

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

Civil Revision No. 147 of 2022

Md. Tozammel Hossain

.....petitioner

-Versus-

Md. Sazzadul Islam and others

..... Opposite parties

Mr. Ashfaqur Rahman, Advocate

..... For the petitioner

Mr. Mohammad Moshiur Rahman, Advocate

..... For the Opposite Parties

Heard on: 09.05.2023, 15.05.2023,
16.5.2023 and

Judgment on 28.05.2023

Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and order dated 22.11.2021 passed by the learned Joint District Judge, 1st Court, Bogura in Miscellaneous Appeal No. 28 of 2019 dismissing the same and thereby affirming the judgment and order dated 20.01.2019 passed by the learned Assistant Judge, Shonatola, Bogura in the Miscellaneous Case No. 14 of 2009 (preemption) disallowing the said preemption 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.

The instant petitioner as preemptor filed Miscellaneous Case No. 14 of 2009 in the court of Assistant Judge, Shonatola, Bogura impleading the instant opposite parties as opposite party in the preemption case. The trial court upon hearing the

preemption case dismissed the case by its judgment and order dated 20.01.2019. Being aggrieved by the judgment and order of the trial court the preemptor as appellant filed Miscellaneous Appeal No. 29 of 2019 which was heard by the learned Joint District Judge, 1st Court, Bogura. Upon hearing, the appellate court however dismissed the appeal by its judgment and order dated 22.11.2021 and thereby affirmed the judgment and order of the trial court passed earlier. Being aggrieved by the judgment and order of the court below the preemptor as petitioners filed the instant civil revisional application which is presently before this court for disposal.

The plaint case inter alia is that the land under M.R.R. Jote No. 324 of Mouza – Pakulla, Upazila- Shonatola, District- Bagura was recorded in the names of Syed Ali Akand, Tomez Uddin Akand, Mozibor Akand, Babar Ali Akand, Asatan Nesa Bibi, Ebatan Nesa Bibi, Nofiron Beowa, Shuvo Bibi and Taiman Nesa. Thereafter, the said Nofiron Beowa while staying in possession of the said land died leaving behind her legal heirs: 3(three) sons namely Tomez Uddin Mozibor Rahman and pre-emptee- respondent-opposite party No. 4 Babar ali Akand and 2(two) daughters Asatan Nesa and pre-emptee-respondent opposite party No. 5 Ebatan Nesa; subsequently, the said Tomez Uddin Akand while staying in possession of the said land died leaving behind his legal heirs: 2(two) sons namely Tozammel Hossain Akand (the instant petitioner) and pre-emptee-respondent opposite party No. 6 Abul Hossain Akand and 5(five)

daughters namely Nunki Beowa and preemptee respondent opposite party Nos. 7-10. Thus the pre-emptor appellant petitioner became a co-sharer by inheritance of the suit land. That while the pre-emptor appellant petitioner, having his right and title, was in possession of the land, he somehow came to know on 05.10.2009 that the preemptee respondent opposite party No. 3 secretly sold and transferred the suit land to preemptee respondent-opposite party No. 1 and 2 for a consideration of Tk. 11,000/- (eleven thousand taka) only by executing a registered kabala being Deed No. 3062 dated 17.09.2009. The pre-emptor-appellant-petitioner did have any knowledge about the said sale and transfer of the suit land made by the preemptee-respondent-opposite party No. 1 and 2. That if the pre-emptor-appellant petitioner had knowledge about it, he would have surely purchased the suit land upon paying the existing market price of the land. Hence, the instant pre-emption case.

The preemptee respondent opposite party Nos. 1 and 2 entered appearance in the said case and contested by way of filing a written objection, denying all the material allegations made by the pre-emptor and also asserted that the applicant had no locus standi to file the preemption case and the cause of action is vague and misconceived.

That the suit land under C.S. Khatian No. 203 was originally owned and possessed by predecessor Abbas Ali Sarkar and he sold and transferred the case land along with other lands

in favour of Syed Ali Akand. Subsequently, the said Syed Ali Akand while in possession of the said land gifted and transferred the case land along with other lands measuring to 1.23 acres of land in favour of his wife Shuvo Bewa by executing a registered Heba-bel Ewaz being Deed No. 3744 dated 23.08.1956. Thereafter, the said Shuvo Bewa while staying in possession of the case land along with other lands measuring to 1.23 acres of land transferred the same to her brother's son namely Md. Akbar Ali Mollah, who is the pre-emptee-respondent-opposite party No. 3 by executing registered Deed No. 4097 dated 21.07.1979.

Subsequently, the pre-emptee-respondent-opposite party No. 3 Md. Akbar Ali Mollah by filing Mutation Case No. 513(1X-1)80-81 dated 15.12.1980 opened up separate M.M.R.R. No. 755 revenue Khatian (record) and later on the case land along with other lands measuring to 1.23 acres of land got recorded in his name in R.S. Khatian No. 17. The preemptee respondent opposite party No. 3 Md. Akbar Ali Mollah while staying in possession of the case land transferred the land to preemptee respondent opposite party Nos. 1 and 2. Thereafter, pre-emptee-respondent-opposite party Nos. 1 and 2 invested around Tk. 20,000/- for development of the case land and remained in possession of the same.

The trial court framed issues, witnesses were examined by both sides and both parties produced documents marked as exhibits.

Learned Advocate Mr. Ashfaqur Rahman appeared for the preemptor petitioner while Mr. Mohammad Moshir Rahman represented the preemptee opposite parties.

The learned Advocate Mr. Ashfaqur Rahman for the petitioner submits that the courts below ignored the fact that the preemptor is a co-sharer to the case land and therefore entitled to preemption. He submits that upon overlooking the vital factors both courts upon non consideration of the actual fact deprived the preemptor petitioner his right as a co-sharer and caused injustice to him. He submits that the petitioner is a co-sharer but however the preemptee is a stranger in the case land and therefore the petitioner is entitled to preemption as being co-sharer. Upon a query from this bench regarding the petitioner showing any proof of his claim that he is a co-sharer to the case land, he however could not show any documentary evidence. Upon a further query from this bench as to whether the case land was recorded in the preemptor's name he also could not show anything to the effect. He however concludes his submissions upon assertion that the judgment of the courts below needs interference and ought to be set aside and the Rule be made absolute for ends of justice.

On the other hand learned Advocate Mr. Mohammad Moshir Rahman for the preemptee opposite parties opposes the Rule. At the onset of his submission, he contends that to prove that the preemptor is entitled to preemption to the case land by

way of being co-sharer, it is the preemptor's duty to prove that he has title upon producing documentary evidences. He draws upon the records and submits that from the materials it is clear that the preemptor petitioner could not produce anything to the effect. He submits that although the petitioner claims that M.M.R.R. was recorded in the name of the preemptor but however such M.M.R.R. could not be produced by the preemptor neither in trial nor in appeal. He submits that whereas on the other hand R.S. record was prepared in the preemptees vendor's name. He reiterates that since preemptor filed a case relying on his claim of being co-sharer to the case land therefore it is the preemptor's duty to prove the fact that he is a co-sharer. He submits that it is evident that in the absence of any document the petitioner has no lawful title in the case land since he is not a co-sharer.

He points out to the cross examination of PW-1. From the cross examination of the pw-1 he shows that pw-1 admitted to the transfer of the case property earlier on 23.08.21956 and again on 21.07.1979 by way of execution of kabala deeds between the preemptees predecessor and others. He submits that therefore since the preemptor himself admits to the valid transfer of the case land by way of the previous kabala deed in 1956 and 1979 it is also an admission that the title of the case land validly passed in the name of the others and the preemptor has no title in the case land. He concludes his submissions upon assertion that the

judgment of the courts below needs no interference and the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides, also perused the application and materials on records including both the judgments of the courts below. In a case of preemption under Section 96 of the State Acquisition and Tenancy Act when the preemptor claims for preemption relying on the fact of his being a co-sharer to the case land and if such claim is denied by the other side, it is the duty of the courts to examine as to whether the preemptor is actually a co-sharer or not. Evidently he must prove his claim of being co-sharer by evidence. It is preemptor's duty to substantiate his claim by way of evidence particularly documentary evidences. In this case the preemptor petitioner during trial claimed that M.M.R.R was prepared in the preemptor's name. Although he orally claims that the M.M.R.R is prepared in the preemptor's name but however he could not produce the M.M.R.R nor any other document by way of evidence of possession. Regrettably the preemptor could not show any another document to substantiate his claim of being a co-sharer in the case land.

Moreover this court's attention was drawn to the cross examination of the PW-1. It appears that in the cross examination he has virtually admitted that a Heba deed was executed on 23.08.1956 and then again on 21.07.1979 kabala deed was executed between the preemptees predecessor vendor

and other persons. The preemptor did not at any stage challenge the validity of these deeds.

Therefore in my considered view in the absence of any documents to prove the preemptor's claim of title and furthermore in the presence of some deeds which remain unchallenged whatsoever, there is no scope for the preemptor to claim preemption in the case land. It is clear that the preemptor is not a co-sharer in the case land since he could not prove his case.

Therefore from the foregoing discussions made above and under the facts and circumstances and in the light of the submissions made by the learned Advocates for both parties, I am of the considered view that the judgment of the courts below need not be interfered with. I find no merits in this Rule.

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

Order of status-quo granted earlier by this court is hereby recalled and vacated.

Send down the lower courts records at once.

Communicate the judgment at once.

Shokat (B.O)