

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 493 of 2022

Md. Abdur Rahman

.....Petitioner.

-Versus-

Mst. Khaleda Khanam and others

.....Opposite parties.

Mr. Pronay Kanti Roy, Advocate

.....For the petitioner.

Mr. Sherder Abul Hossain, Advocate

..... For the opposite parties.

Heard and judgment on 19th February, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 22.09.2021 passed by the Joint District Judge, 2nd Court, Dinajpur in Misc. Appeal No. 17 of 2011 affirming those dated 11.01.2011 passed by the Senior Assistant Judge, Sadar Court, Dinajpur in

Miscellaneous Case No. 34 of 2001, rejecting the plaint under section 151 of the Code of Civil Procedure should not be set aside.

Petitioner as pre-emptor filed Miscellaneous Case No. 34 of 2001 before the Court of Senior Assistant Judge, Sadar, Dinajpur for preemption under section 24 of the Non-Agricultural Tenancy Act against the pre-emptee opposite parties.

Plaint case in short, inter alia, is that the opposite party No.2 Alhaz Moulovi Mohammad Ali purchased 29 decimals of land from the suit jote vide registered sale deed No. 8370 dated 27.04.1974 which is situated at Balubari Mahallah within the Dinajpur Municipality and the nature of the land is the homestead. While the said opposite party No.2 Mohammad Ali was in possession of the said land he executed a heba deed No. 9639 dated 17.09.1988 in respect of 4.50 decimals of land to his daughter Tahera Banu, the opposite party No.6, who has been enjoying the same on construction of a dwelling houses therein. Said Mohammad Ali also transferred another 8 decimals of land to his wife opposite party No.7 Khadeja Begum vide registered deed of Heba-bill-ewaj No. 9640 dated 17.09.1988 and handover the possession of the said land to her accordingly, who have been

possessing the same by thereon. The opposite parties No.2 is the father of the pre-emptor and the opposite party Nos.3-5 are his brothers. The opposite part Nos. 7 and 6 respectively are the mother and sister of the pre-emptor. Father of the pre-emptor Mohammad Ali also transferred another 12 decimals of land to opposite party Nos. 3-5 by a registered heba No. 6552 dated 31.05.1990 and handover the possession of the same to them accordingly. The said opposite party No.2 transferred his 24.50 decimals of land and remains with 4.50 decimals of land, which he transferred to the pre-emptor by a registered heba No. 6986 dated 29.06.1998 and handover the possession of the same to him accordingly. The pre-emptor became the co-sharer of the suit jote by a transfer otherwise than by purchase. The opposite party No.5 also transferred his 4 decimals of land to the pre-emptor vide registered sale deed No. 6985 dated 29.06.1998. The pre-emptor is former army personnel, who joined the Pakistan Army in 1970 and retired in 1985. He then went to Kuwait as retired Army Officer and sent huge amount of money to his parents for their maintenance and they having been very much satisfied with him also gifted him with 4.50 decimals of land. The pre-emptor comes

to the country once a year. On 18.12.2000 the pre-emptor came to Bangladesh and went to Kuwait on 22.02.2001. In 1999 the pre-emptor setup 14 pillars in the case land and butted and bounded the same boundary pillar, his wife and brother-in-law are looking after his land. In the absence of the pre-emptor, the opposite party Nos.3-4 with the help of some unruly persons including the opposite party No.1 entered into the suit land and started to make pucca wall, which the petitioner opposed. At the time, the opposite party No.1, disclosed that he purchased the case land. The wife of the petitioner also filed G.R. Case No. 574 of 2000 against them and the opposite party filed Other Suit No. 32 of 2001 for cancellation of the heba deed and being informed about the same, the pre-emptor came to Bangladesh, on 18.12.2000, and filed Other Suit No. 48 of 2001 and took necessary steps in suit No. 32 of 2001. Till that date the pre-emptor did not know that the opposite party No.3-4 sold the case land to opposite party No.1. On quarry, on 19.02.2001, the pre-emptor came to know about the impugned sale deed as described in the schedule Kha of the plaint. On 15.12.2001 the pre-emptor executed a power of attorney deed in favour of his wife to do the needful. Accordingly she also filed

the instant Misc. Case for pre-emption by depositing required amount of money in the court.

Pre-emptee opposite party No.1 appeared in the court and filed an application under Order 7 Rule 11 read with section 151 of the Code of Civil Procedure for rejecting the plaint.

The Assistant Judge vide judgment and order dated 11.01.2001 allowed the application and rejected the plaint.

Challenging the said judgment and order, pre-emptor petitioner preferred Misc. Appeal No.17 of 2011 before the Court of District Judge, Dinajpur, which was heard on transfer by the Joint District Judge, 2nd Court, Dinajpur, who by the impugned judgment and order dated 22.09.2021 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and order, pre-emptor petitioner obtained the instant rule.

Mr. Pronay Kanti Roy, the learned advocate appearing for the petitioner submits that since the pre-emptor was living abroad and authorizes the petitioner to file a miscellaneous case may be with no proper authorities but subsequently by way of another

power of attorney the said lacuna was filled up and the instant miscellaneous case was proceeded as per law but the court below totally failed to appreciate this matter of this case. The learned advocate further submits that the instant case was filed under special law wherein time frame is there, if the case is not filed within time, the preemptor statutory right will be infringed and they will be deprived from getting justice. He further submits that nowhere in the civil procedure there is a provision that the suit can not be file on non compliance of provision as laid down under Order 6 rule 14 of the Code of Civil Procedure and the plaint would be rejected. Rather the provision as laid down therein that if the plaintiffs could not file, the plaint due to his absence, it may be file through signing by persons duly authorized. In the instant case it was filed through power of attorney, narrating the fact that the petitioner then resided abroad and not in the position to comply the provision of filing the plaint by signing through himself within the statutory period of limitation. When the case was initiated not by violating any legal provision of law, the court below most illegally dismissed the pre-emption case and thereby taken away the petitioners statutory right of pre-emption most illegally. The

impugned judgment is not sustainable in law, which is liable to be set aside.

Mr. Md. Sherder Abul Hossain, the learned advocate appearing for the pre-emptee opposite party, on the other hand submits that in the instant case, the party/plaintiff in person or his recognized agent since not signed the plaint, which is the legal essence to place the plaint under Order 6 Rule 14 of the Code of Civil Procedure, has not been complied with. Moreover the advocate was not also appointed by the plaintiff so since 2001 to 2010, the pre-emption case was proceeded by unrecognized persons. Although the plaintiff tried to regularize the proceedings by executing a power of attorney subsequently in giving retrospective effect from 2001 but this is a clear irregularities and the activities made by the present petitioner are a fraudulent approach to the court for which court below committed no illegality in rejecting the plaint. He finally prays that the rule contains no merits, it may be discharged.

Heard the learned Advocate and perused the Lower Court Record together with the impugned judgment of the court below.

This is a pre-emption case. Filed through a power of attorney holder Mst. Ferdousi Begum, who is the wife of the petitioner-pre-emptor Abdur Rahman along with one Md. Aminul Haque. It has been contended in the plaint that pre-emptor is a retired Army personnel and deputed to Kuwait in the year 1994 through the government and now employed therein. It has been further stated in the plaint that the power of attorney holder as being the caretaker of the pre-emptor came to know that schedule property was transferred to opposite party No.1 on 07.02.2000 they instituted this pre-emption case on behalf of the pre-emptor on 25.03.2001, as and when they became confirmed about the said transfer, on behalf of the pre-emptor.

The pre-emptee opposite party opposes the suit by saying that pre-emption case was not been filed by the pre-emptor himself rather some legal irregularities are there in proceedings with the case, court below rejected the plaint. While rejecting the plaint both the court below found that although under Order 7 Rule 11 of the Code of Civil Procedure no clause are there to support the application for rejection of plaint but since there is no valid cause of action to institute the civil suit, plaint was rejected

upon applying the jurisdiction under section 151 of the Code of Civil Procedure, which is under challenged in the instant rule. It is of no doubt that by now there are so many decision of our Apex Court are there as to even in a appropriate case a plaint cannot be rejected on any clause as been narrated therein under Order 7 rule 11 of the Code of Civil Procedure but upon applying the inherent jurisdiction as been conferred upon by the court through section 151 of the Code of Civil Procedure, plaint can be rejected on a fribulas litigation. Wherein the instant case it appears that the case was initiated through a power of attorney and it is apparent from the statement narrated above that in the plaint it has been urged that pre-emptor Abdur Rahman, an ex-army personnel was staying since long in the abroad and all his belonging are looked into by the Power of attorney holders, who initiated this pre-emption case, as and when they came to know that the property, which is the part of their dwelling house was been transferred secretly in favour of the opposite party No.1.

Order 6 Rule 14 of the Code of Civil Procedure that:

“14. Every pleading shall be signed by the party and his pleader (if any): Provided that where a party

pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.”

In the said provision it has been laid down that every pleading must be signed by the party concern but in a case, where it is not possible by the party of the pleadings to put his signature, it can be placed, upon filing by the person authorized by him. That means, anybody claims to be authorized person by way of power of attorney holder, can also proceed the pleadings on behalf of the party of the pleadings. Under Order 6 or any other provision, there is no specific provision that a pleading cannot be presented with the court through his authorize person.

In the instant case, record speaks that the case was initiated with the power of attorney, which was sworn affidavit on 15.02.2004 wherein it was stated that:

"আমি অবর্তমানে নিম্ন তপশীলে বর্ণিত জমি দেখাশুনা ও রক্ষনাবেক্ষন এবং উক্ত জমি লইয়া উদ্ভূত ৩২/২০০১ অন্য ও ৪৮/২০০১ অন্য নং মামলা এবং উক্ত মামলা হইতে উদ্ভূত আপীল আনুষাংগিক মামলাগুলির যাবতীয় কার্যাদি আমার পক্ষে

সম্পাদন করিবার জন্য ভূমি, ১নং আমার স্ত্রী মোছাঃ ফেরদৌসী বেগম ওরফে রাবেয়া বেগম এবং আপনি ২নং মোঃ আমিনুল হক কে আম-মোক্তার নিযুক্ত করিয়া এতদ্বারা অংগীকার ও ঘোষণা করিতেছি যে,

১। আপনারা নিম্ন তপশীলে বর্ণিত জোত জমি হইতে সৃষ্ট সদর সিনিয়র সহকারী জজ আদালতের ৩২/২০০১ অন্য এবং ৪৮/২০০১ অন্য মোকদ্দমায় এবং উক্ত মোকদ্দমাগুলি হইতে উদ্ভূত যাবতীয় আপীল, রিভিশন ও রিভিউ মামলা দায়েরকরিতে পরিচালনা করিতে, শুনানী করিতে আইনজীবী নিয়োগ করিতে, দরখাস্ত, আরজী ও জবাবে দরখাস্তে ও আপত্তিতে আমার "ব" কলমে সহি স্বাক্ষর করিতে পারিবেন নিম্ন তপশীলে বর্ণিত জমি বাবদে দেওয়ানী ও ফৌজদারী ও রেভেনিউ আদালতে আবশ্যিক মত যাবতীয় মামলা মোকদ্দমা আনয়ন করিতে, আইনজীবী নিয়োগ করিতে ওকালতনামায় আরজীতে, লিখিত বর্ণনা পত্রে ও আপত্তিতে আমার "ব" কলমে আমার পক্ষে সহি স্বাক্ষর করিতে, সাক্ষ্য ও জবানবন্দী প্রদান করিতে ও এফিডেভিট করিতে পারিবেন। ইহা ছাড়া যে কোন অফিসে আদালতে নিম্ন তপশীলে বর্ণিত জমি বাবদ সৃষ্ট যাবতীয় মামলা পরিচালনা দেখাশুনা, কাগজাদী দাখিল, তদবীরাদী গ্রহন সহ যাবতীয় আইনানুগ কার্যাদী করিতে পারিবেন। (Underline given) উপরোক্তরূপে আপনাদের কৃত কার্যাদীতে আমার পূর্ণ সম্মতি রহিল বা পূর্ণ সম্মতি থাকিবে এবং ঐরূপ আপনাদের কার্যাদী আমার কৃত কার্যাদী বলিয়া গন্য হইবে।"

Subsequently during pendency of this case on 24.01.2010 another power of attorney was sworn an affidavit wherein it was disclosed therein that:

"কস্য আম-মোক্তার নামা দলিল লিখিতং মিৎ কার্য্যাঞ্জগে দিনাজপুর জেলার কোতয়ালী থানার, বালুবাড়ী মৌজার ২৮/২৯নং ক্ষতিয়ানের ৬০২নং দাগের রকম বাস্তু মোট ২৯ শতকের মধ্যে .০৮ ১/২ শতক জমির বাবদ সদর সিনিয়র সহকারী জজ দিনাজপুর আদালতের ৩২/২০০১ অন্য এবং ৪৮/২০০১ অন্য নং মোকদ্দমায় আমার পক্ষে মামলা পরিচালনার যাবতীয় কার্য্যাঙ্গাদি সম্পাদনের নিমিত্তে তোমাকে সহ জঁনৈক মোঃ আমিনুল হককে ইং ১৫.০২.২০০১ তারিখে ১৩৮ নং এফিডেভিটমূলে আম-মোক্তার নিযুক্ত করি। উল্লেখ করা আবশ্যিক যে, উক্ত ৬০২ নং দাগের .২৯ শতক জমির মধ্যে .১২ শতক তৎমধ্যে ০.৭ শতক জমির বাবদ একখানা কবালা হয়। উক্ত কবালা সাইদুর রহমান গং দিয়াছেন মর্মে ধারণা করিয়া আমি রেজিস্ট্রারী অফিসে তল্লাসী চালাই। কিন্তু কোন খোজ না পাইয়া ফেরৎ আসি। ইং ১৪/০২/২০০১ তারিখে লোকমুখে জানিতে পারি যে, আমার পিতা আলহাজ্ব মোহাম্মদ আলী এবং ভ্রাতা জিয়াউর রহমান উক্ত কবালা রেজিস্ট্রারী দিয়াছেন। ফলে উক্ত কবালা তপশীল বর্ণিত .০৭ শতক জমির বাবদ আমি অগ্রদ্রয়ের মোকদ্দমা দাগের করিব মর্মে ইচ্ছা পোষণ করিয়া ইং ১৫/০২/২০০১ তারিখে ১৩৮নং আম-মোক্তার নামায় তোমাকে আম-মোক্তার নিযুক্ত করিয়া মোকদ্দমা দায়ের, আপীল, রিভিশন দায়ের শুনানী সহ যাবতী কার্য্যাঙ্গাদি সম্পাদনের ক্ষমতা দেই। সেই মোতাবেক তুমি উল্লেখিত ৬০২ নং দাগের মোট .২৯ শতক

জমির মধ্যে .১২ শতক তৎমধ্যে .০৭ শতকের বাবদ ইং ৭/০২/২০০০ তারিখের ১৩৮১ নং কবালার উপর ইং ২৭/৩/২০০১ তারিখে সদর সিনিয়র সহকারী জজ দিনাজপুর আদালতে ৩৪/০১ মিস মোকদ্দমা দায়ের করিয়াছি, যাহা বিচারাধীন রহিয়াছে। আমি বিদেশ হইতে ইং ১১/১২/২০০৯ তারিখে আসিয়া যাবতীয় মোকদ্দমা কার্যক্রম তোমার নিকট হইতে জানিতে পারিয়া সন্তোষ প্রকাশ করিতেছি। তবে মোকদ্দমার বিচার চলাকালীন জানিতে পারিতেছি যে, ইং ২৫/০১/২০১০ তারিখে ১নং প্রতিপক্ষ দেঃ কাঃ বিধির ৭ আদেশ ১১ রুল এবং ১৫১ ধারা মতে দরখাস্ত দিয়া অগ্রক্রয়ের মোকদ্দমাটি খারিজের আদেশ চাহিয়াছেন। উক্ত দরখাস্তে আরো উল্লেখ করিয়াছেন যে ইং ১৫/০২/২০০১ তারিখে আম-মোক্তার নামায় নাকি আমি ৩৪/০১ মিস মোকদ্দমার তপশীল বর্ণিত জমির বাবদ অগ্রক্রয়ের উক্ত মোকদ্দমা বিজ্ঞ আদালতে দায়ের করার জন্য তোমাকে আম-মোক্তার নিযুক্ত করি।"

By these two power of attorney it is apparent that the case was initiated in the absence of the pre-emptor through his power of attorney holder. Although in the first power of attorney, there was no specific disclosure about the initiation of the pre-emption case, but subsequently by way of another power of attorney, the pre-emptor himself admits and recognizes all the activities as has been done by the power of attorney holder on behalf of the pre-emptor. Now neither the pre-emptor nor anybody on his behalf has denied the fact of initiation of this pre-emption case not by them

rather the irregularity, if at all been there, was been rectified by the pre-emptor petitioner. Now the things left to the court to accept his contention. Any objection can be raised by the pre-emptor saying that the case was not filed by him or the person obtained the power of attorney is not his legal attorney to institute the case. If the matter is of the same nature, question can be raised that suit was not been properly filed with the legal persons. But it is none of the business of the pre-emptee or any person to raise any question on legal infirmity in the pleadings, which was filed by the power of attorney holder of the pre-emptor.

Moreover if the plaint is rejected summarily in this way, the statutory right as been conferred upon to the pre-emptor under law, will be infringed and the statutory right can be taken away only on some irregularities, which is not been restricted by any means under law. Save an accept the contention that plaint was not been properly placed by the party concern, although it has not been accepted by the pre-emptor rather he has endorsed his acknowledgement by way of subsequent power of attorney, there is no other reasons to reject the plaint. When the pre-emptor himself acknowledged that it was filed and all activities has been

done by the power of attorney holder on his behalf has been rectified subsequently, his statutory right should not be taken away upon rejecting the plaint arbitrarily. Court below totally failed to appreciate this aspect of this case and rejected the plaint most illegally.

I thus find merit in this rule.

In the result, the rule is made absolute and the impugned judgment and order passed by the court below is hereby set aside and the pre-emption case is restored to its file and number.

Trial court is hereby directed to dispose of the case on merit expeditiously as early as possible.

The order of status-quo granted earlier is hereby recalled and vacated.

Send down the L.C.R along with the judgment to the courts below at once.