Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 893 OF 2022.

IN THE MATTER OF:

An application under Section 115 (4) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Mozammel Huque being died his heir:
1(a) Shahen Shahi Begum and others.
…. Petitioners.

-Versus –

Ekram Hossain and others
……opposite-parties.

Mr. Farid Uddin Khan, Advocate
…. For the petitioner.

Heard on: 22.04.2024 and
Judgment on: 29.04.2024.

Let the two supplementary-affidavit filed by the petitioner do form the part of the original application.

On an application of the petitioner Mozammel Huque being dead his legal heirs: 1(a) Shahen Shahi Begum and others under section 115(4) of the Code of Civil Procedure the leave was granted and the Rule was issue calling upon the opposite party No.1 to show cause as to why the judgment and order dated 24.09.2014 passed by the learned Additional District Judge, Chattogram in Civil Revision No.92 of 2010 discharging the civil revision and thereby affirming the judgment and order dated 29.10.2009 passed by the learned Assistant Judge, Lohagara, Chattogram in Miscellaneous Appeal No.13 of 2007 rejecting the application for

addition of party filed under Order I rule 10 read with Section 151 of the Code of Civil Procedure should not be set-aside and/or pass such other or further order or orders as to this Court may seem fit and proper

Facts necessary for disposal of the Rule, in short, is that the opposite party No.1 Ekram Hossain file pre-emption case under Section 96 of the State Acquisition and Tenancy Act along with under Section 24 of the Non Agriculture Tenancy Act before the learned Senior Assistant Judge, Lohagara, Chattogram challenging the impugned deed No.4158 dated 27.11.1991. The matter was fixed on 17.04.2007 for hearing but the opposite party No.1 did not appear before the Court to contest the miscellaneous. But subsequently the present petitioner as applicant filed application for addition of party under Order I rule 10 read with Section 151 of the Code of Civil Procedure on 29.10.2009 claiming that he is the co-sharer by inheritance as well as the purchaser of the case land.

The trial Court after hearing the parties and considering the facts and circumstance of the case rejected the said application by its judgment and order dated 29.10.2009 taking view that the application is barred under Section 52 of the Transfer of Property Act on the principle of lis pendens without considering that the petitioner is a co-sharer by inheritance of the case land.

Thereafter, the petitioner filed revisional application under Section 115(2) of the Code of Civil Procedure before the learned District Judge, Chattogram being Civil Revision No.92 of 2010. The said revisional

application was heard and disposed of by the Additional District Judge, 3rd Court, Chattogram who after hearing the parties and considering the facts and circumstance of the case rejected the said revisional application and thereby upholding the judgment and order of the trial Court by its judgment and order dated 24.09.2014.

Being aggrieved by and dissatisfied with the impugned judgment and order of the Courts below the applicant as petitioner filed this revisional application under section 115(4) of the Code of Civil Procedure and accordingly the leave was granted and the Rule was issued.

Mr. Farid Uddin Khan, the learned Advocate appearing on behalf of the petitioner submits that after filing this revisional application the petitioner died and thus the present petitioners were substituted on the order of this Court dated 05.01.2024. He further submits that both Court committed serious error in law resulting in an error in the decision in not considering that the pre-emption case is not maintainable since the applicant in its application specifically mentioned that he is the co-sharer of the case land by inheritance. In support of his argument the learned Advocate submits that the supplementary-affidavit filed by the petitioner annexing the record (Annexure-F) shows that the father of the deceased petitioner was the recorded owner of the case land as such the applicant Mozammel Hoque became the co-sharer of the case land but both the Court did not consider the said material facts of the case erroneously passed the impugned judgment. He prayed for making the Rule absolute.

I have heard the learned Advocate of the petitioner, perused the impugned order, the application of the addition of party and the papers and documents as available on the record.

It appears that the pre-emptor opposite party No.1 challenging the impugned deed being No.4158 dated 27.11.1991 filed pre-emption case on 17.04.2007 long after 16 years of the transfer of the case land. It appears that the pre-emption application filed not only under Section 96 of the State Acquisition and Tenancy Act but also under Section 24 of the Non Agriculture Tenancy Act which is clear misconception of law and the two provisions of law cannot be invoked in a same claim. It also appears that the case land is a null land and also situated outside of the Pourosava in such circumstance of the case Section 24 of the Non Agriculture Tenancy Act is not applicable in the instant case. It also appears that the applicant somehow came to know the instant case and thus filed the application since the pre-emptor did not make him party and no notice was served upon him in such circumstance of the facts he is constrained to file the application for addition of party but both the Court did not consider the said facts.

The settle principle is that in pre-emption case there is no scope to file an application for addition of party but in the instant case it is found that the applicant as a co-sharer of the case land filed this application. Though the pre-emption case was filed after 16 years of the transfer of the property and which should be clearly barred by limitation if the

pre-emptor could not prove his definite date of knowledge and in such a case the pre-emption case should be failed. But the same is the subject matter for disposal of the pre-emption case by the trial Court after considering the evidence on record.

It is found that the applicant categorically stated that he is the co-share of the case land by inheritance and in support of his case though he failed to produce the Parcha record in the trial Court which was recorded in the name of father of the petitioner and in the revisional stage the applicant filed the same through the supplementary-affidavit annexing the said documents. In such circumstance of the facts it is my view that the case should be bad for defect of parties if it is proved that the applicant is a co-sharer of the case land by inheritance and in such a case the pre-emption case should be failed and the said matter also should be considerd by the trial Court by taking evidence in accordance with law.

However, since the applicant made out a *prima-facie* case that he is a co-sharer by inheritance and filed this application for addition of party in such a case it is better to consider the same but both the Court did not consider the said facts and erroneously passed the impugned judgment. Thus, I find merit in the Rule.

In the result, the Rule is made absolute. The judgment and order dated 24.09.2014 passed by the learned Additional District Judge, Chattogram in Civil Revision No.92 of 2010 discharging the civil revision

and thereby affirming the judgment and order dated 29.10.2009 passed by the learned Assistant Judge, Lohagara, Chattogram in Miscellaneous Appeal No.13 of 2007 rejecting the application for addition of party is hereby set-aside.

The present petitioners the heirs of the original applicant Mozammel Hoque be added as opposite parties in the miscellaneous case.

The trial Court is directed to amend the cause title of the pre-emption case inserting the name of the heirs of the deceased Mozammel Hoque and also directing to dispose of the pre-emption case expeditiously as early as possible preferably within 06 (six) months from the date of receipt of this order.

Communicate the order at once.

B.O (Obayedur)