At the instance of the present preemptee-appellant-petitioner,
Sree Sotish Chandra Ray, this Rule was issued upon a revisional
application filed under section 115(1) of the Code of Civil
Procedure calling upon the opposite party No. 1 to show cause as to
why the impugned judgment and order dated 23.10.2019 passed by
the learned Joint District Judge, Court No. 1, Dinajpur in the
Miscellaneous Appeal No. 20 of 2009 dismissing the appeal and
thereby affirming the judgment and order dated 10.02.2009 passed

by the learned Assistant Judge, Buchagonj, Dinajpur in the Miscellaneous Case No. 06 of 2003 allowing the preemption case should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party No. 1, Sree Hirendra Barmon alias Binod Chandra Ray as the preemptor-opposite party filed the Miscellaneous Preemption Case No. 06 of 2003 in the court of the learned Assistant Judge, Bochagonj, Dinajpur under section 96 of the State Acquisition and Tenancy Act, 1950. The plaint of the said case contains that the total land measuring 69 decimals originally belonged to one Jamuram Barman who died leaving behind his legal successors and the successors' names were properly recorded in the S. A. Khatian. One of the successors Sottendro Barman died without any child. Birendro Barman and Hirendra Barman got 8 (eight) annas share by amicable partition. The opposite party No. 2, Most. Mahfuza Begum purchased $16\frac{1}{2}$ decimals of land from Digendro Barman who again secretly sold the same suit land to the opposite party No. 1 Hirendrar Barman alias Binod Chandra Ray on 04.12.2002 which is the contiguous land of the preemptor. The present preemptor opposite party is a co-sharer of the said land as the contiguous land and the present preemptee-petitioner is a stranger to the land which was sold without serving any notice or the preemtor did not know about the said matter. Subsequently, by

obtaining a certified copy on 26.02.2003 he could know as to the transfer of the said land. Thus, a miscellaneous case was filed on 03.04.2003.

The preemptee-opposite party No. 1 contested the said miscellaneous case by filing a written objection contending, *inter alia*, that the preemptor was never interested in purchasing the suit plot and he lost his right as a contiguous land owner as he sold his all land to one Abdullah Masum in the year 1987, as such, he is not a co-sharer in the plot but the preemptee purchased the land on 04.12.2002 within the knowledge of the preemptor. The preemptor filed the case at the instruction of other persons. The learned Assistant Judge, Buchagonj, Dinajpur heard the parties in this preemption case and obtained the evidence in support of their respective cases and he came to a conclusion to allow the preemption case by his judgment and order dated 10.02.2009. Being aggrieved the present preemptee purchaser preferred the Miscellaneous Appeal No. 20 of 2009 in the court of the learned District Judge, Dinajpur which was subsequently transferred to the learned Joint District Judge, Court No. 1, Dinajpur who after hearing the respective parties dismissed the appeal and thereby affirmed the judgment and order of the learned trial court.

This revisional application has been filed by the preemptee purchaser challenging the legality of the impugned judgment and

order passed by the learned lower appellate court and the Rule was issued thereupon.

This matter has been pending in the daily cause list of this court for a long period of time for hearing but no one appears to support the Rule issued by this court. However, the petitioner has taken the ground that the learned trial court observed P.W.-1 stated in the cross that he sold $16\frac{1}{2}$ decimals land to Abdullah Masum on 25.02.1987 by a registered deed and delivered the possession thereof and he sold the said $16\frac{1}{2}$ decimals land as inherited from his father, as such, it is the duty of the preemptor must prove that he got more than that of he is entitled to get but the court below shifted the burden of proof in favour of the defendant, as such, the same is liable to be *set aside*.

The Rule has been opposed by the present opposite party No. 1, Sree Hirendra Barmon alias Binod Chandra Ray.

Mr. Md. Badsha Alamgir, the learned Advocate, appearing on behalf of the opposite party No. 1 submits that the learned trial court considered the case of the preemptee-petitioner but he failed to prove his entitlement as a purchaser and stranger, as such, the learned trial court allowed the application for preemption rightly under section 96 of the State Acquisition and Tenancy Act, 1950 of the present opposite party No. 1 as a preemptor.

The learned Advocate also submits that the learned appellate court below properly considered the section 96 of the Act, 1950, thus, a preemption right has been created in favour of the preemptor- opposite party because the law requires that the vendor of a co-sharer must have to serve notice upon the co-sharer or co-sharer by owning the contiguous land (before the amendment of the said provision of law in the year 2006). It is showing that the present petitioner utterly failed to prove his own case as no service of notice to the preemptor- opposite party No. 1, thus, the learned court below committed no error of law, as such, the Rule is liable to be discharged.

Considering the above submission made by the learned Advocate appearing for the opposite party No. 1 and also considering the revisional application filed by the preemptee-petitioner under the provision of section 115(1) of the Code of Civil Procedure along with the impugned judgment and order annexed therein and also perusing the essential documents available in the lower courts records which adduced and produced by the respective parties before the learned courts below, it appears to me that the present preemptor the opposite party filed a miscellaneous case claiming right of preemption under section 96 of the State Acquisition and Tenancy Act, 1950. It further appears that the preemptor claimed the right as an owner of the land as a contiguous

owner of the land which was the law before the amendment in the year 2006.

I have carefully examined the prayer of the miscellaneous case filed before the learned trial court where the preemptor claims himself as co-owner by inheritance, as such, the preemption right has been created as soon as the case land was sold by another co-sharer to a stranger under the provision of section 96 of the Act, 1950.

The legislature amended section 96 of the Act, 1950 by maintaining preemption right only for the successor or owner by inheritance. In the instant case, the present preemptor claimed his right as the owner of the land transferred without serving any notice or without any knowledge thereof, as such, the courts below committed no error of law by passing the concurrent judgment and order, as such, I am not inclined to interfere into the impugned judgment and order.

Accordingly, I do not find merit in this Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and order dated 23.10.2019 passed by the learned Joint District Judge, Court No. 1, Dinajpur in the Miscellaneous Appeal No. 20 of 2009 disallowing the appeal and thereby affirming the judgment and order dated 10.02.2009 passed by the learned Assistant Judge, Buchagonj, Dinajpur in the

Miscellaneous Case No. 06 of 2003 allowing the preemption case under section 96 of the State Acquisition and Tenancy Act, 1950 is hereby *upheld*.

The interim order of stay upon operation upon of the impugned judgment and order dated 23.10.2019 passed by the learned Joint District Judge, Court No. 1, Dinajpur as well as direction of the *status quo* passed by this court at the time of issuance of this Rule to maintain the *status quo* by the respective parties in respect of the possession and position of the suit land and subsequently the same was extended till disposal of this Rule are hereby recalled and vacated.

The pertinent department of this Court is hereby directed to send down the lower courts' records along with a copy of this judgment and order to the lower courts concerned as soon as possible.