

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 1123 OF 2020

Jibunessa (Shilpi)
Pre-emptee-Appellant-Petitioner

Versus

Md. Rafiqul Islam Patwary being dead his legal
heirs:

1(a) Shamima Islam and others
Pre-emptor-Respondent-Opposite Parties

Mr. Md. Tamij Uddin with
Mr. Md. Mahabubur Rahman Kishore, Advocates
for the petitioner

Mr. Garib Newaz, Advocate
for the opposite parties

Judgment: on 26.10.2022

This Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and Order dated 26.1.2020 passed by the learned District Judge, Chandpur in Miscellaneous Appeal No. 9 of 2018 disallowing the Appeal and thereby affirming the Judgment and Order dated 23.10.2017 passed by the learned Senior Assistant Judge, Matlab, Chandpur in Pre-emption Miscellaneous Case No. 30 of 2002 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The opposite-party No. 1 as pre-emptor instituted the instant Pre-emption Case No. 30 of 2002 before the Court of learned Senior Assistant Judge, Matlab, Chandpur under Section 96 of the State Acquisition and Tenancy Act, 1950.

The short facts of the pre-emption Case is that Samiruddin being owner of 4.205 acres of land in his 2 Anna 13 Gonda 1 Kara 1 Kranti share in the case jote died leaving behind one son Nurul Islam Patwary and two daughters Faizunessa and Rahatunnesa and thereby the son Nurul Islam Patwary inherited 02.1025 acres of land and each of Faizunessa and Rahatunnesa inherited 1.0512 acres of land and their names were recorded in S.A Khatian. Nurul Islam Patwary died leaving behind 3 sons Rafiqaul Islam (pre-emptor), Jahirul Islam, Safiqul Islam and two daughters Momtaz Begum and Jahanara Begum. By amicable partition with brothers and sisters pre-emptor Rafiqul Islam got land of entire case jote in his share and his brothers and sisters got some other land in their share. Thus being owner of the entire land pre-emptor Rafiqul Islam gifted 0.86 acres of land to Awshinpur High School and remained owner of 0.7225 acres of land. Rahatunnesa daughter of Samiruddin having inherited 1.05125 acres of land died leaving

behind two sons Abul Hossain and Fazlul Haque and thereby Abul Hossain becomes the owner of 0.5256 acres of land and thereafter under sale deed No. 102 dated 06.01.1982 he sold the same to pre-emptor Rafiqul Islam and his brothers. Thereafter pre-emptor Rafiqul Islam and his brothers with the other heirs of the original owner under Partition Deed No. 3565 dated 01.07.2001 partitioned the entire property and pre-emptor Rafiqul Islam got his share in the case property. It may be mentioned here that vendor Khadeza Begum daughter of Fazlul Haque is the No. 6 Second Party of the Partition deed. The present Khatian No. 894 containing Plot No. 4842 and some other plots have been published in the name of the pre-emptor Rafiqul Islam. The pre-emptor is thereby a co-sharer of the case property. Khadeza Begum the vendor being the owner of the .0450 acres of land of S.A. Khatian No. 77 Hal Khatian No. 2484 previously Plot No. 1495, Hal Plot No. 4845 made a exchange deed being deed No. 5666 dated 22.10.2021 and transferred the same to one stranger Kuddus Sarker. The deed shows that .03 acres of land of S.A. Khatian No.20 previously Plot No. 180 of Shahbazpur Mouza was exchanged. On the same day Khadeza Begum under Sale Deed No. 5669 transferred the same

property to the pre-emptee Jibunsessa (Shilpi), wife of Kuddus Sarker without serving any co-sharer notice. After knowing of the same and obtaining certified copy of the deed the pre-emptor filed the pre-emption case.

The opposite party No. 1 as pre-emptee contested the pre-emption case by filing a written objection denying all the material allegations made in the application for pre-emption alleging, inter alia, that vendor Khadeza Begum being owner of .0450 acres of land of S.A. Khatian No. 77, Hal Khatian No. 2484 previous Plot No. 1495, Hal Plot No. 4845 under exchange Deed No 5666 dated 22.10.2001 exchanged the property with pre-emptee's .03 acres of land of S.A. Khatian No.20 previous Plot No. 180 of Shahbazpur Mouza. After getting delivery of possession of the property the pre-emptee-petitioner has developed the land by filling earth costing at Taka 25,000/- (twenty five thousand) and planted various types of valuable fruit trees.

The Trial Court allowed the pre-emption case by its Judgment and Order dated 23.10.2017. Against which the pre-emptee as appellant preferred Pre-emption Appeal No. 9 of 2018 before the Court of learned District Judge, Chandpur who rejected the Appeal and hence the pre-emptee as petitioner moved this

application under section 115 (1) of the Code of Civil Procedure before this Court and obtained this Rule.

During pendency of the Rule the pre-emptor-opposite party Rafiqul Islam died and accordingly his heirs were substituted.

Mr. Md. Tamij Uddin, the learned Advocate for preemptee-appellant-petitioner, submits that the learned Trial Court framed issue No.3 as regards whether the pre-emptor is a co-sharer by inheritance in the case Khatian but did not discuss any single word regarding the same in the judgment and its subsequent Miscellaneous Appeal is also ill-founded and both the Courts below committed gross illegality in evaluating the documentary evidence in its true perspective and also there has been non-consideration of material facts resulting in an error in the decision occasioning failure of justice in the disposal of the pre-emption miscellaneous case and its subsequent appeal as such concurrent deceptive finding of both Courts below are liable to be set aside. He then submits that the petitioner herein being the pre-emptee has exhibited Gift Deed No. 4962 dated 09.09.1968 and marked as Exhibit No. Ka which reflects that pre-emptor Rafiqul Islam being doner gifted .9330 acres of land to the Awashin Pur High School but the Courts below committed an error in evaluating the documentary evidence in its true perspective, and also there has been non-consideration of material facts resulting in an error in the

decision occasioning failure of justice as the such concurrent deceptive finding of both the Courts below are liable to be set aside.

Mr. Garib Newaz, the learned Advocate for the pre-emptor-respondent-opposite parties opposes the Rule and submits that both the Courts below after threadbare discussion of the evidences on record gave findings to the effects that the transaction was colorable device and the transfer made by vendor Khadeza Begum was not exchange and the same was an out and out sale. The Courts below also held that the pre-emptor is a co-sharer of the case land. He then submits that although the deed was shown as an exchange deed but the same is a colorable device and in fact an out and out sale deed which is apparent from the fact that the property which was transferred by the pre-emptee to the vendor Khadeza Begum under the deed was on same day transferred by the vendor Khadeza Begum to the pre-emptee (who is now the petitioner). It may be mentioned here that at the time of the alleged exchange deed the pre-emptee was not the owner of the land which has been shown to be transferred by him to the vendor Khadeza Begum. The property belonged to his father and the father was alive at that time. He next submits that this revisional application has no ground to be taken by the petitioner-pre-emptee to the effect that the pre-emptor is no more a co-sharer of the case jote as he has

gifted his entire property to the Awshinpur High School in 1968. The petitioner filed an application for amendment of the revisional application and added a new ground that the pre-emptor is no more a co-sharer of the case land. He further submits that the pre-emptor by amending the pre-emption application and in his deposition on recalling stated that by making amicable partition with his brothers and sisters he got the entire case jote in his share and after gifting 86 decimal of land to the School he remained owner of 72.25 decimal of land. He next submits that the gift was made to the Awshinpur High School in 1968 and thereafter on 06.01.1982 the pre-emptor with his three brothers purchased the entire share of Abul Hossain son of Rahatunnesa measuring 52.50 decimal. That deed was produced by the pre-emptor is lying with the LCR and under partition deed No. 3565 dated 01.07.2001 the entire property left by Samiruddin the original owner was partitioned amongst his heirs and successors. The share of the pre-emptor has been given in the partition deed. The vendor Khadeza Begum is No. 6 second party of the said partition deed and she got her share. The partition deed has been filed as Exhibit No. 4. He next submits that pre-emptor by amending the pre-emption application and in his deposition on recalling stated that by making amicable partition with his brothers and sister he got the entire case jote in his share and after gifting 86 decimals of land to the School he remained

owner 72.25 decimals of land. He also submits that the gift was made to the Awshinpur High School in 1968 and thereafter on 06.1.1982 the pre-emptor with his three brothers purchased the entire share of Abul Hossain son of Rahatunnesa measuring 52.50 decimals. The deed was produced by the pre-emptor is lying with the LCR. He next submits that the aforesaid facts and circumstances it is crystal clear that the pre-emptor is a co-sharer of the case property and has got every right to file this pre-emption case. He next submits that one Ali Newaz Master claiming to be the constituted Attorney of the pre-emptee deposed in the case as D.W. 1. But no such power of Attorney has been produced by him. So his deposition cannot be accepted and the pre-emptee is to be presumed as non-contesting party. He lastly submits that the pre-emptor at the time of hearing the pre-emption case produced D.P. Khatian No. 894 containing Plot No. 4842 that is the case plot. That the final B.S Khatian No. 894 in respect of case land in the names of the pre-emptor and others have been published and the pre-emptor has by making a supplementary affidavit filed the same in this revisional application as Annexure-1.

Heard the learned Advocates for the parties and perused the record.

Both the Courts below held that the pre-emptor is a co-sharer of the case land. The Courts below gave findings to the

effects that the transfer made by Khodeza Begum to the pre-emptee was not an exchange rather the same was an out and out sale and the pre-emptee is no more a co-sharer of the Case land. The Court below by careful examination of the record and considering the facts and law rightly allowed pre-emptor case which is affirmed by the Appellate Court below and the pre-emptee could not show any ground to interfere with the impugned judgment and order and the Rule has no merit at all.

Considering the facts and circumstances of the Case, I find no substance in this Rule rather I find substance in the submission of the learned Advocate for the pre-emptor opposite party.

In the result, the Rule is discharged.

The impugned Judgment and Order dated 26.1.2020 passed by the learned District Judge, Chandpur in Miscellaneous Appeal No. 9 of 2018 disallowing the Appeal and thereby affirming the Judgment and Order dated 23.10.2017 passed by the learned Senior Assistant Judge, Matlab Court, Chandpur in Pre-emption Miscellaneous Case No. 30 of 2002 is hereby up-held.

The order of stay and status-quo granted earlier by this Court is hereby vacated.

Send down the lower Courts record with a copy of the Judgment to the Courts below at once.