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

Present:

Mr. Justice Md. Ziaul Haque

Civil Revision No. 3081 of 2015

Nripendra Chandra Barman
.....Pre-emptee-Appellant -Petitioner.
-Versus-
Upendra Chandra Barman and others
....Pre-emptor-Respondent-Opposite parties.

Mr. Md. Zainul Abedin, Advocate
….For the petitioner
Mr. A.T.M. Mizanur Rahman, Advocate
….. For the opposite parties

Heard on 10-11-2025 and
Judgment on 13.11.2025.

"Bismillahir Rahmanir Rahim (In the name of Allah, the most merciful and the most magnificent.)"

1. That, this Rule was issued at the instance of the pre-emptee-appellant-petitioner against the judgment and order dated 27-04-2015 passed by the learned Additional District Judge, 1st Court, Kishoregonj in Miscellaneous Appeal No. 41 of 2007 affirming those dated 14-05-2007 passed by the learned Assistant Judge, Tarial, Kishoregonj in Pre-emption Miscellaneous Case No. 01 of 2003 allowing pre-emption under Section 96 of the State Acquisition & Tenancy Act, 1950.

2. That, the facts relevant for disposal of the Rule in short are that the opposite party No.1 as pre-emptor instituted Pre-emption Miscellaneous Case No. 01 of 2003 for getting pre-emption of the case land under Section 96 of the S.A & T Act, 1950 stating interalia that the property described in the schedule to the pre-emption case belonged to Baghai Mal,

Bipin Mal, Fatiq Mal and Radhanath Mal. Radhanath Mal died leaving behind his only son Ramendra Chandra Borman, who inherited the shares of Radhanath Mal. Ramendra Chandra Borman died leaving behind 4 sons namely Shamoresh Borman, Upendra Borman, Nipendra Borman and Bakul Borman and the property was devolved upon them. Nipendra Borman died leaving behind 3 sons, who are opposite party Nos. 2, 3 and 4. Fatiq Mal died leaving behind only son Horendra Mal and Horendra Mal died leaving behind only son Judhistir Mal. Judhistir Mal died leaving behind 4 sons, who are opposite party Nos. 4, 5, 6 and 8. That, further case of the pre-emptor are that the pre-emptor is a co-sharer of the case land by inheritance and the opposite party Nos. 2-6 transferred the case land to the pre-emptee i.e. opposite party No. 1 without giving any notice to the pre-emptor and the transaction was done behind the back of the pre-emptor. Moreover, the pre-emptee in fact purchased the property but the deed was registered as a deed of exchange on 01.06.2002 and the said deed is a fraudulent and colorable deed and the pre-emptee and the seller made such transaction in the name of exchange to defeat the right of pre-emption; that the pre-emptee is an stranger in the case land and the pre-emptor has every right to get it back through pre-emption. The pre-emptor also made deposit of the valued described in the deed with compensation-vide Challan No. 12 dated 02.01.2003. The pre-emptee came to know the facts from reliable source on 17.12.2002 and obtained the certificate copy of the deed in question and requested the pre-emptee to transfer the property to

the pre-emptor by taking the value; but the pre-emptee refused to do so and as such the pre-emptor was constrained to file the pre-emption case.

3. That the petitioner of this Rule being the opposite party of the Pre-emption Miscellaneous Case contested the case by filing written objection denying the material allegations contending interalia that the pre-emption case is not maintainable and the deed in question is a deed of exchange, not a kabala deed and Section 96 of the S.A & T Act, 1950 can only be applied for the sale deed i.e. suf-kabala deed, not against the deed of exchange and the purchaser exchanged his own land with the seller and subsequently, the seller has transferred the said land to elsewhere and therefore, the pre-emption case does not lie. The pre-emptee prayed for rejection of the pre-emption case.

4. That the learned Trial Court below framed as many as 4(four) numbers of issue as such:

1. Is the case maintainable in it's present form and nature?

2. Is the petitioner a co-sharer of the case holding?

3. Whether the disputed deeds bearing Nos. 1127 & 1128 are deed of exchange or not ?

4. Is the petitioner entitled to the relief as prayed for?

5. That the learned trial Court below discussed the issues separately and observed that the pre-emption case is maintainable and the deed in question

bearing No. 1127 & 1128 dated 01-06-2002 were out an out sale deed and those deeds were made as exchange to defeat the right of pre-emption.

6. That on perusal of the evidence on record the learned Trial Court below allowed the application for pre-emption under Section 96 of the S. A &T Act, 1950 on the findings that the deed in question although made as a deed of exchange; but in fact it was a sale deed, which can be called as colorable deed created purposefully showing as a deed of exchange to defeat the right of pre-emption of the pre-emptor.

7. That the learned Trial court below further observed that the Exhibit-Ga shows that the opposite party No. 1 purchased 10.00 decimals of land of Plot No. 2270 of Damiha mouza from one Rabindra Majumder on 29.04.02 The Exhibit No. kha shows that the Opposite Party No. 1 executed a deed of exchange bearing No. 1127 dated 01.06.02 with Opposite Party No. 2 and 3. In accordance with the said deed Opposite Party No. 1 obtained 9.00 decimals of land of Boruha Mouja of case Plot No. 21 and 22 as described in schedule No. 2 to the petition and the Opposite Party No. 2 and 3 obtained 6.00 decimals of land of Damiha Mouza, which the Opposite Party purchased through the Exhibit No. Ga. Again the Opposite Party No. I on the same date on 01.06.02 executed anothers deed of exchange bearing No. 1128 Exhibit No. Umo with Opposite Party No. 4-6. In accordance with this deed, the Opposite Party No. 1 obtained 5.00 decimals of land of Boruha Mouza of the case plots as described in the schedule No. 1 to the petition and the Opposite Party No. 4-6 obtained 4.00 decimals of land of

Damiha Mouza, which the Opposite Party No. 1 obtained through the Exhibit No. Ga. Again the Exhibit No. 4 and 5 show that, the Opposite Party No. 2-6 sold out 10.00 decimals of land of Damiha Mouza to the previous owner Rabindra Chandra Barman, which they have obtained though two deeds of exchange from the opposite party No. 1. Thus it appears that all these transfers made within a very short span of time and the intermediate transferee of 10.00 decimals of land did not possess any quantum of land.

8. That, the learned Trial Court below concluded that the circumstantial evidence and the oral evidence of the witnesses proved that two deed of exchange bearing Nos. 1127 and 1128 were made to avoid pre-emption case and the deeds are in fact colorable deeds. The learned Trial Court below further observed that the petitioner is a co-sharer by inheritance in the case holding. Since the exchange deeds are colorable deed and in fact the seller sold away the property to the pre-emptee and the deeds should be treated as sale deed. The learned Trial Court below therefore allowed the pre-emption case by judgment and order dated 14-05-2007.

9. That being aggrieved by and dissatisfied with the said judgment and order passed by the learned Senior Assistant Judge, Tarail, Kishoregonj in Prfe-emption Miscellaneous Case No. 1 of 2003 dated 14.05.2007, the pre-emptee/opposite party No. 1 preferred Miscellaneous Appeal No. 41 of 2007 before the learned District Judge, Kishoregonj. The case was transferred to the learned Additional District Judge, 1st Court, Kishoregonj

for hearing and disposal. The learned Court of Appeal below heard the appeal and disallowed the appeal on concurrent findings of facts vide judgment and order dated 27-04-2015.

10. That, being aggrieved by and dissatisfied the said judgment and order, the pre-emptee moved this revisional application before this court and obtained Rule and status-quo order on 17-09-2015.

11. That, Mr. Md. Joynul Abedin, the learned Advocate appeared for the petitioner and submits that the judgment and order of the learned Courts below are apparently illegal and void because the deeds in question are deed of exchange, not sale deed and therefore, the pre-emption case does not lie. He further submits that the judgment and order of the learned courts below suffers from misreading and non-reading of evidence on record and misinterpretation of the depositions made by the witnesses and the pre-emption case is barred by Section 96 of the State Acquisition & Tenancy Act. 1950.

12. That, Mr. Mizanur Rahman, the learned Advocate appeared for the opposite party No. 1 and submits that the learned court of appeal below is the last court of assessment of facts, which cannot be disturbed under the revisional jurisdiction. He further submits that both the courts below have allowed the pre-emption case on concurrent findings of facts, which cannot be interfered. He further submits that the pre-emptee and the seller in collusion with each other have made the deed as deed of exchange, which is a colorable deed to deprive the petitioner from exercising his right

of pre-emption and the transaction was motivated and malafide and the learned Courts below have not committed any error of law and there is no error in the decision occasioning failure of justice and as such the Rule deserves no merit and liable to be discharged.

13. Heard the learned Advocate for both the parties and perused the oral and documentary evidence on record. The case was filed before the amendment of Section 96 of S.A&T Act, 1950.

Section 96 of the said law (as original) runs as follows:

"Right of pre-emption (1) If a portion or share of a holding of a raiyat is transferred, one or more co-sharer tenants of the holding may, within four months of the service of the notice given under section 89, or, if no notice has been served under section 89, within four months of the date of the knowledge of the transfer, apply to the Court for the said portion or share to be transferred to himself or themselves; and if a holding or a portion or a share of a holding is transferred, the tenant or tenants holding land contiguous to the land transferred may, within 4 months of the date of the knowledge of such transfer, apply to the Court for the holding or portion or share to be transferred to himself or themselves:

Provided, that no co-sharer tenant or tenant holding land contiguous to the land transferred shall have the right to purchase under this section unless he is a person to whom transfer of the holding or the portion or share thereof, as the case may be, can be made under section 90.

(2) In an application made under sub-section (1) by a co-sharer tenant or co-sharer tenants, all other co-sharer tenants of the holding and the transferee shall be made parties, and in such an application made by a tenant holding land contiguous to the land transferred, all the co-sharer tenants of the holding and all the tenants holding lands contiguous to the land transferred and the transferee shall be made parties.

(3) (a) An application made under sub-section (1) shall be dismissed unless the applicant or applicants, at the time of making it, deposit in the Court the amount of the consideration money or the value of the transferred holding or portion or share of the holding as stated in the notice under section 89 or in the deed of transfer, as the case may be, together with compensation at the rate of ten per centum of such amount.

(b) On receipt of such application accompanied by such deposit, the Court shall give notice to the transferee and to the other persons made parties thereto under sub-section (2) to appear within such period as it may fix and shall require such persons to state the consideration money actually paid for the transfer and shall also require the transferee to state what other sums he has paid in respect of rent since the date of transfer and what expenses he has incurred in annulling encumbrances on, or for making any improvement in respect of, the holding, portion or share transferred, and the Court shall then, after giving all the parties an opportunity of being heard after holding an enquiry as to the actual amounts of the consideration money and rent paid and the expenses incurred by the transferee in

annulling encumbrances on, or for the improvement of, the land transferred, direct the applicant or applicants to deposit a further sum, if necessary, within such period as it thinks reasonable:

Provided that the transferee shall, in no case, be entitled to claim consideration money in excess of the amount mentioned in the deed of transfer."

14. That, the provisions of Section 89(4) of the S.A & T Act 1950 runs As follows:

Manner of Transfer-(1) Every such transfer shall be made by registered instrument, except in the case of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, and a Registering Officer shall not accept for registration any such instrument unless the sale price, or where there is no sale price, the value of the holding or portion or share thereof transferred is stated therein and unless it is accompanied by-

(a) a notice giving the particulars of the transfer in the prescribed form together with the process fee prescribed for the transmission thereof to the Revenue-officer; and

(b) such notices and process fees as may be required by sub-section (4).

(4) If the transfer of a portion or share of such a holding be one to which the provisions of section 96 apply, there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees

prescribed for the service thereof on all the co-sharer tenants of the said holding who are not parties to the transfer and for affixing a copy thereof in the office of the Registering Officer or the Court house or the Office of the Revenue Authority, as the case may be.

15. That in the present case, there is no evidence that notice under Section 89 of the S.A & T Act, 1950 was served upon the pre-emptor or any other co-sharer before sale of the property; rather sale was made showing exchange which was manifestly done by the seller and the purchaser in collusion with each other and the pre-emptor had no prior knowledge about the sale in question made in the guirb of exchange.

16. That, restriction has been imposed in Section 96(10)(b) of the S.A &T Act, 1950 that when a transfer made by exchange or partition, the provisions of Section 96 of the said Act shall not apply. But it has been decided in many cases that when a deed is made as exchange to defeat the right of pre-emption shall be deemed to be a colorable deed. In the present case, the pre-emptee has failed to prove any real exchange and the 'Deed of exchange' was made instead of a 'deed of sale' which was a fraudulent deed. In case of fraudulent transfer the right of pre-emption can not be defeated. The decision passed by the High Court Division in the case of Khurshed Ali and another Vs. Aftabuddin and others reported in 47 DLR 607 and the decision of Md. Sukur Ali Vs. Sree Shuresh Chandra Borman and others, reported in 4 BLD 219 and the decision of Abul Hossain and others Vs. Md. Nasim Ali and others, reported in 19 DLR 677 and the

decision of the Apex Court in the case of Shafi Khan Vs. Mannujan Hossain and others, reported in 35 DLR (AD) 225 can be relied on.

17. That, considering the facts and circumstances of the case, this court hold that the findings of the learned courts below are perfect and justified and the learned courts below have made proper assessment of the evidence on record and concluded the findings that the pre-emptor is a co-sharer by inheritance and he is permitted by law to exercise his right of pre-emption and the deeds in question are in fact colorable deeds made for the purposes of defeating the right of pre-emption of the pre-emptor. Those deeds were in fact out and out sale deed.

18. That, since he has made proper deposit in the Court and filed the case within the statutory period of limitation and he is the first degree of claimant as being co-sharer by inheritance and since no sale offer or notice under Section 89(4) of the S.A&T Act, 1950 was given to the pre-emptor before transfer and the seller and purchaser made an unholy alliance and collusion with each other by making the transfer showing exchange with malafide intention to defect the right of pre-emption and as such his preferential right of pre-emption cannot be curtailed and the pre-emptor is entitled to get pre-emption of the case land. The Rule deserves no merit. In the view of the above, the Rule is liable to be discharged. Accordingly the Rule is discharged without any order as to cost.

The judgment and order of the learned trial court below as well as by the court of appeal below are sustained and upheld.

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

(Justice Md. Ziaul Haque)