

District-Pirojpur.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 2705 of 2022.

Md. Amzad Hossain alias Amzad Ali,
---- Pre-emptor- Appellant-Petitioner.

-Versus-

Md. Rafiqul Islam and others.
---- Pre-emptee -Respondent-Opposite Parties.

Mr. Probir Halder, Advocate with
Mr. Md. Akhteruzzaman Talukder, Advocate
----For the Pre-emptor- Appellant-Petitioner.

Mr. Noor Mohammad Moral, Advocate for the,
----For the Pre-emptee—Opposite Party Nos. 1-4.

Heard On: 03.11.2025.

And

Judgment Delivered On: 02.12.2025.

Md. Toufiq Inam, J.

By this Rule, the pre-emptees-opposite parties were called upon to show cause as to why the Judgment and order dated 25.01.2022 passed by the learned District Judge, Pirojpur in Miscellaneous Appeal No. 16 of 2018 dismissing the appeal and thereby affirming the judgment and order dated 26.07.2018 passed by the learned Senior Assistant Judge, Sadar Court, Pirojpur in Miscellaneous Pre-emption Case No. 12 of 2012 rejecting the pre-emption case, should not be set aside.

The petitioner, as pre-emptor, claims pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950 in respect of 17 decimals of land sold through deed No. 601 dated 07.05.2003, registered on 10.07.2003, by Monsur Ali Howlader in favour of the opposite party Nos. 1-4. The petitioner asserts that he is a co-sharer by inheritance in S.A. Khatian Nos. 58 and 59 and also claims a derived interest in S.A. Khatian No. 82. He asserts that he gained knowledge of the impugned sale only on 28.12.2011 and thereafter filed the pre-emption case on 06.03.2012.

The Trial Court rejected the pre-emption case, which was affirmed by the appellate court. Against which the pre-emptor as petitioner obtained the present Rule.

Mr. Probir Halder, learned Advocate appearing with Mr. Md. Akhteruzzaman Talukder, learned Advocate for the pre-emptor-petitioner, submits that the petitioner is a co-sharer by inheritance in S.A. Khatian Nos. 58 and 59, and that the lands described in Plot Nos. 187, 188 and 189 originally formed a single compact holding, a portion of which was subsequently recorded in S.A. Khatian No. 82 during the S.A. operation. He argues that merely because part of the same plot was separately recorded in Khatian No. 82 does not divest the petitioner of his ancestral right over the remaining portion, and therefore the petitioner is also entitled to claim co-sharership in the

land included in Khatian No. 82. He further submits that the petitioner and his predecessors have been in long, continuous, and peaceful possession of the suit land, as evidenced by the existence of the petitioner's homestead and the grave of his mother on portions of the land. He contends that the vendor, examined as PWs, categorically stated that the petitioner was a co-sharer and that he had no knowledge of the impugned sale until December 2011.

He emphasizes that knowledge of the sale was first communicated to the petitioner on 28.12.2011, and therefore the pre-emption case filed on 06.03.2012 is within time as reckoned from the date of knowledge. He lastly argues that the courts below failed to properly consider the petitioner's evidence, both oral and documentary, as well as the Advocate-Commissioner's report, and thereby arrived at an erroneous conclusion causing serious miscarriage of justice. He accordingly prays that the Rule be made absolute.

Per Contra, Mr. Noor Mohammad Moral, learned Advocate for the pre-emptee–opposite party Nos. 1-4, opposed the Rule. He submits that the concurrent findings of both courts below are based on correct appreciation of evidence and settled principles of pre-emption law. He argues that the petitioner failed to prove that his predecessor, late Arshed Ali, had any recorded share in S.A. Khatian No. 82, and as pre-emption under Section 96 is strictly khatian-based, a person who

is not a recorded co-sharer in the particular khatian affected by the transfer cannot claim pre-emption. Learned counsel further submits that the opposite parties produced several deeds, including Exhibits K and K-1, which prove that the petitioner had earlier transferred more land than he inherited from S.A. Khatian Nos. 58 and 59, thereby extinguishing all his proprietary interest in those khatians long before the impugned sale.

He argues that a person who no longer retains any subsisting interest in the relevant khatian cannot maintain a pre-emption claim. He also contends that the entire claim is hopelessly barred by limitation since the deed was registered on 10.07.2003 and the pre-emption case was filed only on 06.03.2012, almost nine years later, far beyond the statutory three-year bar under Section 96. According to him, the petitioner's alleged date of knowledge rests on hearsay evidence because the person who allegedly conveyed the information (Bazlur Rahman) was never produced before the Court, rendering the petitioner's plea of knowledge unreliable and insufficient to overcome the bar of limitation. He lastly submits that the existence of a graveyard or homestead on a portion of the suit land does not establish recorded title nor does it revive a title extinguished by earlier valid transfers, and that oral and local investigation evidence cannot override documentary proof and statutory bar. He therefore prays for discharging the Rule.

The materials on record have been carefully examined. The S.A. Khatian records show that late Arshed Ali was recorded as a tenant in S.A. Khatian Nos. 58 and 59. The same records do not show his name in S.A. Khatian No. 82. Since the right of pre-emption under Section 96 is dependent on recorded co-sharership in the specific khatian affected by the transfer, absence of the petitioner's predecessor's name in S.A. Khatian No. 82 is fatal to the claim in so far as the land recorded therein is concerned.

The opposite parties have also produced several deeds executed earlier by the petitioner, including Exhibits K and K-1, which demonstrate that the petitioner alienated a total area exceeding his inherited share. The documentary evidence shows that the petitioner transferred approximately 42.5 decimals of land from S.A. Khatian Nos. 58 and 59, whereas his hereditary entitlement was only 25 decimals. Thus, by his own earlier registered transfers, the petitioner divested himself of the entire extent of land he inherited from these khatians, leaving no subsisting interest to support a pre-emption claim at the time of the impugned sale.

The petitioner's reliance on oral testimony regarding possession, existence of graves, and homestead cannot displace clear documentary evidence. The Advocate-Commissioner's report confirming that a graveyard exists is a physical fact, but pre-emption rights are based on

title recorded in the khatian, not on possession or burial grounds. Neither the vendor's oral testimony nor the local inspection can recreate a title that has been extinguished by earlier registered transfers.

The question of limitation deserves careful attention. The impugned sale deed was registered on 10.07.2003. The pre-emption case was filed on 06.03.2012. Section 96, as amended, explicitly bars a pre-emption petition filed beyond three years from the date of registration of the deed. Even if the petitioner's alleged date of knowledge (28.12.2011) is accepted, which the Court is not inclined to do due to lack of reliable evidence, the application was not filed within two months thereof. More importantly, the statutory three-year bar from the date of registration is mandatory and absolute. The petitioner's case was filed nearly nine years after registration, and no acceptable explanation has been offered.

The evidence of P.W.2 regarding knowledge is based solely on hearsay because the person who allegedly informed him, namely Bazlur Rahman, did not testify. Courts cannot rely on such uncorroborated hearsay to circumvent statutory limitation. The courts below rightly held that the pre-emption claim is hopelessly barred and that the petitioner failed to prove the date of knowledge.

Upon comprehensive evaluation, the concurrent findings of the courts below appear to be based on correct appreciation of fact and law. No error of law causing failure of justice has been demonstrated and no ground exists for interference in revisional jurisdiction.

In view of the discussions above and the submissions of the learned Advocates for both sides, this Court finds that the petitioner has failed to establish that he is a recorded co-sharer in the khatian affected by the impugned transfer, that he had any subsisting interest at the time of the sale, or that his application was within limitation. The ancillary oral and local investigation evidence does not suffice to override the documentary record or statutory bar.

Accordingly, **the Rule is discharged.**

The judgment and order dated 26.07.2018 passed by the learned Senior Assistant Judge, Sadar, Pirojpur, and the judgment and order dated 25.01.2022 passed by the learned District Judge, Pirojpur in Miscellaneous Appeal No. 16 of 2018 are hereby affirmed.

There will be no order as to costs.

Let the lower court records be sent down at once along with a copy of this judgment for information and necessary action.

(Justice Md. Toufiq Inam)