

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1302 OF 2021

In the matter of:

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

And

Md. Abdul Karim Kazi being dead his heirs-
Abdus Salam Kazi and others

.... Petitioners

-Versus-

Md. Abu Sama Sarker and others

.... Opposite parties

Mr. Shasti Sarker, Senior Advocate with
Mr. Laxman Biswas, Advocate

.... For the petitioners.

Mr. Md. Abdul Haque, Advocate

.... For the opposite party

No.1.

Heard and Judgment on 20.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and order dated 10.03.2021 passed by the learned Joint District Judge, 2nd Court, Pabna in Miscellaneous Appeal No.53 of 2010 and thereby reversing those judgment and order dated 01.11.2010 passed by the learned Assistant Judge, Pabna Sadar, Pabna in Miscellaneous Case No.116 of 2000 in allowing the Pre-emption Case should not be set aside and or/pass

such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite parties as petitioners filed above case under Section 96 of the State Acquisition and Tenancy Act, 1950 for pre-emption against registered kabola deed dated 14.08.2000 executed by opposite party No.2 to opposite party No.1 transferring 30 decimal land appertaining to S. A. Khatian No.81 alleging that the petitioner is a co-sharer by purchase by registered kabola deed dated 24.11.1973 from Ramesa Khatun and opposite party No.1 is a stranger to above holding. The petitioner filed this case on 13.09.2000 within the statutory period of limitation.

Opposite party No.1 contested the suit by filing a written objection alleging that opposite party No.2 offered the petitioner and Hamdu Miah to purchase above 30 decimal land but they refused to purchase the same and they requested opposite party No.1 to purchase above land and opposite party No.1 who is a landless peasant purchased above land and erected his dwelling huts and living in above huts alongwith the members of his family.

At trial petitioners examined two witnesses and opposite party examined six. Documents of the petitioners were marked as Exhibit No.1-10 and those of the opposite parties were marked as Exhibit Nos."Ka" and "Kha".

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge allowed above case.

Being aggrieved by above judgment and order of the trial Court above opposite parties as appellants preferred Miscellaneous Appeal No.53 of 2010 to the District Judge, Pabna which was heard by the learned Joint District Judge, 2nd Court who recorded additional evidence of two witnesses for the opposite party and on consideration of facts and circumstances of the case and evidence on record allowed above appeal and set aside the judgment and order of the trial Court and dismissed above case.

Being aggrieved by and dissatisfied with above judgment and order of the Court of Appeal below above respondents as petitioners moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Shasti Sarker, learned Senior Advocate for the petitioners submits that disputed 30 decimal land belonged to opposite party No.2 who transferred the same to opposite party No.1 by registered kabola deed dated 14.08.2000 and opposite party is a stranger to above joma and petitioner is a co-sharer by purchase and above case was filed within the statutory period of limitation. In the written objection the opposite party claimed that before selling disputed land to opposite party No.1 by the impugned kabola deed opposite party No.2 offered the petitioner and Hamdu Miah to purchase above land but they

refused to purchase the same. But the opposite party could not prove above claim by legal evidence. The father of opposite party No.1 gave evidence as O.P.W.1 but he could not mention the date or venue when opposite party No.2 offered the petitioner to purchase above land. Similarly opposite party No.2 while giving evidence as O.P.W.2 could not mention the date, time or venue as to when he asked the petitioner to purchase above land. Mere claim that the right of pre-emption of the petitioner has been defeated by the principal of waiver and acquiescence is not enough and the opposite parties were required to prove above claim by legal evidence. But the opposite party has miserably failed to substantiate above claims and on consideration of above materials on record the learned Judge of the trial Court rightly allowed the case. But the learned Judge of the Court of Appeal below utterly failed to appreciate the correct meaning of the principal of waiver and acquiescence and the evidence on record and most illegally held that the suit was barred by the principal of waiver and acquiescence and on the basis of above erroneous perception allowed the appeal and dismissed the case which is not tenable in law. In support of above submissions the learned Advocate refers to the unreported judgment of the Appellant Division passed in Civil Appeal No.25 of 2005 in the case of Md. Iqbal Hossain Talukder Vs. Md. Joynal Abedin Talukder.

On the other hand Mr. Md. Abdul Haque, learned Advocate for the opposite party No.1 submits that in written objection opposite party

has made out a case of waiver and acquiescence against the petitioners. It was alleged that opposite party No.2 offered the petitioner and his uncle Hamdu Miah to purchase above land but they refused to buy and requested the petitioner to purchase the same and on reliance of above request the petitioner purchased the disputed land and erected dwelling huts and living there with the members of his family since 2000. It has been proved by the evidence of the Advocate Commissioner that opposite party erected his dwelling huts and excavated a tank by spending huge amount of money. but the learned Judge of the trial Court did not award any compensation. On consideration of above materials on record the learned Judge of the Court of Appeal below rightly allowed the appeal and dismissed the suit which is calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that opposite party No.2 who was the rightful owner of disputed 30 decimal land transferred above land to opposite party No.1 by impugned registered kabola deed dated 14.08.2000.

In the written objection opposite party raised two claims, firstly it was stated that immediately after purchase of above land they erected their dwelling huts and excavated tank by spending Taka 25,000/ and secondly at Paragraph No.9 of the written statement it was alleged that before transferring above land to opposite party No.1 the owner of above land opposite party No.2 offered the petitioner and his uncle

Hamdu Miah to purchase above land but they refused to buy and the petitioner requested the opposite party No.1 to purchase above land and on the basis of above request opposite party No.1 purchased above land. The petitioner did not amend his petition to make a specific denial to above claims of the opposite party. While giving evidence as PW1 the petitioner merely stated that it was not true that he mediated the purchase of disputed land by the opposite party. But above witness did not deny the allegation of the opposite party that opposite party No.2 offered him to purchase above land but he refused to buy the same. While giving evidence as O.P.W.2 opposite party No.2 Abdul Aziz a man of 83 years of age stated that before sale of the disputed land to the opposite party No.1 he asked the petitioner to purchase above land but the petitioner refused to purchase. Above witness was cross examined by the petitioner but he was not cross examined directly on his above evidence. Nor any suggestion was put to above witness to the effect that he did not offer the petitioner to purchase above land nor the petitioner refused to purchase the same. Father of opposite party No.1 while giving evidence as opposite party witness No.1 stated that the petitioner inspired opposite party No.1 to purchase above land. In cross examination he stated that the petitioner refused to purchase above land in Chaitra 2000 and Ohab, Mokshed and Ismail were present. Above witness was cross examined by the opposite party but he was not cross examined on his above evidence that the petitioner inspired

the opposite party to purchase above land nor any suggestion was put to above witness in this regard.

On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the Court of Appeal below rightly held that the claim of pre-emption of the petitioner was barred by the principal of waiver and acquiescence which calls for no interference. The learned Judge of the Court of Appeal below further held that the opposite party is a landless peasant and he has no other land excepting this disputed land on which he has constructed his dwelling house and living with the members of his family and above findings of the Court of Appeal below is based on the evidence on record.

The facts and circumstances of the case law referred to above by the learned Advocate for the petitioner is quite distinguishable from those of the case in hand and above case law has no application in this case.

In above view of the materials on record I am unable to find any illegality or irregularity in the impugned judgment and order passed by the learned Judge of the Court of Appeal below nor I find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged. The order of status-quo granted at the time of issuance of the Rule is vacated.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER