

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 629 of 2021

Bashi Rudra

... Petitioner

-Versus-

Sukumar Chakraborty and others

...Opposite-parties

Mr. Mintu Kumar Mondal with

Mr. Kishore Kumar Mondal, Advocates

...For the petitioner

Mr. Debashis Bhattacharyya, Advocate

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

Heard on 17.01.2024 and

judgment on 25th January, 2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 21.09.2020 passed by the learned Joint District Judge, Banshkhali, Chattogram in Miscellaneous Appeal No. 39 of 2019 dismissing the appeal and thereby affirming the judgment and order dated 21.01.2019 passed by the learned Senior Assistant Judge, Banshkhali, Chattogram in Miscellaneous Preemption Case No. 34 of 2010 dismissing the same should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very short compass. The petitioner, as applicant, filed Miscellaneous Case No. 34 of 2010 in the Court of Senior Assistant Judge, Banshkhali, Chattogram against the present opposite-party under Section 96 of the State Acquisition and Tenancy Act (shortly SAT Act) read with Section 24 of the Non-Agricultural and Tenancy Act praying for preemption of the suit property, claiming that she is a co-sharer in the case plot by way of Gift No. 3671 dated 31.08.1991 from her husband. The opposite-party is a stranger who purchased the case property by a sale deed dated 29.12.2003 from opposite-party No. 2. On 15.04.2010, when the opposite-party No. 1 demanded partition of the case property and taking measurement of the same there was an altercation with the plaintiff and at once stage, the opposite-party No. 1 disclosed that he purchased the property from opposite-party No. 2 by a registered deed dated 29.12.2003. On coming to know about the fact, the petitioner made search with the concerned Sub-register office and obtained true copy of the sale deed on 21.04.2010 and came to know that the opposite-party No. 2 transferred the case plot to the opposite-party No. 1 without knowledge of the petitioner. The petitioner being a co-sharer in the plot would purchase the property,

if it was offered by the opposite-party No. 2. Before transfer of the property the opposite-party No. 2 did not serve any notice under Section 89 of the SAT Act, expressing his intention to sell the case property. Because of suppression of the fact, the petitioner could not come before the court within time but when she came to know about the transfer filed the present case for preemption.

The opposite-party No. 1 contested the case by filing written objection denying all the material allegations made in the application for preemption, contending, inter alia, that the opposite-party No. 2 is husband of the petitioner who used to live in same mess. Opposite-party No. 2 gifted a portion of the case property to the petitioner and she was well aware about transfer of the property by her husband, but the petitioner most cunningly suppressed identity of her husband in the application and instead of exposing herself as wife of opposite-party No. 2, purposely written name of her father in the application. The opposite-party further stated that the application at the same time under Section 96 of the SAT Act and 24 of the NAT Act is not maintainable in law. It is also stated that the application

has not been filed with proper deposit and within statutory period of limitation, as such, the case is liable to be rejected.

The trial court framed 5(five) issues for determination of the dispute. In course of hearing, the petitioner and the opposite-party No. 1 each examined single witness as Pt.W. and O.P.W and submitted some documents in support of their respective claim which were duly marked as Exhibits. The trial court after hearing by its judgment and order dated 21.01.2019 dismissed the case.

Being aggrieved by and dissatisfied with the impugned judgment and order of the trial court, the petitioner preferred Miscellaneous Appeal No. 39 of 2019 before the Court of learned District Judge, Chattogram. Eventually, the said appeal was transferred to the Court of learned Joint District Judge, Banskhali, Chattogram for hearing and disposal who after hearing by the impugned judgment and order dated 29.09.2020 disallowed the appeal affirming the judgment and order passed by the trial court. At this juncture, the petitioner, moved this Court by filing this revision and obtained the present Rule and order of status-quo.

Mr. Mintu Kumar Mondal with Mr. Kishore Kumar Mondal, learned Advocates appearing for the petitioner submits that because of misquoting of section in the application the case is not liable to be rejected. The contents of the application are to be taken into consideration while deciding the case. From the averments made in the application it can be easily construed that the case actually filed under Section 96 of the SAT Act. He finds it difficult to satisfy the Court that the deposit made by the petitioner is in accordance with law. He candidly admits that the deposit made in this application under old law, but after 2006 the provision of law has been changed and in case of filing an application under Section 96 of the SAT Act, the petitioner is to deposit 25% of the consideration as compensation along with 8% simple interest, but this application has not been filed with proper deposit. He also finds it difficult to defend the petitioner that the case was filed within time as prescribed by law.

Mr. Debashis Bhattacharyya, learned Advocate appearing for the opposite-party No. 1 at the very outset raised objection regarding maintainability of the case in its present form. He argued that in the event of filing a case under Section 96 of SAT Act, the applicant is to deposit 25% more of the consideration money along with 8%

simple interest, but in the instant case, as appearing from the order, the applicant deposited consideration money with 10% compensation amounting to Tk. 22,000/- only.

He further submits that 2nd proviso to Section 96 of the SAT Act, provided limitation for filing a preemption case within 3 years from the date of registration of the sale deed. In the instant case the deed in question was registered on 29.12.2003 and entered into volume on 24.08.2005 and the case was filed on 11.05.2010 beyond 3 years, as such, the case is hopelessly barred by limitation.

Heard the learned Advocates of both the parties, have gone through the revisional application, preemption application, written objection, evidences both oral and documentary available in lower court records and the impugned judgment and order passed by both the courts below.

The petitioner claimed that she is a co-sharer in the case property by way of gift from her husband, but the petitioner purposely suppressed the name of her husband and written in the application father's name. At the time of leading evidence she admitted that the opposite-party, transferor of the property is her

husband, but took a stand that she used to live in a separate mess. Such contention of the petitioner could not be established by herself or by any other evidence. As appearing from the application for preemption as well as order of the court, the preemption case was filed on 11.05.2010 on deposit of Tk. 22,000/-. But Section 96 of the SAT Act, provides deposit of money includes consideration/compensation @ of Tk. 25%+8% simple interest per year. Because of improper deposit the application is found to be incompetent. Secondly, the petitioner could not prove that she came to know about the transfer by her husband on 15.04.2010. Moreover, Section 96 in its proviso specifically mentioned limitation for preemption case which can be extended upto 3 years from the date of registration of the sale deed. In the instant case the deed was executed and registered on 29.12.2003 and entered into volume on 24.05.2005, as such, the period of limitation for filing this case has become over. Hence, the case is hopelessly barred by limitation. Since the petitioner is wife of opposite-party No. 2 transferor, it is very hard to believe that she was not aware of transfer made by her husband.

Apart from this she is not a co-sharer by inheritance. Section 96 prohibits preemption at the instance of a person who is not a co-sharer by inheritance, as such, the trial court as well as the appellate court rightly dismissed the case and the appeal. There is no illegality or error in the judgment of the courts below calling for interference by this Court.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioner.

In the result, the Rule is discharged, however, without any order as to costs.

Order of *status-quo* granted at the time of issuance of the Rule stand vacated.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.