Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.3894 OF 2022

Mosammat Julekha Parvin
..... *Pre-emptor-Petitioner.*

-VERSUS-

Sahnaj Parvin Papia and others
.....*Opposite parties.*

Mr. Mansur Habib, Advocate
..... *For the Pre-emptor-petitioner.*
Mr. Md. Alamgir Mustafizur, Advocate
--- For the opposite parties.

Heard on 18.05.2025, 19.06.2025, 28.05.2025, 08.07.2025.

Judgment on 09.07.2025

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and order dated 29.11.2021 passed by learned Additional District Judge, 3rd Court, Rajshahi in Miscellaneous Appeal No.14 of 2018 dismissing the appeal and affirming the Judgment and order dated 28.01.2018 passed by the learned Senior Assistant Judge, Sadar, Rajshahi in Miscellaneous Case No.22 of 2013 dismissing the Miscellaneous Case for preemption of the case land should not be set aside and/or

pass such other or further order or orders as to this Court may seem fit and proper.

The facts in brief for disposal of the Rule are that the petitioner as pre-emptor instituted Miscellaneous Case No.22 of 2023 before the Senior Assistant Judge, Sadar, Rajshahi against the preempte-opposite parties under section 96 of the State Acquisition and Tanancy Act, 1950 for preemption of the case land contending inter-alia that the preemptor is a co-sharer of the case holding but the preempte No.2 as seller sold the case land to preempte purchaser who is a stranger to the case holding by a Kabala dated 14.12.2010 without serving any notice to the pre-emptor under Section 89 of the State Acquisition and Tenancy Act.

The pre-empte purchaser contested the case by filing a written statement, contending, inter alia, that the case land was transferred with the mediation of the pre-emptor and the pre-emptor is not a co-sharer of the case holding, since the jama is duly separated by mutation.

The learned Senior Assistant Judge of Sadar, Rajshahi, framed the necessary issues to determine the dispute between the parties. Subsequently, the learned Senior Assistant

Judge, Sadar, Rajshahi, by the Judgment and order dated 28.01.2018, dismissed the Miscellaneous Case.

Being aggrieved, the preemptor-petitioner, as appellant, preferred Miscellaneous Appeal No.14 of 2018 before the District Judge, Rajshahi. Eventually, the learned Additional District Judge of the 3rd Court, Rajshahi, by the Judgment and order dated 29.11.2021, dismissed the appeal and affirmed those passed by the trial Court below.

Being aggrieved, the pre-emptor-petitioner preferred this Civil Revision under section 115 (1) of the Code of Civil Procedure before this Court and obtained the instant Rule.

It appears that the petitioner herein, as the pre-emptor, filed the instant case for the preemption of the case land, with a contention that he is a co-share of the case holding, but the pre-empte seller sold the case land to the pre-empte purchaser, who is a stranger to the case holding, without serving any notice. In order to prove the case, the pre-emptor examined as many as three witnesses and exhibited material evidence; on the contrary, the pre-empte examined three witnesses and exhibited material evidence to prove their respective cases.

I have scrutinized each deposition and cross-examination of the witnesses. It appears that both the courts below, considering the above evidence on record, disallowed the Miscellaneous Case and observed that the pre-emptor lost his co-sharership, as the pre-empte seller, after separating the Jama of the case holding by mutation, transferred the case land to the pre-empte.

A pertinent question, however, involved in the instant case, is whether preemptor petitioner, who became a co-sharer in the case holding by inheritance thereof earlier, ceased to be a co-sharer by gating his portion separated through a Mutation proceeding opening a separate Jama in his name and whether his co-sharership in the case land could not be treated to have ceased.

Now, it is a settled proposition of law that after the separation of holding by mutation, the other co-sharers cease to be co-sharers. This view gets support from the case of Sha Alam (Md) vs. Md. Shahidur Rahman and others reported in 55 DLR (HCD) 214, wherein it was held that—

> "The decision in the case of Sunil Krishna Banik and others -Vs. Kailash Chandra Saha and others reported in BCR 1984 AD 243, which related to a proceeding

under section 24 of the Non-Agricultural Tenancy Act, reveals that in the trial court the pre-emptees raised a plea of disability of the pre-emptor to pre-empt the case land on the ground of his having lost his co-sharership in the holding by separation of his jama through a mutation proceeding. In support of such separation, the pre-emptees produced two rent receipts, two municipal tax receipts, and another document (not specified) which were received by the trial court as exhibits A, A(1), B, B(1) and C respectively but the learned Judge declined to consider them in his Judgment because of their belated production and eventually allowed preemption. Being aggrieved the pre-emptees preferred an appeal before the High Court Division and during the pendency of the appeal filed an application under Order 41, Rule 27 of the Code of Civil Procedure by annexing certified copies of application for separation of old jama which initiated two mutation proceedings, orders passed in the said mutation proceedings separating the old holding and two newly opened khaitans as annexures A, A(1), B, B(1) and C, C(1) respectively and prayed for receiving the said documents as additional

evidence regarding separation of the said jama. But the appellate High Court Division refused to receive them as such and dismissed the appeal. On appeal, their Lordships of the Appellate Division observed"....

the evidence offered by the appellants to prove that the respondent was no longer a co-sharer was already produced before the trial court, but this was done only at a late stage of the trial. The evidence was not considered by the trial court for this reason. It was not produced for the first time before the appellate Court. On the other hand, the exhibits referred to in their application for additional evidence could, if considered according to the appellants, have shown that the respondents have ceased to be co-sharers, particularly when the necessary issue to determine this point was already framed by the trial court" With the aforesaid observation their Lordships allowed the appeal and sent the case on remand to the High Court Division for disposal in accordance with law. The aforesaid observation by their Lordships left a clear indication that a co-sharer loses his co-sharership in the tenancy

or holding by separating his jama through a mutation proceeding, and cannot apply for preemption.

In the aforesaid decision reported in BCR1984 AD 243, reference was also made to another decision in the case of Mafizuddin Patwari Vs. Abdul Hakim Miazi reported in 33 DLR (AD) (1981) at page 305, wherein it was held that an original co-sharer who ceased to be a co-sharer of the jama cannot apply for preemption. It was further held that a co-sharer seeking preemption must have a subsisting interest in the holding at the time when he files an application for preemption and must continue to hold such interest until the case is finally disposed. It will not be out of place to mention here that the separation of jama or sub-division of a holding or tenancy distributing rents, whether in the case of agricultural land under the State Acquisition and Tenancy Act or in the case of non-agricultural land under the Non-Agricultural. Tenancy Act takes place under section 117(1)(c) of the State Acquisition and Tenancy Act, and the original co-sharers on such separation cease to be co-sharers as such and cannot apply for preemption on the ground of co-sharership.

The principle is equally applicable in both the cases of agricultural and non-agricultural land."

A similar view has been taken in the case of Md. Khalilur Rahman Mathbar Vs. Kazi Shahjahan, being dead, his heirs Jannatun Ara and others, reported in 11 L M (AD) 474 wherein their Lordship of the Appellate Division held that:--

After the separation of case holding the other co-sharers ceased to be co-sharers, and as such, the pre-emptors have lost their right of preemption.

A similar view has been taken in the case of Sayed Sad Ali Vs. Bidhan Chandra Dev and others reported in 20 BLD (HCD) 343 wherein it was held that:--

The pre-emptor, though a co-sharer in the jama, was not a co-sharer in the land (i.e., shop) transferred to the opposite party, No.1 Bidhan Chandra Dev, because of the fact that the shop transferred is well demarcated as per the admission of the pre-emptor himself.

In the instant case, it appears that the vendor, who is the pre-empte opposite party No. 2, became the owner of the case land by way of inheritance and by a deed of gift No. 796 dated 26.01.2006 (Exhibit-KHA). It transpires from the

Exhibits - Ga, Gha, and Uma that before transferring the case land to the preempte purchaser, the land was mutated in the name of vendor vide Mutation Case No. 2791/9-1/05-06/9-1/20, and the Jama has been separated and prepared a separate Mutation Khatian No. 433 in her name, who paid the land tax regularly to the Government. Moreover, the vendor enjoyed possession of the case land by separating it from other land, as well as electricity, water supply, and other utility connections to the case land. Further, from the record, it also appears that the pre-empte purchaser purchased the case land vide deed No. 1980114 dated 12.2010 and mutated his name in the year 2010 in Mutation Case No. 589/9-1/2010-2011, and a separate khatian No. 757 has been prepared in his name, who regularly pays the land tax to the Government. On the contrary, the pre-emptor petitioner filed the instant case on May 12, 2014. In this regard, the appellant Court below, as a last court of fact, critically analyzed the evidence on record, observed that:---

> "২নং প্রতিপক্ষ তার প্রাপ্ত সম্পত্তি ১নং প্রতিপক্ষ বরাবর ১৪/১২/১০ তারিখে ১৯৮০১ নং দলিল মূলে হস্তান্তরের পূর্বে পুনরায় ২০১০ সালে ৭৫৭ নং প্রস্তাবিত খতিয়ান চালু করেন এবং উক্ত খতিয়ানের বুনিয়াদে সরকার বরাবর ২০১০ সাল পর্যন্ত খাজনা পরিশোধ করেন। অর্থাৎ ২নং প্রতিপক্ষ ইসমত আরা সিফা নালিশী সম্পত্তি ১নং প্রতিপক্ষ বরাবর হস্তান্তরের পূর্বেই দুইবার নিজ নামে হোল্ডিং খুলে ২০১০ সাল পর্যন্ত খাজনা পরিশোধ করেছেন। অর্থাৎ, উক্ত সম্পত্তি হস্তান্তরের

পূর্বেই আরএস খতিয়ান হতে নালিশী প্রস্তাবিত খতিয়ান এবং জমা পৃথক হয়েছে। সঙ্গতকারণে আরএস খতিয়ান হতে জমা পৃথক হওয়ায় দরখাস্তকারী জুলেখা পারভীন নালিশী জমিতে সহ শরীক নয় মর্মে আদালতে সিদ্ধান্ত গৃহীত হলো। অধিকন্তু, জমা পৃথকীকরণ কাজটি সেটেলমেন্ট অফিসের সরকারী কাজের অংশ হওয়ায় এবং তার মালিকানা বিষয়ে অন্যথা প্রমাণিত না হওয়ায় জমা পৃথক সঠিকভাবে ও □থা□থভাবে হয়েছে প্রতীয়মান হয়।”

Mr. Mansur Habib, the learned advocate appearing on behalf of the petitioner, submits that the proceedings of the mutation case for the split up of the Jama are illegal and void for not serving any notice upon the co-sharer of the case holding. In support of his contention, he referred to a case of Golam Mostafa Vs. Begum Rokeya Khandaker & ors reported in 53 DLR (HCD) 232 wherein it was held that:-

"In approaching the said question provision contained in section 117 of the State Acquisition and Tenancy Act may conveniently be noticed. Section 117(l)(c) enshrines that for the purpose of sub-division of a joint tenancy for distribution of rent and for effecting a subdivision of a joint tenancy an application is required to be filed and notice is required to be given to all the parties concerned to appear and be heard in the matter and notice having not been served upon co-sharers, mutation and subdivision effected behind their back

cannot said to be valid sub-division or splitting up of jama and in such case co-sharer in the joint tenancy cannot be said to have lost their right of preemption."

In reply, Mr. Md. Alamgir Mustafizur, the learned advocate appearing on behalf of the opposite party, submits that when a competent revenue officer passed an order under Section 117 of the State Acquisition and Tenancy Act, its validity can not be challenged for a collateral purpose, i.e. in a proceeding of preemption case, and in the preemption case there is no scope to consider whether any notice is served or not upon the co-sharer of the case jote of a mutation case. In support of his contention, he cited a case of Md. Mafizuddin Vs. Abdul Hakim reported in 33 DLR (AD) 309 wherein it is stated that:-

"Before concluding, however, we like to observe that when an order is passed by a competent Revenue Officer under section 117 of the Act, and the order is in conformity with the statutory requirements and the order has been given effect by the co-sharer tenants of the holding, the holding stands separated under the law. If any of the tenants is aggrieved by the order, he can take recourse to appeal as provided in this section

itself. In the absence of such an appeal, the order becomes final and binding upon all the co-sharer tenants. When such a valid order under section 117 is on record, and the order has been given effect, the order on the ground of finding some irregularity in the same as a Court of appeal, while dealing with the application under Section 96 of the Act for preemption."

In the instant case, I have already noticed that the preempte seller separated the jama by mutating her name and paid the land tax regularly to the Government. Moreover, she enjoyed the possession of the case land, which was surrounded by separate boundaries from others, and had access to electricity, water supply, and other utility connections. The pre-empte purchaser, after purchasing the case land in the year 2010, also separated the jama in his name and regularly pays the land tax to the Government. On the contrary, the pre-emptor petitioner filed the instant case on May 12, 2014. So, I am of the view that since the pre-empte seller/vendor, before transferring the case land to the preempte purchaser, separated her Jama of the case land under the law and paid tax of the case land to the Government based on the mutation khatian, the pre-emptor

is no longer a co-sharer of the case holding. This view gets support from the case of Muhammad Ali Vs. Mrs. Khaleda Rahman and others reported in 7 ADC (2010) 382 wherein their Lordship of the Appellate Division observed that:---

> "Since the learned Single Judge of the High Court Division correctly found that the predecessor of the pre-emptor petitioner separated her jama as far back as in 1987 and paid ground rent on the basis of the said mutation Miscellaneous Case, the contention raised by Mr. T. H. Khan has got no substance. Obviously, the Pre-emptor petitioner was not a co-sharer in the case-land."

Consequently, I do not find the substance of the submissions of Mr. Mansur Habib.

Considering the above facts and circumstances I am of firm view that the Judgment of the appellate Court below as well as trial Court below do not suffer from any legal infirmity, so the impugned Judgment is well founded in accordance with law and based on the materials on records, which cannot be interfered with by this Court exercising revisional power under Section 115 (1) of the code.

Resultantly, the Rule is discharged with cost.

Communicate the Judgment with the lower courts' records at once.

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(Md. Salim, J).

Kabir/BO