

District-Kurigram.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 3874 of 2018.

Sree Subash Chandra Das.

.....Pre-emptee-Respondent-Petitioner.

-Versus-

Md. Rabiul Haque.

.....Pre-emptor-Appellant-Opposite Party No.1.

Md. Delowar Hossain and others.

..... Opposite Party Nos. 2-14.

Mr. Md. Sajjad Ali Chowdhury, Advocate

.....For the Pre-emptee-Respondent-Petitioners.

Mr. Md. Raju Mia, Advocate

...For the Pre-emptor-Appellant-Opposite Party No.1.

Heard On: 27.07.2025, 03.08.2025.

And

Date of Judgment: 18.08.2025.

Md. Toufiq Inam, J:

This Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and order dated 01.10.2018 passed by the learned Joint District Judge, 1st Court, Kurigram in Misc. Appeal No. 41 of 2012, reversing the judgment and order dated 29.02.2012 passed by the learned Senior Assistant Judge, Ulipur, Kurigram in Misc. Case No. 48 of 2002, should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The opposite party No.1, as pre-emptor, instituted Misc. Case No. 48 of 2002 under section 96 of the State Acquisition and Tenancy Act, 1950 before the Senior Assistant Judge, Ulipur, Kurigram, seeking pre-emption of the land described in the schedule of the plaint.

The case of the pre-emptor, in substance, is that the case land measuring 03 decimals out of 11.50 acres forms part of current plot No. 609 (corresponding to former plot No. 1099) under S.A. Khatian No. 402 and C.S. Khatian No. 146, originally recorded in the name of Sajna Bewa, who died issueless, leaving her husband Gommoddi Sheik as her sole heir. Later, the name of Gommoddi Sheik was recorded in the S.A. Khatian along with Amiruddin in respect of other non-suit land. Over time, Amiruddin sold his portion to Sree Montu and Sree Purimoyee Dasi, who subsequently transferred their portions to opposite party No.2 and opposite parties No.7–10 respectively. Gommoddi Sheik sold his land to Rajab and Asia Khatun on 16.11.1961 and 25.07.1986, while the remaining portion was transferred to Shamsuddin, who sold to Mokbul Hossain on 07.06.1992. Mokbul thereafter sold his purchased land to opposite party No.2. On 07.12.1998, Shamsuddin transferred another portion to the pre-emptor and opposite parties No.3–6, thus making the pre-emptor a co-sharer in the disputed holding. Subsequently, opposite party No.2 sold the suit land to opposite party No.1, which came to the knowledge of the pre-emptor on 31.07.2012, hence the filing of the pre-emption case.

The pre-emptee-petitioner contested the case by filing written objection, denying the material allegations of the plaint and contending that the pre-emptor was present at the time of sale. They asserted that the pre-emptor failed to prove the date of knowledge and, therefore, the case was barred by limitation.

The trial court, upon hearing, dismissed the pre-emption case by judgment and order dated 29.02.2012, holding it to be barred by limitation. On appeal, however, the learned Joint District Judge, 1st Court, Kurigram allowed Misc. Appeal No. 41 of 2012 by judgment and order dated 01.10.2018, thereby allowing the pre-emption case.

Mr. Md. Sajjad Ali Chowdhury, learned Advocate for the pre-emptee-petitioner, submits that the appellate court erred in law in allowing the pre-emption case. He contends that the appellate court failed to comply with Order XLI Rule 31 CPC, as it did not frame proper points for determination, and arrived at an erroneous decision causing miscarriage of justice. He further argues that the trial court rightly dismissed the case as barred by limitation since the pre-emptor had knowledge of the transfer.

On the other hand, Mr. Raju Mia, learned Advocate for the pre-emptor-opposite party No.1, submits that the appellate court properly complied with Order XLI Rule 31 CPC, as reflected in paragraph 7 of

its judgment, where the court framed the point for determination as to whether the trial court's decision could be sustained in law.

He further argues that the appellate court correctly held the case to be within limitation, since the deed was entered in the registration volume under section 60 of the Registration Act, 1908 on 23.05.2002 and the pre-emption case was filed on 15.09.2002- well within four months. Referring to 43 DLR 506, he submits that limitation in a pre-emption case under section 96 SAT Act begins from the date of registration of the deed, not from the date of execution.

Having heard the learned Advocates for both parties and perused the record, this Court finds as follows:

(i) The pre-emptor is a co-sharer by purchase. This fact is supported by documentary evidence and is not seriously disputed. There is also a clear averment in the plaint that the pre-emptor does not own more than 60 bighas of land.

(ii) As to compliance with Order XLI Rule 31 CPC, paragraph 7 of the appellate court's judgment shows that the court did frame the point of determination-namely, whether the judgment of the trial court could be sustained in law, and decided the appeal on that basis. This satisfies the requirements of Order XLI Rule 31 CPC.

(iii) On limitation, the Court observes that the well-settled principle is that the limitation period under section 96 of the State Acquisition and Tenancy Act, 1950, begins to run from the date the deed is registered under section 60 of the Registration Act, 1908, and not from the date of execution of the deed. Since the deed in question was registered on 23.05.2002 and the pre-emption case was filed on 15.09.2002, the case was clearly filed within time. Therefore, the appellate court rightly held that the case was not barred by limitation, correcting the erroneous finding of the trial court.

In view of the above, this Court finds no illegality, irregularity, or error of law in the impugned judgment of the appellate court warranting interference under revisional jurisdiction.

Accordingly, the Rule is discharged.

The judgment and order of the appellate court dated 01.10.2018 is hereby affirmed.

The office is directed to send down the record at once and communicate this judgment to the court below.

(Justice Md. Toufiq Inam)