

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.587 OF 2022**

**In the matter of:**

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

And

Md. Mahubar Rahoman

... Petitioners

-Versus-

Md. Dohonor Uddin being dead his heirs-  
Mohchana Bewa and others

.... Opposite parties

Mr. Md. Khalilur Rahman with

Mr. Meer Ahmad Shoaib, Advocates

.... For the petitioners.

Mr. Shasti Sarker, Advocate

.... For the opposite parties.

**Heard on 04.03.2025 and 10.03.2025.**

**Judgment on 11.03.2025.**

On an application under Section 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 12.10.2021 passed by the learned Joint District Judge, Nilphamari in Miscellaneous Appeal No.42 of 2016 allowing the appeal and reversing thereby the judgment and order dated 18.05.2016 passed by the learned Assistant Judge, Jaldhaka, Nilphamari in Pre-emption Miscellaneous Case No.41 of 2009 dismissing the case 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 in short are that the opposite party as petitioner instituted above case for pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950 against registered kabala deed dated 22.11.2004 transferring 28 decimal land by opposite party Nos.2 and 3 to opposite party No.1. It was alleged that the petitioner is a co-sharer by purchase but opposite party No.1 is a stranger to disputed S. A. Khatian No.190. Above kabola deed was registered under Section 60 of the Registration Act, 1908 on 23.12.2009 and this case was filed on 11.10.2009.

Opposite party No.1 contested above case by filing a written objection alleging that the petitioner is not a co-sharer by purchase to above holding. The petitioner was owner and possessor of 51 decimal land of the disputed holding but before filing of this case he transferred all above land by sale.

At trial petitioner examined two witnesses and opposite party No.1 examined three. Documents of the petitioner were marked as Exhibit Nos.1-8 and those of the opposite party No.1 were marked as Exhibit No."Ka" to "Ga" series.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge dismissed above case.

Being aggrieved by above judgment and order of the trial Court above petitioner as appellant preferred Miscellaneous Appeal No.42 of 2016 to the District Judge, Nilphamari which was heard by the learned

Joint District Judge who allowed above appeal, set aside the judgment and order of the trial Court and allowed the case.

Being aggrieved by and dissatisfied with above judgment and order of the Court of Appeal below above respondent as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Md. Khalilur Rahman, learned Advocate for the petitioner submits that the petitioner is not a co-sharer by inheritance and this case for pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950 was filed on 11.10.2009 after amendment of Section 96 of the State Acquisition and Tenancy Act, 1950 by Section 2 of Act No.XXXIV of 2006 which came into effect on 20.09.2006. After above amendment pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950 is available only to a co-sharer by inheritance and to no other o-sharers. On correct appreciation of above law and facts and circumstances of the case the learned Judge of the trial Court rightly dismissed above case but the learned Judge of the Court of Appeal below miserably failed to understand the true meaning of Section 96 of the State Acquisition and Tenancy Act, and most illegally allowed the appeal, set aside the lawful judgment and order of the trial Court and allowed the case which is not tenable in law.

On the other hand Mr. Shasti Sarker, learned Advocate for the opposite party No.1 submits that the sale of 28 decimal land of the disputed holding was effected by registered kabola deed dated

22.11.2004 and the right to pre-emption of the opposite accrued on above date. Above kabola deed was entered into the volume of the registration under Section 60 of the Registration Act, 1908 on 23.12.2009 and the petitioner as a co-sharer by purchase filed this case on 11.10.2009. The right of the opposite party to pre-emption has been protected by Clause 18 of Section 96 of the State Acquisition and Tenancy Act, 1950. The learned Advocate further submits that not the right to pre-emption but the limitation of a case for pre-emption starts to run from the date of Registration of the Kabola deed under Section 60 of the Registration Act, 1908. On correct appreciation of above facts and law the learned Judge of the Court of Appeal below rightly allowed the appeal, set aside the unlawful judgment and order of the trial Court and allowed the case which calls for no interference. In support of above submission the learned Advocate refers to the case the law reported in 11 MLR (AD) 2006 at Page No.421.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that opposite party Nos.2 and 3 transferred 28 decimal land of S. A. Khatian No.190 to opposite party No.1 by registered kabola deed dated 22.11.2004 and above kabola deed entered into the registration volume book under Section 60 of the Registration Act, 1908 on 23.12.2009 and this case was filed on 11.10.2009. It is also admitted that the petitioner is a co-sharer by purchase but opposite party No.1 is a stranger to S. A. Khatian No.190.

A right to pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950 accrues not on the date of execution of the sale deed by the seller but on the date on which above kabola deed enters into the registration volume book under Section 60 of the Registration Act, 1908. A deed between two individuals for transfer of a private immovable property becomes a public document after registration of above deed under Section 60 of the Registration Act, 1908 and above deed and above deed is available for inspection or copy on payment of necessary fees. If any case under Section 96 of the State Acquisition and Tenancy Act, 1950 is filed before completion of registration of the sale deed under Section 60 of the Registration Act, 1908 that will be a premature case which may be matured during the continuation of the pre-emption case.

Section 96 of the State Acquisition and Tenancy Act, 1950 has been amended by Act No.XXXIV of 2006 which came into effect on 20.09.2006 and after above amendment only a co-sharer by inheritance is competent to maintain a case for pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950. The impugned kabola deed was registered under Section 60 of the Registration Act, 1908 on 23.12.2009 and this case was filed on 11.10.2009 after Act No.XXXIV of 2006 came into force. As such this case will be guided by the provisions of Section 96 as amended by above Act No.XXXIV of 2006 and since the petitioner is not a co-sharer by inheritance in the disputed holding this case is not enable in law.

On consideration of above materials the learned Judge of the trial Court rightly held that the petitioner is not entitled to maintain this case under Section 96 of the State Acquisition and Tenancy Act, 1950 and get an order of pre-emption and rightly dismissed the case.

The submissions of the learned Advocate for the opposite party that Registration under Section 60 of the Registration Act, 1908 is considered only for counting the limitation of a case for pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950 is correct. The period of limitation for any suit or case starts to run when the right to sue accrues. Since a right to pre-emption accrues only after the registration of the impugned sale deed under Section 60 of the Registration Act, 1908 the limitation for filing of above case also starts to run from above date.

The case law cited by the learned Advocate for the opposite party does not help the case of the opposite party in any way. As far as Section 96(18) is concerned that is a repeal and saving clause which provides that despite amendment of Section 96 by Act No.XXXIV of 2006 all cases filed under the previous law and pending for trial shall continue under the previous law.

I am unable to find any substance in above submissions of the learned Advocate for the opposite party that Section 60 Clause 18 provides protection to the instant case of the opposite party which was filed long after Act No.XXXIV of 2006 came into force and the

impugned kabola deed was also registered under Section 60 of the Registration Act, 1908 after the Act NO.XXXIV of 2006 came into force.

In above view of the facts and circumstances of the case and the relevant laws I hold that the learned Judge of the Court of Appeal below committed serious illegality in allowing the appeal and setting aside the lawful judgment and order of the trial Court which is not tenable in law.

I find substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

Accordingly, the Rule is hereby made absolute. The impugned judgment and order dated 12.10.2021 passed by the learned Joint District Judge, Nilphamari in Miscellaneous Appeal No.42 of 2016 is set aside and the judgment and order dated 18.05.2016 passed by the learned Assistant Judge, Jaldhaka, Nilphamari in Pre-emption Miscellaneous Case No.41 of 2009 is restored.

However, there will be no order as to costs.

Send down the lower Court's records immediately.