

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.1409 OF 2021.

Sheikh Ekram Hossain (Jahid) and
another

..... Pre-emptee-Petitioners.

-VERSUS-

Most. Saleha Khatun, being dead, her
heirs:

Sheikh Shamsul Alam and others

.... Pre-emptor-Opposite Parties.

Mr. Khandaker Aminul Haque, Advocate.

..... For the petitioners.

Mr. Md. Habibur Rahman, Advocate

..... For the opposite parties.

Heard on 27.01.2025 and 28.01.2025

Judgment on 30.01.2025

By this Rule, the opposite parties were called upon to show cause as to why the Judgment and order dated 10.12.2020 passed by learned Additional District Judge, 2nd Court, Satkhira in Miscellaneous Appeal No.32 of 2012, affirming the Judgment and order dated 25.04.2012 passed by the learned Senior Assistant Judge, Sadar, Satkhira in Miscellaneous Case No.5 of 2005 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 facts, in brief for disposal of the Rule, are that the opposite party Nos.1-2 as preemptors instituted Miscellaneous Case No.05 of 2005 before the Assistant Judge, Sadar, Satkhira for preemption of the case land under section 96 of the State Acquisition and Tenancy Act,1950 contending inter-alia that, the preemptors are co-sharer by inheritance in the case Khatian. Pre-emptee No.3 Sheikh Abdus Sabur, without informing the pre-emptors, sold $56\frac{2}{3}$ decimals of land to the pre-emptee Nos. 1 and 2 by registered kabala deed no. 6477 dated 30.06.2004 without service any notice upon the pre-emptee; that the pre-emptee Nos. 1 and 2 are strangers and possession of the case land was not handed over to them; that the pre-emptor came to know about the aforesaid kabala on 20.10.2004 from Sheikh Abul Khayer and after obtained certified copy of the Kabala on 28.11.2004 filed the instant suit on 05.01.2005, within the period specified in the law.

The pre-emptor-petitioners contested the suit by filing a jointly written objection denying all material allegations and stating that the instant miscellaneous case is barred by limitation and defect of parties; that the pre-emptor No.3, Abdul Sabur has given a proposal to all the co-sharers for selling his own $56\frac{1}{3}$ decimals of the land but due to his personal needs, the pre-emptors denied to purchase the same. The Pre-emptor No.1 and Pre-emptor No.3, along with Md. Nurul Islam, son of late Nasir Uddin and Somed Ali of Dahakula village, went to the house of the pre-emptor on 27.06.2004, but they also denied purchasing the case land even then she also told them if the pre-emptor Nos. 1-2 purchase the case land, she had no objection and therefore, with full knowledge and consent of the pre-emptors, the case land was purchased by the pre-emptor Nos. 1 and 2 by way of registered Kabala deed No. 6477 dated 30.06.2004; that it is mentioned here that on the same date the pre-emptor No.3 also sold his other land to Shahidullah and others and as such the instant Miscellaneous Case is liable to be disallowed.

The learned Senior Assistant Judge, Sadar Satkhira, framed necessary issues to determine the dispute involved between the parties.

Subsequently, the learned Senior Assistant Judge, Sadar, Satkhira, allowed the Miscellaneous Case by the Judgment and order dated 25.04.2012.

Being aggrieved, the pre-empte-petitioners, preferred Miscellaneous Appeal No.32 of 2012 before the District Judge, Satkhira. Eventually, the learned Additional District Judge, 2nd Court, Satkhira, by the Judgment and order dated 10.12.2020, disallowed the appeal and thereby affirming the Judgment and order of the trial Court.

Being aggrieved, the pre-empte-petitioner preferred this Civil Revision under section 115 (1) of the Code of Civil Procedure before this court and obtained the instant Rule and an order of stay.

Mr. Khandaker Aminul Haque, the learned advocate appearing on behalf of the petitioner, submits that the appellate court, as a last court of fact, did not at all consider the evidence on record by the Judgment and order of the appellate court below is not proper the Judgment as

per provision under order 41 rule 31 of the Code of Civil Procedure.

Mr. Habibur Rahman, the learned advocate appearing on behalf of the preemptor-opposite parties, submits that the appellate court below-considered evidence on record rightly and justifiedly affirming the Judgment and order of the trial court below so no interference by this Rule at this stage on a revisional Jurisdiction.

Be that as it may, I have anxiously considered the submissions of the learned advocate for both parties and perused the impugned Judgment and other materials on record.

It appears that the contention of the preemptors was that they knew about the transfer on 20.04.2004 from Sheikh Abul Khair, and after procuring a certified copy of the Kabala on 28.11.20-4, they instituted the instant case on 05.01.2005.

By deposing it as PW-1, the preemptor narrates facts about the instant case. Sheikh Abul Khayer, deposing as PW-2, also supported the evidence of PW-1, stating that he knew about the transfer and conveyed it to the preemptor.

It also appears from the evidence of OP.W-1 that he claimed that before the registration of the deed, he went to the preemptor to inform about the matter, but this evidence is not concurred by any other witness.

On meticulous consideration of the impugned Judgment and evidence on record, it is evident that the preemptor-opposite parties to the present case are a co-sharer tenant in the case Khatian, and the preemte-purchaser-petitioners are strangers. It also appears from the records that there is no conclusive evidence that can be treated as cogent and credible to believe that at the interference of the preemptor, the case land was transferred, and admittedly, the preemptors filed the instant case within the time specified in the law.

Apart from this, both the courts concurrently held advert evidence there in that the case is not barred by the principles of stopple, waiver, and acquiescence. There is no trustworthy evidence to that effect from the side of the preemte-purchaser-peitioners. In their observation and findings, the courts below considered the relevant evidence

to arrive at a decision and allowed the case that the preemtors have subsisting interest over the case land.

The appellate court, as the final court of the finding of facts, affirms the trial court's Judgment on a proper assessment of evidence on record, there is no misreading of material evidence, and the findings do not suffer from any error of law.

Considering the above facts and circumstances, I do not find any merit in the Rule.

Resultantly, the Rule is discharged with cost.

Let the order of stay granted at the time of issuance of Rule is hereby vacated.

Communicate the Judgment with lower courts' records at once.

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(Md. Salim, J).