

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

Present:

Mr. Justice Rezaul Karim

Civil Revision No. 5634 of 2007

Md. Mojibar Rahman

...Petitioner

-Versus-

Md. Abul Kashem being dead his heirs Md.
Momtazul Islam and others.

....Opposite parties

None for both sides.

Heard on: 22.06.2026

Judgment on: 24.06.2026

This Rule was issued calling upon the opposite party nos. 1-13 to show cause as to why the judgment and order dated 14.06.2007 passed by the learned Joint District Judge, 2nd Court, Natore in Title Miscellaneous Appeal No. 72 of 2001, allowing the appeal and thereby setting aside the judgment and order dated 28.05.2001 passed by the learned Assistant Judge, Baraigram, Natore in Preemption Case No. 65 of 1994, should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

No interim order, by way of stay or otherwise, was passed at the time of issuance of the Rule.

The petitioner, as preemptor, filed Preemption Case No. 65 of 1994 before the learned Assistant Judge, Baraigram, Natore on 25.10.1994 under Section 96 of the State Acquisition and Tenancy Act, 1950, seeking preemption of 8½ decimals of land described in the schedule to the preemption application. His case, in brief, was that the land originally belonged to his father, Haran Pramanik, who died leaving three sons, including the petitioner, four daughters, including opposite party no. 5 (now opposite party no. 14), and a widow, and that the petitioner is accordingly a co-sharer by inheritance in the suit land; that opposite party nos. 1-4 (predecessors of present opposite party nos. 1-10, and opposite party nos. 11-13), behind the back of the petitioner, purchased the suit land from opposite party no. 5, and to defeat the petitioner's right of preemption, had the transaction dressed up as a deed of exchange; that the land given to opposite party no. 5 in exchange was subsequently made over, by a kabala deed bearing no. 4322, to one Jesmin Akhtar, the wife of a cousin of opposite party no. 1; and that the petitioner, having learnt of the transaction from another source, obtained a certified copy of the deed dated 18.10.1994 and thereafter filed the preemption application.

Opposite party nos. 1-4 contested the case by filing a written objection, denying that there was any purchase and asserting that the transaction was a genuine exchange of land, effected within the knowledge of the petitioner; that the true value of the exchanged land

was about Taka one lac, though shown as Taka 500 only, so as to reduce the cost of registration; and that opposite party no. 5, having herself sold the land received by her in exchange, and the petitioner having sought to take advantage of that circumstance, filed the preemption case upon a false statement.

By judgment and order dated 28.05.2001, the learned Assistant Judge, Baraigram, Natore allowed the preemption application, principally on the finding that opposite party no. 3, examined as O.P.W.1, had admitted in cross-examination that land in three current plots had been purchased by them, and that this admission established that the impugned deed, although styled as one of exchange, was in substance a deed of sale.

Being aggrieved, the successors of opposite party no. 1, since deceased, together with opposite party nos. 2 and 3, preferred Title Miscellaneous Appeal No. 72 of 2001, which was heard and disposed of by the learned Joint District Judge, 2nd Court, Natore. By judgment and order dated 14.06.2007, the learned Judge of the appeal Court below allowed the appeal and set aside the judgment of the trial Court. It was found that the admission of O.P.W.1 as to purchase of land in three plots did not specifically establish that the suit land, as distinguished from any other plot, had been purchased; that the burden of proving that the impugned deed, though ostensibly one of exchange, was in truth a deed of sale, lay upon the petitioner and had

not been discharged; that the value shown for the exchanged land and for the suit land was identical, a circumstance consistent with a genuine exchange rather than a sale; and that the subsequent transfer, by opposite party no. 5, of the land received by her in exchange to Jesmin Akhtar, the wife of a cousin of opposite party no. 1, did not, without more, establish that opposite party nos. 1-4 had purchased the suit land or had taken back the exchanged land, there being neither pleading nor evidence that opposite party nos. 1-4, or anyone on their behalf, had purchased the exchanged land from Jesmin Akhtar or otherwise received it back. On this reasoning, the Court of appeal below held that the impugned deed was a deed of exchange and not a deed of sale, and that the petitioner was, accordingly, not entitled to preempt the suit land.

Being aggrieved, the petitioner has preferred this revisional application.

This matter having appeared in the daily cause list, is taken up for disposal. None appears, either for the petitioner or for the opposite parties, to press or to oppose the Rule, although sufficient opportunity has been given. In the circumstances, I have perused the revisional application together with the judgments of the two Courts below forming part of the record, and proceed to dispose of the Rule on that basis.

A deed of exchange, duly registered and reciting itself as such, is *prima facie* evidence of its recited character; it is not, however, conclusive, and it remains open to a party alleging that the transaction is, in truth, a sale coloured as an exchange, so as to defeat a co-sharer's right of preemption, to establish that case by cogent evidence. The burden of proving that the impugned deed was such a colourable transaction lay upon the petitioner.

As pleaded by the petitioner himself, his case rested on a single, specific premise: that the land taken by opposite party no. 5 in exchange had, in truth, been reacquired by or on behalf of opposite party nos. 1-4, through its subsequent transfer to Jesmin Akhtar, the wife of a cousin of opposite party no. 1, thereby exposing the exchange as a mere paper transaction. No other ground for treating the exchange as a sham—such as absence or inadequacy of consideration, or the conduct of the parties otherwise than as stated above was pleaded. On this, the petitioner's own case, no evidence was led to show that the exchanged land was purchased back by, or reverted to, opposite party nos. 1-4; the connection sought to be drawn rests only on the marital relationship between Jesmin Akhtar and a cousin of opposite party no. 1, which, without more, is insufficient to establish reacquisition or collusion.

The admission of O.P.W.1 does not fill this gap. The suit land is described in the schedule to the preemption application as R.S. Plot

Nos. 3883, 3884 and 3885, whereas O.P.W.1 admitted only, in general terms, that land in three current plots had been purchased, without identifying those plots by number; O.P.W.2, for his part, spoke of land purchased from opposite party no. 5 which included Plot No. 3589, a plot distinct from the suit plots. In these circumstances, the admission of O.P.W.1, without further particulars connecting it to the suit plots, cannot be read as an admission that the suit land itself was purchased, and does not displace the documentary character of the impugned deed as one of exchange.

The finding of the Court of appeal below that the impugned deed is a genuine deed of exchange, and that the petitioner has failed to prove his case for preemption, is thus a finding of fact reached upon a consideration of the pleadings and the evidence on record. It is not shown to be vitiated by any misreading or non-consideration of material evidence, nor does it disclose any error of law resulting in an erroneous decision occasioning failure of justice, within the meaning of Section 115(1) of the Code of Civil Procedure. Sitting in revisional jurisdiction, this Court is not called upon to re-appreciate the evidence as a court of first appeal would, and no ground is made out for interference with the finding.

I find no infirmity, legal or otherwise, calling for interference in exercise of this Court's revisional jurisdiction.

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

Let a copy of this judgment along with the lower Court records, be sent down at once.

Mazhar, BO