

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 4918 of 2005

Md. Mostafa Akhand

... Petitioner

-Versus-

Md. Ramizuddin Sheikh and others

... Opposite parties

Mr. Shamsul Hoque Bhuiyan, Advocate

...for the petitioner

No one appears for the opposite parties

Judgment on 31.07.2024

This rule was issued on an application under Section 115 (1) of the Code of Civil Procedure calling in question the judgment and order dated 30.07.2005 passed by the Additional District Judge, Second Court, Gazipur in Miscellaneous Appeal Number 02 of 2004 dismissing the appeal affirming those dated 22.11.2003 passed by the Assistant Judge, Fifth Court, Gazipur in the Preemption Miscellaneous Case Number 23 of 2001 rejecting the preemption application.

The petitioner filed an application for preemption under Section 96 of the State Acquisition and Tenancy Act in the Fifth Court of Assistant Judge, Gazipur for preemption of 41 decimals of land as described in the schedule of the application. The

preemptor's case was that he was a co-sharer in the case land, but opposite party number 2, Idris Moral (predecessor of opposite parties number 2-6 herein) being another co-sharer transferred it to opposite party number 1 beyond his knowledge.

Opposite parties number 1 and 2 contested the case by filing a joint written objection denying the material allegations raised in the preemption application and claiming the transfer deed to be an exchange deed, not a sale deed.

Learned Judge of the trial court framed issues and proceeded with the trial. In course of trial, the preemptor-petitioner deposed as PW 1, where he admitted that one year before he separated the holding by opening new khatian in his name.

On conclusion of trial, learned Assistant Judge on the basis of the evidence of PW 1, found the preemptor no more a co-sharer in the case land and rejected the preemption case on that sole ground by judgment and order dated 22.11.2003. Being aggrieved thereby, the preemptor preferred Miscellaneous Appeal Number 2 of 2004 before the District Judge, Gazipur. During pendency of the appeal, the preemptor-appellant filed an application for amendment of the original preemption application claiming himself to be a contiguous land owner as well and asserted his right to preemption on that ground.

There was also a subsequent development of fact that opposite party number 2 i.e. the admitted co-sharer and vendor of

the case land was a party in Partition Suit Number 92 of 1992 between her co-sharers. The suit was decreed, but opposite party 2 did not get any share. Under the circumstances, he took back the case land by a registered deed on mutual understanding with preemptee-opposite party number 1.

Ultimately the learned Additional District Judge, Second Court, Gazipur heard the miscellaneous appeal and dismissed the same by the impugned judgment and order on the ground that with reversion of the case land to its original owner, the right to preemption did no more exist in favour of the preemptor.

Mr. Md. Shamsul Hoque Bhuiyan, leaned advocate for the petitioner submits that the petitioner was also a contiguous land owner and the transfer in question was actually a sale under the color of exchange. Despite proving the same by legal evidence, the appellate court below dismissed the miscellaneous appeal and thereby committed error of law resulting in an error in decision occasioning failure of justice.

I have considered the submissions of the learned Advocate, carefully gone through the record including the judgments of the courts below. The reversion of the case land by a registered deed has been proved and the lower appellate court arrived at definite a finding on that fact. I do not find any stronger evidence to rebut the presumption of the registered document of reversion of the case land to its original owner. Learned Judge of the Appellate Court

rightly held that with revision of the case land in favour of the original owner, who is admittedly a co-sharer, the right to preemption did no more exist. I am in full agreement with the proposition and do not find any substance in the rule.

Accordingly, the rule is discharged.

Send down the lower courts' records.