

**Present:**

**Mr. Justice Md. Kamrul Hossain Mollah**

**Civil Revision No. 950 of 2021**

**IN THE MATTER OF:**

An application under Section 115(1) of the Code of Civil Procedure

- AND -

**IN THE MATTER OF:**

Md. Ajibor Rahman

..... Premptor-Respondents-Petitioner

-Versus –

Md. Rasel Parvez Rana

..... Pre-emptee-Appellant-Opposite Party

Mr. Md. Mokhlesur Rahman, Advocate

..... For the petitioner

Mr. Sudipta Arjun, Advocate

..... For the Opposite Parties

**Heard on 11.10.2023, 15.10.2023  
and Judgment on 17.10.2023**

**Md. Kamrul Hossain Mollah, J:**

On an application by the petitioner, under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and order dated 16.03.2021 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Satkhira in Miscellaneous Appeal No. 33 of 2018 reversing the judgment and order dated 16.09.2018 passed by the learned Assistant Judge, Kolarowa, Satkhira in Preemption Miscellaneous Case No.12 of 2013 allowing the

Preemption Miscellaneous Case under section 96 of the State Acquisition and Tenancy Act should not be set-aside and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, are that the petitioner as plaintiff filled a Preemption Miscellaneous Case No.12 of 2013 under section 96 of the State Acquisition and Tenancy Act against the opposite party No. 1 and others stating that, within district Satkhira P.S Kolarowa, Mouza Mohmudpur, SA Khatian No. 50 with an area 70 decimals belonged to Islam Gazi, who died leaving behind his wife Joynab Bibi, 3 sons Mojibur Rahman, Ajibur Rahman, and Muslem Gazi, And 5 daughters Mst. Fatema Khatun, Anowara Khatun, Jahanra Khatun, Asura Khatun and Masura Khatun, Jahanara Khatun died leaving behind a son Mizanur Rahman and her Husband Jaha Box.

During hal Record 70 decimals of land from dag No.193 converted to dag No.314 BS Khatian No. 129 published in the name of Mojibur Rahman, Ajibor Rahman, Fatema Khatun, Anowara Khatun, Mijanur Rahman, Asura Khatun and Joynab Bibi within which 13.50 decimals of land is the suit land.

Co-sharer of BS Khatin No. 129 Joynab Bibi sold 9 decimals of land to her 2 sons Mojibur Rahman and Ajibur Rahman. Masura Khatun sold her enter share to the petitioner vide kabla No. 2164 dated 06.04.2004. Her another sister Asura Khatun sold 9.50 Decimals of land to the petitioner vide deed No. 3514 dated 19.06.2005. The petitioner got  $13\frac{1}{2}$  decimals of land inherited from his father, 4.50 decimals perused from his mother,

13.50 decimals purchase from his 2 sisters. So he become the owner of 31.50 decimals of land in the suit holding.

Thereafter he constructed house in some portion and in the rest portion he planted Trees and in some portion he has been in possession by cultivating seasonal crops etc. The sister of the petitioner Anowara Khatun and a son of the sister Jahanara Khatun named Mijanur Rahman sold 13.50 decimals of land from the suit holding secretly to the opposite party No. 1 vide deed No. 1742 dated 24.04.13 without serving any notice to the petitioner. He got the information of that sale on 17.04.13 and got the certificate copy the of kabla on 28.04.13 and filed the preemption case on 2/5/13. The Petitioner is a co-sharer of the suit holding and need the suit land, otherwise he will suffer irreparable loss.

The opposite party No.1 contested the suit by filling written objection denying all materials allegations made in plaint stating inter alia that, the matter of sale was with the knowledge the petitioner, further case of the opposite party No. 1 is that the SA kahtian No. 129 hal dag No. 314 with an area of 70 decimals belong to Mojibur, Ajibur, Fatema, Mijanur, Anowara, asura, Joynab Bibi, Anowara And Mijanur Rahman. The opposite parties No. 2 to 3 proposed to sale the suit land but the petitioner did not want to purchase the same and as such the opposite party No. 1 purchased the same at Tk. 3,00,000/- lac vide agreement in the year of 2012 by paying advance of Tk. 1,00,000/- lac and thereafter, he made cow shed and store room and thereafter the opposite parties No.2 and 3

executed the deed No. 1742 dated 02.04.13 by taking rest of Tk. 2,00,000/- so he prayed for dismissing the case.

In support of the respective claim, the plaintiff examined 2 (two) witnesses and produced some documents which is marked as exhibits No. 1 to 6.

The defendant examined 2 witnesses and produced documents as exhibits-A to E series.

After hearing both the parties and considering the evidence on record, the learned Assistant Judge, Kolarowa, Satkhira allowed the Pre-emption Miscellaneous Case No.12 of 2013 by his judgment and order dated 16.09.2018.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 16.09.2018 passed by the learned Assistant Judge, Kolarowa, Satkhira in Pre-emption Miscellaneous Case No.12 of 2013 the pre-emptee-opposite party No.1 filed Miscellaneous Appeal No.33 of 2018 before the learned District Judge, Satkhira. Thereafter, it was transferred to the learned Joint District and Sessions Judge, 2<sup>nd</sup> Court, Satkhira for disposal. The learned Joint District and Sessions Judge, 2<sup>nd</sup> Court, Satkhira after hearing both the parties and considering the materials on record allowed the Miscellaneous Appeal No.33 of 2018 and reversed the judgment and order dated 16.09.2018 passed by the learned Assistant Judge, Kolarowa, Satkhira in Pre-emption Miscellaneous Case No.12 of 2018 by his judgment and order dated 16.03.2021.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 16.03.2021 passed by the learned Joint District and Sessions Judge, 2<sup>nd</sup> Court, Satkhira in Miscellaneous Appeal No.33 of 2018 the pre-emptor-petitioner this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Md. Mokhlesur Rahman, the learned Advocate appearing on behalf of the petitioner submits that the impugned judgment and order of the lower Appellate Court has been passed by way of misleading, misreading and non-consideration of evidences in view of the fact that the suit land is not the Homestead land and no house was purchased in the suit deed, but the lower Appellate Court passed the judgment by considering the same as homestead land beyond the pleadings as it appears on the face of the record and as such the same is liable to be set-aside.

He further submits that the Appellate Court below in deciding the appeal made a 3<sup>rd</sup> case without considering the record and evidence by way of misleading the definition of homestead land and misreading of the section 96 of the S.A.T Act and allowed and appeal which was defective one by it making the parties to all who were the parties in the preemption Miscellaneous Case and committed error of law.

He next submits that the learned Appellate Court made some erroneous comment that “আপীলকারী/তরফসানী শুধু মাত্র একটি গ্রাউন্ডে আপীলটি মঞ্জুরের প্রার্থনা করেছেন। তিনি দাবী করেছেন যে, নালিসী জমি ‘Homestead’ হওয়ায় তার বিরুদ্ধে প্রিয়মশন চলবে না।” and finally allowed the appeal by way of misinterpretation of law as provided in section 96(16), 49DLR(1997), 50DLR(1998), 17BLD(1997)

and 30DLR(1978) and passed erroneous judgment and allowed the appeal vide judgment and order dated 16.03.2021 and committed error of law and the defendant pre-emptee totally failed to prove his case and never claimed anywhere that the suit land is a homestead land rather he state his father purchase the land by an agreement and their after he made cow shed and kitchen in the suit land and he never purchase any house in any form, and conversion was made after purchase and was not proved also and committed error of law.

He also submits that the lower appellate Court below without considering the said facts and law point and without explaining the evidence, papers and documents and without ascertaining the transfer of possession before execution of deed in favour of the purchaser on the basis of the alleged deed and without taking into the judicial notice of that fact that the suit land is within the jurisdiction of section 96 of the State Acquisitions and Tenancy Act passed erroneous judgment and thus committed error of law.

The learned Advocate finally submits that the lower Appellate Court below failed to frame proper issues and also failed to decide the issues as framed in terms of Order 20 Rule 5 of the Code of Civil Procedure and without discussing any evidence as per law judgments and order have been passed on the basis of fraudulent claims of the opposite party No.1 and without discussing the record and evidence and by way of misreading, of the evidence on record comes to a wrong and erroneous decision occasioning failure of justice as it appears on the face of the record and as

such the impugned judgment and order of the lower Appellate Court is liable to be set-aside. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Sudipta Arjun, the learned Advocate appearing for the opposite parties submits that the matter of sale was with the knowledge the petitioner, further case of the opposite party No. 1 is that the SA kahtian No. 129 hal dag No. 314 with an area of 70 decimals belong to Mojibur, Ajibur, Fatema, Mijanur, Anowara, asura, Joynab Bibi, Anowara And Mijanur Rahman. The opposite parties No. 2 to 3 proposed to sale the suit land but the petitioner did not want to purchase the same and as such the opposite party No. 1 purchased the same land with value of Tk. 3,00,000/- lac vide agreement in the year of 2012 by paying advance of Tk. 1,00,000/- lac and thereafter, he made cow shed and store room and thereafter the opposite parties No.2 and 3 executed the deed No. 1742 dated 02.04.13 by taking rest of Tk. 2,00,000/-.

The learned Advocate lastly submits that, the suit land is homestead. So, the pre-emption case is not maintainable upon the homestead land. Therefore, the judgment and order dated 16.09.2018 passed by the Assistant Judge, Kolarowa, Satkhira in Pre-emption Miscellaneous Case No.12 of 2013 wrongly, which is not maintainable in the eye of law and the judgment and order dated 16.03.2021 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Satkhira in Miscellaneous Appeal NO.33 of 2018 rightly, which is maintainable in the eye of law. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and decree of the Courts' below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

It appears from the record that the matter of sale was with the knowledge the petitioner, further case of the opposite party No. 1 is that the SA khatian No. 129 hal dag No. 314 with an area of 70 decimals belong to Mojibur, Ajibur, Fatema, Mijanur, Anowara, asura, Joynab Bibi, Anowara And Mijanur Rahman. The opposite parties No. 2 to 3 proposed to sale the suit land but the petitioner did not want to purchase the same and as such the opposite party No. 1 purchased the same land with value of Tk. 3,00,000/- lac vide agreement in the year of 2012 by paying advance of Tk. 1,00,000/- lac and thereafter, he made cow shed and store room and thereafter the opposite parties No.2 and 3 executed the deed No. 1742 dated 02.04.13 by taking rest of Tk. 2,00,000/-.

Further, it appears from the impugned deed which is marked as exhibit-1, khatian marked as exhibit-D and BRS khatian marked as exhibit-4 that the suit land is homestead. So, it is proved by documentary that the suit land is homestead land.

Now, let us examine the section 96(16) of the State Acquisition and Tenancy Act, wherein it has been held that-

“(16) Nothing in this section shall be deemed to apply to homestead land. In the definition of the said section it is stated that-

(14) “Homestead” means a dwelling house with the land under it, together with any courtyard, garden, tank, place of worship and private burial or cremation ground attached and appertaining to such dwelling



house, and includes any out-buildings used for the purpose of enjoying the dwelling house or for purpose connected with agriculture or horticulture and such lands within well defined limits, whether vacant or not, as are treated to be appertaining thereto.”

Considering the above facts, circumstances and materials on record, I find that as per section 16 of the State Acquisition and Tenancy Act upon the homestead the pre-emption case is not maintainable.

Therefore, the learned Joint District Judge, 2<sup>nd</sup> Court, Satkhira rightly passed the judgment and order dated 16.03.2021 is maintainable in the eye of law and I do not find any substance to interference into the said judgment and decree and I find substance in the submission of the learned Advocate for the opposite parties.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and order dated 16.03.2021 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Satkhira in Miscellaneous Appeal No.33 of 2018 allowing the Appeal and thereby reversing the judgment and order dated 16.09.2018 passed by the learned Assistant Judge, Kolarowa, Satkhira in Pre-emption Miscellaneous Case No.12 of 2013 allowing the pre-emption case is hereby upheld and confirmed.

Let a copy of this judgment and order along with L.C.R be sent to the concerned Court below at once.

Md. Anamul Hoque Parvej  
Bench Officer