Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 2069 of 2019
Abul Fayez Md. Mahbubul Haque and another....Petitioners
-Versus-
Mst. Sabekunnahar and others....Opposite parties
Mr. Dewan Abdun Naser, Advocate
....For the petitioners
Mr. Md. Abdur Rouf, Advocate
....For the opposite party No. 1
Heard on 13.08.2026, 18.08.2026 and 19.08.2026
Judgment delivered on 20.08.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party Nos. 1 and 32 to show cause as to why the impugned judgment and order dated 21.03.2019 passed by the Joint District Judge, Court No. 2, Satkhira in Miscellaneous Appeal No. 45 of 2014 reversing the judgment and order dated 28.09.2014 passed by the Assistant Judge, Debhata, Satkhira in Pre-emption Miscellaneous Case No. 17 of 1999 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 stated in the application under section 96 of the State Acquisition and Tenancy Act, 1950, are that the pre-emptors Abul Fayez Md. Mahbubul Haque and Shamapado Ghosh are the co-sharers by purchase of 28 decimals of land of S.A. Khatian No. 451. Md. Abu Hasan, another co-sharer by purchase of the said khatian, sold .312 decimals of land by Deed No. 1527 dated 08.07.1999 to the pre-emptee Sheikh Tariqat Alam beyond the knowledge of the pre-emptors without issuing any notice under section 89 of the State Acquisition and Tenancy Act, 1950. The pre-emptors came to know about the said deed on 28.08.1999 when the purchaser pre-emptee went to the suit land to take possession of the land. Both the pre-emptors and the seller, Md. Abu Hasan, are co-sharers of the suit land by purchase. Therefore, the pre-emptors are entitled to purchase the land exercising their right of pre-emption under section 96 of the State Acquisition and Tenancy Act, 1950. It has been asserted that during B.S. operation, the suit land was jointly recorded in the name of the seller Md. Abu Hasan and the pre-emptors in B.S. Khatian No. 530.

The pre-emptee Sheikh Tariqul Alam contested the pre-emption case by filing a written objection stating that the suit was dismissed for default on 05.08.2003 and, in the meantime, sold the suit land to Mst. Sabekunnahar, opposite party No. 1, and she was added as opposite party No. 32 in the pre-emption application, who filed written objection in the pre-emption case stating that Gokul Bihari Ghosh and others were the S.A. recorded tenant of 3.64 acres of

land appertaining to S.A. Khatian No. 451. Subsequently, the heirs of Haripada, Gokul and Gokul Bihari sold $5\frac{2}{3}$ decimals of land by Deed No. 370 dated 22.01.1979 to Md. Abu Hasan who sold .312 acres of land by Deed No. 1527 dated 08.07.1999 to Sheikh Tariqul Alam and handed over possession and subsequently by Deed No. 1889 dated 21.08.2003 Sheikh Tariqul Alam sold the suit land to Mst. Sabekunnahar. It has been asserted that after purchase, Md. Abu Hasan mutated his name in Miscellaneous Case No. 1380/85-86, and Khatian No. 451/1, Holding No. 2312 was prepared in his name. Since the seller Md. Abu Hasan mutated his name by preparing a separate khatian, the pre-emptors are not the co-sharers of the suit khatian, and they are not entitled to purchase the suit land.

During trial, the pre-emptors examined 3 witnesses and the subsequent purchaser, Mst. Sabekunnahar examined 2 O.P.Ws. Although the opposite party No. 2, Sheikh Tariqul Alam filed written objection but he did not contest the suit. After concluding the trial, the trial Court by judgment and order dated 28.09.2014 allowed the pre-emption case holding that the suit is not barred by limitation and there is no defect of parties and that the subsequent transfer by the pre-emptee to the opposite party No. 32 is barred under section 52 of the State Acquisition and Tenancy Act, 1950 and that the pre-emptors are the co-sharer of the suit land by purchase and they are entitled to purchase the land exercising their right of pre-emption under section 96 of the State Acquisition and Tenancy Act, 1950.

Against the said judgment and order passed by the trial Court, the subsequent purchaser, Mst. Sabekunnahar filed Miscellaneous Appeal No. 45 of 2014 in the Court of District Judge, Satkhira. The Joint District Judge, Court No. 2, Satkhira heard the appeal and by impugned judgment and order dated 21.03.2019 reversed the judgment and order passed by the trial Court holding that the pre-emptors and the pre-emptee are the co-sharer of the S.A. Khatian No. 451 by purchase and the seller Md. Abu Hasan mutated his name in Miscellaneous Case No. 1380/85-86, and Khatian No. 451/1 was prepared in his name (Exhibit Gha), and that after preparing Khatian No. 451/1, the pre-emptors are not the co-sharer of the suit Khatian No. 451/1 against which, the pre-emptors obtained the Rule.

Learned Advocate Mr. Dewan Abdun Naser, appearing on behalf of the petitioners, submits that both the pre-emptors Abul Fayez Md. Mahbubul Haque and Shamapado Ghosh and the seller Md. Abu Hasan are the co-sharer by purchase of the S.A. Khatian No. 451 and without serving any notice under section 89 of the State Acquisition and Tenancy Act, 1950, beyond the knowledge

of the pre-emptors, Md. Abu Hasan, sold the suit land to pre-emptee Sheikh Tariqul Alam and as co-sharer of the suit khatian, the pre-emptors are entitled to purchase the land exercising their right of pre-emption under section 96 of the State Acquisition and Tenancy Act, 1950. He further submits that the Khatian No. 451/1 was not prepared in the name of the seller Md. Abu Hasan following the procedure under section 117(1)(c) of the State Acquisition and Tenancy Act, 1950 and mere preparation of khatian after purchase for paying rent would not disentitled the pre-emptors to purchase the land exercising their right under section 96 of the State Acquisition and Tenancy Act, 1950. In support of his submission, the learned Advocate relied on the decisions made in the case of Md Abdur Rouf and others Vs. Ahmuda Khatun and others reported in 33 DLR (AD) 323 and Md. Atiqur Rahman Chowdhury and others Vs. M/S Marshu Ltd. and others reported in 3 ALR (AD) 58. He lastly submits that the appellate Court below, without considering the above decisions passed by our Apex Court, illegally passed the impugned judgment and order rejecting the pre-emption case by setting aside the judgment and order passed by the trial Court and thereby committed an error of law, resulting in an error in the decision, occasioning failure of justice. He prayed for setting aside the impugned judgment and order passed by the appellate Court.

Learned Advocate Mr. Md. Abdur Rouf, appearing on behalf of the subsequent purchaser Mst. Sabekunnahar, opposite party No. 1, submits that after purchasing the suit land by Deed No. 370 dated 22.01.1979, Md. Abu Hasan prepared separate Khatian No. 451/1, Holding No. 2312 in Miscellaneous Case No. 1380/85-86 and the pre-emptors are not the co-sharers of Khatian No. 451/1. Therefore, the appellate Court below, on consideration of the evidence adduced by both the parties, legally arrived at a finding that the pre-emptors are not the co-sharers of the suit Khatian No. 451/1 and they are not entitled to purchase the property exercising their right of pre-emption under section 96 of the State Acquisition and Tenancy Act, 1950. He prayed for discharging the Rule.

I have considered the submissions of the learned Advocate Mr. Dewan Abdun Naser, who appeared on behalf of the petitioners and the learned Advocate Mr. Md. Abdur Rouf, who appeared on behalf of the opposite party No. 1, perused the application under section 96 of the State Acquisition and Tenancy Act, 1950 and the written objections filed by the opposite party Nos. 1 and 32, evidence adduced by the parties, the impugned judgments and orders passed by the Courts below and the records.

The issue involved in the Rule as to whether, by preparing the separate khatian in a miscellaneous case, the right of pre-emption of the co-sharer would

be ceased or not and whether the pre-emptors are entitled to purchase the suit land exercising the right of pre-emption under section 96 of the State Acquisition and Tenancy Act, 1950.

On perusal of the evidence, it is revealed that the seller, Md. Abu Hasan purchased $5\frac{2}{3}$ decimals of land of S.A. Khatian No. 451 by Deed No. 370 dated 22.01.1979, and thereafter, the purchased land was recorded in his name in Khatian No. 451/1, Holding No. 2312 in Miscellaneous Case No. 1380/85-86. The pre-emptors purchased 28 decimals of land of the Khatian No. 451 by Deed No. 3327 dated 04.05.1979. After filing the application under section 96 of the State Acquisition and Tenancy Act, 1950, the application was dismissed on 05.08.2003, and the pre-emptee Sheikh Tariqul Alam sold .312 decimals of the suit land by deed dated 21.08.2003 to Mst. Sabekunnahar and subsequently, on the prayer of the pre-emptors, the Miscellaneous Case was restored on 10.11.2003. Although the pre-emptee Sheikh Tariqul Alam filed written objection but finally he did not contest the suit and subsequent purchaser Mst. Sabekunnahar examined 2 O.P.Ws.

It is found that the pre-emptors Abul Fayez Md. Mahbubul Haque and Shamapado Ghosh and the seller Md. Abul Hasan are the co-sharers of the suit Khatian No. 451 by purchase and after purchasing $5\frac{2}{3}$ decimals of land by Deed No. 370 dated 22.01.1979, Md. Abul Hasan prepared separate Khatian No. 451/1, Holding No. 2312 and sold the land to pre-emptee Sheikh Tariqat Alam. No statement is made in the written objection filed by pre-emptee Sheikh Tariqul Alam and Mst. Sabekunnahar that in Miscellaneous Case No. 1380/85-86 (Exhibit Gha), the notice was served upon all the co-sharers of the Khatian No. 451 and the Khatian No. 451/1 was prepared following the procedure under section 117(1)(c) of the State Acquisition and Tenancy Act, 1950.

It is a settled proposition that separation of jama and holding are not the same. In case of separation of jama, notice is not required to be served upon all the co-sharers of the holding, but in case of separation or sub-division of a holding, the procedure under section 117(1)(c) of the State Acquisition and Tenancy Act, 1950 is required to be complied with. Separate khatian prepared for payment of rent will not ceased the right of pre-emption of other co-sharer unless the khatian is separated following the procedure under section 117(1)(c) of the State Acquisition and Tenancy Act, 1950.

The above view of this court lends support from the decision made in the case of Md Abdur Rouf and others Vs. Ahmuda Khatun and others reported in 33 DLR (AD) 323, in which our Apex Court has held that;

"In the present case before us the respondents produced exhibits F & G, the record of right and rent receipts respectively, in order to establish that during the pendency of the application for pre-emption the record of right was changed in the name of Sakina Bai. As a result of the mutation so effected by the respondents, the appellants ceased to have any subsisting interest in the disputed land. Had this mutation been effected with a notice to the appellants, it might be argued that the mutation was binding upon the appellants but the non-service of notice of the mutation case has not only resulted in the violation of the principles of natural justice so far as the appellants are concerned but is in direct violation of the statutory requirement laid down in section 117 (1) (c) of the State Acquisition and Tenancy Act. The words used therein are both positive and clear, and the requirement of notice being in respect of rights to property the word 'shall' used therein is mandatory and not directory. There is no vagueness or ambiguity about the intention of the legislature in imposing the duty of serving notice upon the co-sharers when one of them wants to divide the holding. The respondents have failed to show the fulfilment of the requirement provided under the aforesaid section. They have no doubt been able to produce the order of sub-division of the holding, but such sub-division, which is an ex parte order in substance having been obtained without notifying the appellants, cannot be binding on them. As a consequence, their interest in the holding subsisted, and the intended effect of the document contained in exhibits F & G, which might have otherwise taken away such interest, has not been produced. The principles laid down by the Supreme Court of Pakistan in the decision reported in (1967) 19 DLR (SC) 36 are not, therefore, applicable to the facts of the present case and the right of pre-emption claimed by the appellants is not accordingly affected by the order of sub-division of the holding."

Subsequently, in the case of Md. Atiqur Rahman Chowdhury and others Vs. M/S. Marshu Ltd. and others reported in 3 ALR (AD) 58 judgment dated 09.01.2013, our Apex Court has held that;

> "Separation of jama and separation of holding or sub-division of holding is not the same thing, but as it appears, both the Courts below fell into an error in treating the separation of jama as separation of holding or sub-division of holding. The case as made out by the pre-emptor in its pre-emption application was that after purchasing the land from the case holding, he mutated his name only for the convenience of payment of rent. The process of separation or sub-division of holding is altogether a different thing, and it shall have to be done only after observing the procedure as laid down in section 117(c) of the Act, 1950, but in the instant case, no process was initiated under the said section. The pre-emptees also failed to produce any paper and order of the revenue authority in that respect."

O.P.W. 1 Md. Ahsanul Haque, father of Mst. Sabekunnahar stated that Gokul Bihari Ghosh and others were the S.A. recorded owners of S.A. Khatian No. 451 and Md. Abul Hasan purchased the land by Deed No. 370 dated 22.01.1979 from the heirs of S.A. recorded owner and mutated his name in Miscellaneous Case No. 1380/85-86 and Khatian No. 451/1 was recorded in his name. Md. Abu Hasan sold his suit land by deed dated 08.07.1999 to Sheikh Tariqul Alam. Nothing has been stated by O.P.W. 1 that the separate khatian was prepared in the name of Md. Abul Hasan after serving notice to all the co-sharers of the S.A. Khatian No. 451 following the procedure provided in section 117(1)(c) of the State Acquisition and Tenancy Act, 1950. I am of the view that mere preparation of khatian in the name of the seller for payment of rent will not cease the right of pre-emption of other co-sharer. The findings of the appellate Court that since seller Md. Abu Hasan separated his khatian in Mutation Case No. 1380/85-86, and Khatian No. 451/1 was prepared in his name, the pre-emptors are not the co-sharer of Khatian No. 451/1 is misconceived. I am of the view that the pre-emptors and the seller Abul Hasan remained the co-sharers of the suit Khatian No. 451 after recording the name of seller Abul Hasan in Khatian No. 451/1, and the pre-emptors as co-sharer are entitled to purchase the suit land exercising their right of pre-emption under section 96 of the State Acquisition and Tenancy Act, 1950.

I am of the view that the impugned judgment and order passed by the appellate Court is misconceived and the appellate Court below committed an error of law resulting in an error in the decision in setting aside the judgment and order passed by the trial Court, occasioning failure of justice.

I find merit in the Rule,

In the result, the Rule is made absolute.

The impugned judgment and order passed by the appellate Court below is hereby set aside. The judgment and order passed by the trial Court is hereby affirmed.

However, there will be no order as to costs.

Send down the lower Court’s records at once.