Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 417 of 2022
Abdul Mozid alias Mohammad Abdul Mozid alias Mujibur Rahman
.....petitioner
-Versus-
Md. Abdul Matin being dead his legal heirs:
1(a) Aleya Begum and others
.....opposite parties

Mr. Mohammad Abdul Khaleque, Advocate
.....for the petitioners

Mr. Md. Asraful Islam with
Mr. Md. Asad Uddin,
Mr. Abu Daud Nizami and
Mr. Md. Golam Kibria, Advocates
.....for the opposite parties

Heard on: 18.06.2026, 21.06.2026 and 22.06.2026

Judgment on: 25.06.2026

In the instant revision Rule was issued calling upon the opposite party 1 to show cause as to why the judgment and order dated 08.03.2021 passed by the Joint District Judge, 1st Court, Magura in Miscellaneous Appeal Number 03 of 2018 along with Miscellaneous Appeal No. 04 of 2018 disallowing the appeals thereby affirming the judgment and order dated 14.01.2018 passed by the Assistant Judge, Shalikha, Magura in Miscellaneous Case Number 10 of 1993 for pre-emption under Section 96 of the State Acquisition and Tenancy Act,

1950 allowing the pre-emption case 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 1 as pre-emptor filed Miscellaneous Case Number 10 of 1993 on 05.04.1993 seeking pre-emption under Section 96 of the State Acquisition and Tenancy Act.

The case of the pre-emptor is that the land appertaining to C.S. Plot Number 60 of Mouza Chaighoria originally belonged to the pre-emptor and his brother Abdul Rahman by Inheritance and purchase. Their homestead stands on the said plot and C.S. Plot Number 61 lies contiguous thereto.

According to the pre-emptor immediately to the east of the aforesaid Plot Number 60 there is 89 decimals of land comprised in Plot Number 61 as described in the schedule to the application. Opposite parties 2 and 3 transferred the said 89 decimals of land to opposite party 1 by registered deed Number 1057 dated 21.03.1993.

The pre-emptor claims to be a contiguous landholder in respect of the transferred land. He further asserts that the case land is indispensable for his use and enjoyment as he has no other convenient passage for ingress to and egress from his homestead except through the case land.

The further case of the pre-emptor is that with a view to defeating his right of pre-emption opposite party 1 caused the impugned transfer deed to be registered as a deed of exchange although in substance it was a deed of sale. Consequently the pre-emptor filed Title Suit Number 46 of 1993 seeking a declaration that the impugned deed was in fact a sale deed. The said suit was dismissed on contest. Thereafter the pre-emptor preferred Title Appeal Number 55 of 1994 and obtained a decree in appeal. Subsequently the opposite party moved Civil Revision Number 170 of 1995 before the High Court Division. By judgment and order dated 28.11.2001 the High Court Division affirmed that the disputed deed was a deed of sale.

The pre-emptor further contends that neither Plot Number 60 nor Plot Number 61 is traversed by any road and no such road is reflected in the R.S. record. According to him the plea of the opposite parties that a road intervenes between Plot Numbers 60 and 61 has been advanced solely to frustrate the claim for pre-emption. Hence the miscellaneous case was filed.

Opposite party 1 as purchaser-pre-emptee and opposite parties 2 and 3 as vendors filed a written objection contesting

the case and denying all the material statements made in the application for pre-emption. Their case inter alia is that 47 decimals of land comprised in Plot Number 2038 and 42 decimals of land comprised in Plot Number 6445 of Mouza Shatakhali originally belonged to opposite party 1 whereas the land comprised in Plot Number 61 measuring 89 decimals originally belonged to opposite parties 2 and 3.

For the convenience of possession and enjoyment of their respective lands opposite party 1 and opposite parties 2 and 3 entered into an agreement for exchange of lands. Pursuant to the terms and conditions of the said agreement the disputed deed being registered deed of exchange Number 1057 dated 21.03.1993 was executed and registered. No consideration in money was paid or received by either party in connection with the said exchange.

Their further case is that opposite parties 2 and 3 subsequently transferred the exchanged land to one Hussain Ahmed by registered deed Number 1980 dated 18.06.1998. Thereafter the said Hussain Ahmed transferred the same land to Faridul Islam and others by registered deed Number 2732 dated 11.08.1999.

The contesting opposite parties further asserted that there exists a road on the western side of the suit plot and the inhabitants of the southern locality use the said road for their ingress and egress. According to them the instant pre-emption case has been filed merely to harass the opposite parties and as such the application for pre-emption is liable to be dismissed with costs.

Opposite party 26 also filed a separate written objection and contested the case. His case in brief is that 79 decimals of land comprised in C.S. Plot Number 71 under C.S. Khatian Number 65 originally belonged to Badruddin who transferred the same to Chand Ali by a registered deed dated 05.02.1953. Subsequently opposite party 26 purchased the said land in 1359 B.S. and has been possessing the same by constructing his homestead thereon. As the S.A. record was not prepared in his name he filed Title Suit Number 99 of 1965 and obtained a compromise decree. Thereafter the R.S. record was correctly prepared in his name in respect of the said land.

It is further stated that opposite party 26 has long been using a strip of land measuring 8.50 feet in width and 144 feet in length over the case Plot Number 61 as a pathway for ingress and egress. When he was obstructed from using the

said pathway during the month of Falgun, 1408 B.S. he filed Title Suit Number 13 of 2002 claiming easementary right over the case land and obtained a decree. According to him not only he but also other persons have been using the said strip of land as a road and therefore the claim for pre-emption is liable to be dismissed with costs.

The trial Court framed as many as two issues for determination. In support of his case the pre-emptor examined himself as P.W. 1. The opposite parties examined five witnesses. Both sides also adduced documentary evidence in support of their respective cases.

Upon consideration of the pleadings and the oral and documentary evidence on record and after hearing the parties the trial Court allowed the pre-emption case principally on the finding that in an independent suit filed by the pre-emptor the impugned document has already been adjudicated to be a deed of sale and such finding has subsequently been affirmed by the High Court Division. The trial Court thus held that there was no legal impediment to allowing the claim for pre-emption.

Being aggrieved thereby opposite parties 1-3 preferred Miscellaneous Appeal Number 3 of 2018. Opposite party 26 also preferred Miscellaneous Appeal Number 4 of 2018. Both

appeals were heard analogously and were dismissed by the Joint District Judge, 1st Court, Magura by a common judgment and order dated 08.03.2021.

Against the said judgment and order opposite party 1 to the pre-emption proceeding preferred the instant Civil Revision and obtained the Rule on 07.02.2022.

Mr. Mohammad Abdul Khaleque, the learned Advocate appearing for the petitioner submits that the Courts below committed error of law resulting in error in the decision occasioning failure of justice by not considering the evidence on record in its proper perspective of law and facts. He contends that the impugned judgments and orders are therefore liable to be set aside. He further submits that the Court of appeal below failed to comply with the requirements of Order 41 Rule 31 of the Code of Civil Procedure and as such the impugned appellate judgment is not sustainable in law. He also argues that the Courts below failed to consider that the purchaser-pre-emptee incurred an expenditure of taka 20,000/- (twenty thousand) towards development of the case land. Finally he submits that the pre-emptor failed to establish his case and therefore the Rule should be made absolute.

On the other hand Mr. Md. Asraful Islam, the learned Advocate appearing for the opposite party submits that the Courts below upon proper appreciation of the evidence and the applicable law rightly allowed the claim for pre-emption and such concurrent findings cannot be interfered with in revision. According to him there has been no misreading or non-consideration of any material evidence nor any misconception of law affecting the merits of the case so as to attract the revisional jurisdiction under Section 115(1) of the Code of Civil Procedure. He points out that Exhibit-2 namely the judgment passed by the High Court Division in Civil Revision Number 170 of 1995 conclusively demonstrates that the impugned document though disguised and captioned and registered as a deed of exchange was in reality a deed of sale. He finally prays for discharge of the Rule.

I have considered the submissions of the learned Advocates for the respective parties, examined the judgments and orders of the Courts below and perused the evidence and materials on record.

Exhibit-Ga shows that the impugned document was executed and registered on 21.03.1993 as an Awaznama or deed of exchange. Although the pre-emptees sought to justify

the transaction as one of exchange neither in their written objection nor in the evidence adduced by them could they clearly and satisfactorily establish their title to the lands situated in Mouza Shatakhali which were allegedly exchanged under the impugned deed.

It further appears from the record that the instant pre-emption proceeding was filed in the year 1993. In the same year the pre-emptor filed Title Suit Number 46 of 1993 seeking a declaration that the impugned document though styled as a deed of exchange was in fact a deed of sale. The suit was initially dismissed by the trial Court by judgment and decree dated 28.02.1994. However in Title Appeal Number 55 of 1994 the appellate Court reversed the said decision and declared the impugned document to be a deed of sale. Challenging the same the pre-emptee preferred Civil Revision Number 170 of 1995 before the High Court Division.

Exhibit-2 being the judgment of the High Court Division passed in the aforesaid Civil Revision shows that the Rule was made absolute on 28.11.2001 upon a finding that the alleged transaction of exchange was merely colourable in nature and there was specific evidence regarding payment of consideration amounting to taka 50,000/- (fifty thousand). The

High Court Division categorically held that the impugned document was in reality a deed of sale. The said judgment having attained finality is binding upon the parties to the present proceeding. Therefore the contention of the pre-emptee that the transaction was one of exchange can no longer be entertained. Rather the materials on record unmistakably indicate that the document was captioned as a deed of exchange solely with a view to defeating the right of pre-emption available under the law.

So far as opposite party 26 is concerned it appears that he claimed existence of a road between C.S. Plot Numbers 60 and 61 and on the basis of such claim filed Title Suit Number 13 of 2002 seeking declaration of easementary right. The decree passed therein dated 18.09.2002 was produced in evidence as Exhibit-Ka series. However after dismissal of Miscellaneous Appeal Number 4 of 2018 preferred by opposite party Number 26 he did not challenge the appellate decision before this Court by filing any revisional application. Consequently the findings recorded against him have attained finality. In such circumstances there is no necessity to further examine his independent claim in the present revisional proceeding.

The evidence on record further shows that O.P.W. 1 in his cross-examination admitted that the pre-emptor is a contiguous landholder of the transferred land. He also admitted that according to the map the land of the pre-emptor lies immediately to the west of former Plot Number 61. Such admission substantially supports the case of the pre-emptor regarding contiguity. Accordingly the status of the pre-emptor as a contiguous landholder stands established.

The petitioner further attempted to raise a question regarding the valuation of the transferred land and asserted that the actual value thereof exceeded taka 9,900/- (nine thousand nine hundred) at the relevant time. However the impugned deed itself discloses the value of the transferred property as taka 9,900/- (nine thousand nine hundred). Having executed and relied upon the said document the pre-emptee cannot now be permitted to contend that the value of the property was otherwise. In any event such plea does not materially affect the entitlement of the pre-emptor to claim pre-emption in the facts and circumstances of the present case.

As regards the alleged road neither opposite party 1 nor opposite party 26 could produce any reliable evidence in support of such claim. On the contrary Exhibit-3 and Exhibit-

3(a) being the C.S. and R.S. maps respectively together with Exhibit-4(a) being the relevant R.S. record clearly reveal that no road has been shown between Plot Numbers 60 and 61. O.P.W. 1 admitted in cross-examination that the R.S. record was prepared during the years 1987-88 and no road is reflected in the existing map. Significantly when asked to identify any map showing the existence of such road he failed to do so. The inevitable conclusion therefore is that the plea regarding existence of a road has been advanced merely as an attempt to defeat the claim for pre-emption and the same has not been substantiated by evidence.

The Courts below upon proper assessment of the oral and documentary evidence on record concurrently found that the impugned transaction was a sale and the pre-emptor is a contiguous landholder and no legal impediment exists to the grant of pre-emption. I do not find any misreading or non-consideration of material evidence nor any misconception of law warranting interference in revisional jurisdiction.

In view of the discussions made above I find no substance in the Rule.

Accordingly the Rule is discharged.

The judgment and order dated 08.03.2021 passed by the Joint District Judge, 1st Court, Magura in Miscellaneous Appeal Numbers 3 of 2018 and 4 of 2018 affirming the judgment and order of the trial Court are hereby maintained and affirmed.

The order of stay passed by this Court stands vacated.

Let a copy of this judgment be communicated to the Courts below at once.

Md. Ali Reza, J:

Naher-B.O.