

*Present:*

*Mr. Justice A.K.M. Asaduzzaman*

*Civil Revision No.2595 of 2016*

*Sheikh Moniruzzaman and others*

*.....Petitioners.*

*-Versus-*

*Sheikh Ahaduzzaman and others*

*.....Opposite parties.*

*None appears.*

*.....For the petitioners.*

*None appears.*

*.....For the Opposite parties.*

*Heard and Judgment on 21.01.2024.*

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the Opposite Party No.1 to show cause as to why the judgment and order dated 25.01.2016 passed by the Joint District Judge, Second Court, Satkhira in Miscellaneous Appeal No. 62 of 2005 affirming those dated 28.07.2005 passed by the Senior Assistant Judge, Shamnagar, Satkhira in Miscellaneous Case No. 48 of 2002 allowing the pre-emption case should not be set aside.

Facts relevant for disposal of the rule are that opposite party no. 1 as pre-emptor filed a pre-emption case being no. 48 of 2002

under Section 96 of the State Acquisition and Tenancy Act against the petitioner and the pro-forma opposite parties before the Court of Senior Assistant Judge, Shamnagar, Satkhira for pre-emption.

Plaint case in short inter alia is that Khabiruddin was the owner of 62 decimals of land of hal khatian no. 206 of katibarhall Mouja, police station: Shamnagar, district. Satkhira. Thereafter Khabiruddin died leaving behind the present opposite party nos. 1-8 as his legal heirs and as such the present opposite party nos. 1-8 are co-sharer in the case khatian and being co-sharer, the pre-emptor has the right to file the pre-emption case,. Sheikh Rabiul Islam and Sheikh Hasan Ali both sons of late Khabiruddin i.e. the present opposite party nos. 2-3 on 27.07.2002 sold 07 decimals of land to the present petitioner nos. 1-3 secretly. On 19.09.2002 at first the pre-emptor came to know about the alleged transfer of the land and subsequently he filed the instant case praying for pre-emption in the case land.

Petitioner contested the suit by filing written statement denying the plaint case alleging inter-alia that the land under C.S. khatian no. 222 was recorded in the S.A. khatian no. 224 in the name of Mohiuddin, Khabiruddin and others. Mohiuddin died

leaving behind the present petitioners and 05 daughters as his legal heirs. Pre-emptor is the son of Khabir and other brothers of the pre-emptor jointly transferred an area of 26 decimals of land to the present petitioners by way of deeds of Saf-Kabala on different dates with the knowledge of the pre-emptor as he was the mediator of the sale. Present petitioners were the co-sharers in the case jote as legal heirs causing of which the case is not maintainable. Pre-emptor and the present petitioners i.e. the opposite party nos. 1-3 and other co-sharer are the co-sharers in the case jote, since the period of their forefathers as per C.S. and S.A. khatian. The statements regarding present survey of the pre-emptor are not correct. The pre-emptor handed over the possession of the case land to the present petitioner Nos. 1-2 by signing an agreement of sale as a result the pre-emptor cannot file the pre-emption case and as such the pre-emption case is liable to be dismissed.

By the judgment and order dated 28.07.2005, the learned Senior Assistant Judge, Shamnagar, Satkhira allowed the pre-emption.

Challenging the said judgment and order pre-emptee petitioner preferred an appeal being no. 62 of 2005 before the Court of District Judge, Satkhira, which was heard on transfer by the Joint District Judge, Second Court, Satkhira, who by the impugned judgment and order dismissed the appeal and affirmed the judgment of the trial court.

Being aggrieved there against pre-emptee petitioner obtained the instant rule.

Although the matter is posted in the list for several days, mentioning the name of the learned advocates of both the sides but at the time of hearing none was found to place their respective cases.

Perused the lower court's record and the impugned judgment.

This is a case for pre-emption. Pre-emptor claimed that he is the co-sharer by inheritance of the suit jote. Opposite party nos. 2-3 transferred 07 decimals of land secretly to the present petitioner, who are pre-emptee opposite party nos. 1-3, vide register sale deed dated 27.07.2002. Getting the news on

19.09.2002 about the said transfer, pre-emptor filed this pre-emption case on 29.09.2002 well within time. Pre-emptee opposed the pre-emption case with the contention that in the S.A. khatian no. 224 the pre-emptee petitioners are a co-sharer of the suit jote and accordingly the pre-emption case against the co-sharer is not maintainable. It has further been opposed on the ground that the impugned sale deed was made well within the knowledge of the pre-emptor as well as his personal intervention and as such the instant case is barred by waiver and acquiescence. The Court below upon discussing the evidence on record found that in the present khatian no. 206, which has already been published before institution of this suit shows that pre-emptee-petitioners are not here as a co-sharer and accordingly they are hold to be stranger purchaser and accordingly the instant case for pre-emption against them is very much maintainable. The Courts below further concurrently held that the pre-emptee could not proved by evidences that the pre-emptor has lost his interest in the suit property by transferring the same from to any other persons as well as had taken any part to negotiate the alleged impugned transaction as well as he has waived out his statutory right of pre-

emption in any manner. Moreover Courts below concurrently found that the impugned sale deed was registered on 27.09.2002 and the instant case was filed well within time on 29.09.2002. Accordingly pre-emption case was not barred by limitation.

Having regards to the above concurrent findings of the courts below together with the grounds taken by the pre-emptee petitioner in the rule application, since contains no misreading and non reading of the evidence, the rule contains any merits to interfere with.

In the result, the rule is discharged without any order as to costs and the judgment and decree passed by the courts below are hereby affirmed.

Send down the L. C. Records and communicate the judgment to the court below at once.