

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 899 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.

Mr. Md. Ahia, Advocate

--- For the Preemptee-Petitioner.

Mr. Md. Badsha Alamgir, Advocate

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

**Heard on: 22.08.2023, 23.08.2023 &
24.08.2023.**

Date of Judgment: 24.08.2023.

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. 21 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. 08 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 filed the Miscellaneous Preemption Case No. 08 of 2003 in the court of the learned Assistant Judge, Bochagonj, Dinajpur under section 96 of the State Acquisition and Tenancy Act, 1950. A petition for right of preemption contains that the suit land originally belonged to one Jamuram Barman total land measuring 69 decimals situated in C. S. Khatian No. 136, Dag No. 1523, Mouza- Eshania, Police Station- Buchagonj, District- Dinajpur. The said Jamuram Barman died leaving behind his 5 (five) sons as the legal successors, namely, Sottendro Barman, Degendro Barman, Birendra Barman, Rajendra Barman and Hirendra Barman. Subsequently, their names were properly recorded in the S. A. Khatian. One of the successors Sottendro Barman died without any children, as such, 4 (four) brothers became owners. Birendro Barman and Hirendra Barman got (4 annas + 4 annas = 8 annas) eight annas share each by way of a succession of amicable settlements. Hirendra Barman sold $16\frac{1}{2}$ decimals of land to the opposite party No. 2, Abdullah Masum

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. Opposite party No. 2 Abdullah Masum secretly sold the suit land to the opposite party No. 1 on 26.02.2003 which was the contiguous land of the preemptor. Preemptor is a co-sharer of the land and preemptee is a stranger. In the above transfer no notice was served upon him. Preemptor after knowing the matter on such he arranged certified copy of the Kabala deed dated 26.02.2003 on 27.02.2003, therefore, filed the Miscellaneous case on 26.04.2003. 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 preemptor 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 26.04.2003.

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 for purchasing the suit plot and he lost his right as a contiguous land owner as he sold his entire 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 filed the Miscellaneous Appeal No. 21 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 under section 115(1) of the Code of Civil Procedure challenging the legality and propriety of the impugned judgment and order dated 23.10.2019 passed by the learned lower appellate court and the Rule was issued thereupon.

Mr. Md. Ahia, the learned Advocate appearing for the preemptee-purchaser-petitioner submits that both the courts below committed an error of law by non-considering and without applying judicial mind that the preemptor did not have any right to file the preemption case under section 96 of the Act, 1950 because he sold $16\frac{1}{2}$ decimals of land, as such, he lost his right to preemption but

the learned appellate court below committed an error of law by considering the above facts which is liable to be *set aside*.

The learned Advocate further submits that admittedly 5 brothers succeeded the land, eventually, 4 (four) brothers got the land 69 decimals as 1 (one) brother died. Accordingly, each brother got 17.25 decimals of land by amicable partition but the preemptor filed the case to obtain 8 annas instead of 4 annas by the amicable partition among the parties, therefore, the preemptor's case cannot be believed, as such, the Rule is liable to be made absolute.

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 preemptor-opposite party No. 1 submits that both the learned courts below concurrently found as to the preemption right created in favour of the opposite party No. 1 under the provision of section 96 of the State Acquisition and Tenancy Act, as such, no interference from this court is called for.

The learned Advocate further submits that the preemptor (Sree Hirendra Barmon alias Binod Chandra Ray) got total land measuring $17\frac{1}{2}$ decimals out of the said land Hirendra sold $16\frac{1}{2}$ decimals to one Abdullan Masum without issuing any notice required by law and without knowledge of the preemptor, therefore, preemptor is the main co-sharer of the said jot (জোত) as soon as the

property was purchased by the preemptee-purchaser because he remained to be a co-sharer at least for the land measuring 1 (one) decimal, thus, both the courts concurrently found in favour of the present preemptor opposite party No. 1, as such, the Rule is liable to be discharged.

The learned Advocate also submits that the learned appellate court below properly considered the provision of 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 shows that the present preemptee-petitioner utterly failed to prove his own case as to 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 submissions made by the learned Advocates appearing for the respective parties 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 (as the present opposite party) filed a miscellaneous case claiming right of preemption under section 96 of the State Acquisition and Tenancy Act, 1950 as he remained to be a co-sharer at least 1 (one) decimal of land within the same jot (জোত) after selling measuring $16\frac{1}{2}$ decimals of land, as such, any sale by a co-sharer must be served a notice upon all co-sharers but the vendor-opposite party failed to server any notice under section 89 of the Act, 1950 from the date of knowledge as to the sale to a stranger. Section 96 of the Act before amendment in the year 2006 a preemption right can be created by a co-sharer by inheriting or even by a land contiguous to the land transferred. However, before the amendment of the said Act in the year 2006 the preemptor was obliged to file a miscellaneous case within the 4 (four) months from the date of knowledge. 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.

In the instant case, a miscellaneous case was filed by the preemptor-opposite party No. 1 after obtaining a certified copy of the sale deed dated 26.02.2003 on 27.02.2003 and filed the said miscellaneous case on 26.04.2003. Accordingly, the miscellaneous case was not barred by limitation under the special law regarding

the co-ownership of the preemptor in the said jot/holding as required by the law.

I have carefully examined the prayers of the holding of the suit land where the preemptor-opposite party No. 1 remained to be an owner of at least 1 (one) decimal of land if not more. Accordingly, he acquired the right of preemption as both the courts concurrently found in favour of the preemptor.

Now, I am going to examine the judgment and orders passed by the learned courts below:

The learned Assistant Judge, Buchagonj, Dinajpur came to a conclusion on the basis of the following findings:

...“Though the O.P. 1 deposed as Opp. W. 1 stated that the petitioner got $16\frac{1}{2}$ decimals and Deegendra got $16\frac{1}{2}$ decimals land and the other three brothers got the rest. He neither produced any oral evidence to prove his claim nor produced any deed in the name of Majharul or Sharabla to prove that the petitioner’s interest over the case land was extinguished. On the other hand, the statement of P.W.-1 that he got $34\frac{1}{2}$ decimals of land from the suit plot and suit Khatian was corroborated by P.W.-2 as well as by Naresh Chandra Roy, a neutral witness and contiguous landholder of the suit land. Thus it appears that the O.P. No. 1 has not been able to prove that the petitioner has become disinterested with the case

land and thus this point is decided in favour of the petitioner.”...

The learned appellate court below came to a concurrent finding on the basis of the following findings:

...“সার্বিক বিব্রিচনায়, বোচাগঞ্জ উপজিলা সহকারী জজ আদালতির বিজ্ঞ সহকারী জজ জনাব মোঃ তারিক হোসিন কর্তৃক Act-1950 এর 96 ধারায় দায়িত্বকৃত ০৮/২০০৩ মিস (অগ্রক্রয়) মামলায় গত ১০/০২/২০০৯ খ্রিঃ তারিখে ঘোষিত রায় ও আদেশে অগ্রক্রয় দরখাস্ত মঞ্জুর করি ঘটনাগত ও আইনগত দৃষ্টিক্রাণ হত্র কোন ভুল সংঘটন করিনি মত্রি প্রতিভাত হয়। মেমোরেভাম অব আপীল ও আপীল্যান্টপক্ষের বিজ্ঞ কৌসুলীর নিবেদনের কোন সারবত্তা খুঁজে পাওয়া গেল না। ফলি, তর্কিত রায় ও আদিশ হস্তক্ষপ যোগ্য নয় এবং আপীল্যান্ট প্রার্থিত মত্রি প্রতিকার পেত্রিও হকদার নন। সংগত কারণ তথা অবধারিতভাবে বিবেচ্য বিষয়গুলো আপীলকারীপক্ষের প্রতিকূলে নিস্পত্তি করা হলো এবং আপীল বিনা খরচায় নামঞ্জুর করার সিদ্ধান্ত গ্রহণ করা হলি।”...

In view of the above concurrent decisions of the courts below I am of the opinion that the present opposite party No. 1 rightly became a preemptor under the provision of section 96 of the Act, 1950 and the learned courts below committed no error of law in their findings as well as there is no non-consideration or misreading of the evidence adduced and produced by the parties.

Upon such view, I am not willing to interfere upon the impugned judgment and orders passed by the learned courts below.

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. 21 of 2009 allowing 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. 08 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 passed by this court upon operation of the impugned judgment and order dated 23.10.2019 which was passed by the learned Joint District Judge, Court No. 1, Dinajpur in the Miscellaneous Appeal No. 21 of 2009 as well as direction passed by this court to maintain *status quo* in respect of the possession and position of the suit land by the respective parties and subsequently the same were 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.