

Present:

Mr. Justice Md. Shohrowardi

Civil Revision No. 1247 of 2022

Md. Sajjad Hossain Sarder, being dead, leaving behind the following heirs

Aysha Begum and others....Petitioners

-Versus-

Mrs. Rokaya Bibi and others....Opposite parties

Mr. Mozammel Hossain, Advocate with

Mr. Md. Harun-Or-Rashid, Advocate with

Ms. Mahfuza Begum, Advocate with

Mr. Md. Moinul Hoque, Advocate

....For the petitioners

Mr. M.M. Shafiullah, Advocate with

Mr. Md. Shahid Hasan, Advocate

....For the opposite party No. 1

Heard on 23.04.2026, 10.05.2026, 11.05.2026, 12.05.2026 and
18.05.2026

Judgment delivered on 20.05.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 filed on behalf of the defendant-petitioners Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 04.01.2022 (decree signed on 10.01.2022) passed by the District Judge, Satkhira in Title Appeal No. 34 of 2014 reversing the judgment and decree dated 27.03.2014 (decree signed on 03.04.2014) passed by the Senior Assistant Judge, Sadar Court, Satkhira in Title Suit No. 85 of 2011 should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The plaint case, in a nutshell, is that the land measuring 5.00 acres of land appertaining to SA Khatian No. 1, SA Dag No. 474 of Shuktia Mouza under Police Station Tala of Satkhira is river Doluya filled-up land. One Ananta Kumar Parul Sarder filed Title Suit No. 103 of 1968 in the Court of Munsif, Court No. 3, Satkhira, praying for a decree of declaration of title on 5.00 acres of land, and the said suit was decreed on contest against the Government by judgment and decree dated 29.08.1968. Anonta Kumar Parul Sarder, were possessing and enjoying the said land and he died intestate, leaving behind five sons: Kartrik Chandra Bachhar, Shibopodo Bacchar, Gonesh Chandra Bacchar, Devdash Bachhar, and Bhubash Bachhar, who mutated their names in Mutation Case No. 17 of 72, and the Khatian No. 1 of 1 was prepared in their name. After that, they paid the rent to the government. The plaintiffs and defendant Nos. 3 and 17 purchased 0.67 acres of land on 14.11.1975 by registered kabala No. 7197 and took over the possession of the land. Gonesh Chandra Bachar and others again sold 1.66½ acres of land to the defendant Nos. 5 to 7 by registered deed No. 7198 dated 14.11.1975 in equal shares, and possession of the land was handed over to them. The defendant No. 6 sold 33 decimals of land to the plaintiff, and defendant Nos. 3 and 17 purchased

0.67 acres of land by registered deed No. 4937 dated 17.10.1976. After that, they mutated the land through Mutation Case No. 569/77-78 and paid the rent. During DP Khatian, the land was recorded in DP Khatian No. 297, plot No. 906, in equal shares. Thus, the plaintiffs became a co-sharer in .33½ acres of land.

On 22.03.2011, corresponding to 8th Chaitra, 1417 BS, Abdul Goffar came to the house of the defendant No. 17 Mosammat Rabea Bibi in the presence of her husband Md. Erfan Ali and son Masuduzzaman to inform the plaintiff No. 2 Rukea Bibi whether she has any information regarding the sale of the suit land by the defendant No. 3 to the defendant Nos. 1 and 2. After that, the plaintiff, in the presence of Rabea Bibi, wife of defendant No. 17, her son, Abdul Hakim Sheikh and Hazrat Ali, claimed that she is the co-sharer of the land, and if she cannot purchase the land, she would fall into serious trouble. Thereafter, she, along with her husband, defendant No. 17 Rabea Bibi, Md. Erfan Ali, son Masuduzzaman, said Abdul Goffar, Abdul Hakim Sheikh, and Hazrat Ali went to the house of the defendant Nos. 1 and 2 and found them in their house. At that time, the plaintiff again expressed her intention to the defendant Nos. 1 and 2 to purchase the land. Thereafter, they came back from the house of the defendant Nos. 1 and 2. After collecting the certified copy of the kabala deed No. 1814 dated 01.04.2011 came to know about the sale of the suit land and filed the case for pre-emption under the Mohamedan Law.

The defendants Nos. 1 and 2 contested the suit by filing written statement denying the statement made in the plaint, stating that the suit is not maintainable due to the defect of parties and is barred by limitation. The husbands of the defendant Nos. 3 Jabeda Bibi and 17 Rabea Bibi are full brothers. Initially, Iman Ali, husband of Rukea Bibi used to look after the land of the defendant No. 3, and after his death, Erfan Ali, husband of defendant No. 17, looked after the land as Borgadar. On 4th Chaitra, 1416 BS, corresponding to 18.03.2010, the defendant No. 3 Zabeda Bibi and her son-in-law Azharul Islam came to the house of Erfan Ali, husband of Rabea Bibi and offered to purchase the land in the presence of the plaintiffs, Masuduzzaman, and elder son Mizanur Rahman and requested Erfan Ali to purchase the land. After consultation with the plaintiffs and their sons, defendant No. 3 expressed his intention to purchase the land at Taka one lakh. After that, the defendant No. 3 and her son-in-law informed that they would inform after having information. The defendant No. 3 and her son-in-law collected information that the suit land would be sold at Tk. 2,50,000. On 6 Chaitra, 1416 BS, corresponding to 20.03.2010, the defendant No. 3, along with her son-in-law and Abdur Rahim, went to the house of the plaintiffs and Erfan Ali, and in the presence of the plaintiffs, the defendant No. 17 Rabea Bibi and the

sons of the plaintiffs told them that the suit land would be sold at Tk. 2,50,000. At that time, Erfan Ali Sarder said that he would not purchase the land at more than Tk. one lakh. After that, the defendant No. 3, her son-in-law, and Abdur Rahim requested Erfan Ali to collect the sale deed of the suit land. On 10 Chaitra, 1416, corresponding to 24.03.2010, Erfan Ali went to the house of defendant No. 3 Zabeda Bibi to inform her son-in-law. He collected the purchase deed of the suit land. The defendant No. 3 informed her son-in-law on 11 Chaitra, corresponding to 25.03.2010, at her house. At that time, defendant No. 3, her son-in-law and Abdur Rahim came to the house of Erfan who requested Rahim to call the defendant No. 1, husband of the defendant No. 2 and elder brother of defendant No. 1. After that, Abdur Rahim came to the house of Erfan along with them and after consultation with the defendant No. 3, her son-in-law, Erfan Ali, Abdur Rahim, defendant Nos. 1 and 2 and the husband of the defendant No. 2 in presence of the plaintiffs, defendant No. 17 and their sons fixed the price of the land at Tk. 2,30,000, and the date of registration was also fixed on 01.04.2010. On 01.04.2010, the defendant No. 3, her son-in-law Azharul Islam, Abdur Rahim, defendant Nos. 1 and 2, husband of the defendant No. 2, and Sahidur Rahman came to the house of defendant No. 17 and called Erfan. At that time, defendant No. 17 said that her husband went elsewhere, but she was not aware of him. Thereafter, the deed No. 1814 was registered on 01.04.2010. After that, the defendant Nos. 1 and 2 took possession of the suit land by cultivating paddy, custard, onion, and garlic, etc.

During the trial, the plaintiffs examined 3 P.Ws, and the defendants examined 1 D.W to prove their respective cases. After concluding trial, the trial Court by judgment and decree dated 27.03.2014 dismissed the suit against the defendant Nos. 1 and 2 on contest and *ex parte* against the other defendants holding that the plaintiffs have the locus standi to file the suit under the Mohamedan Law and that the suit is maintainable, and that the suit is not barred by law but the plaintiffs miserably failed to prove the pre-conditions i.e formalities of the pre-emption and they are not entitled to get a decree of pre-emption.

Against the said judgment and decree passed by the trial Court, the plaintiff Mosammat Rukea Bibi filed Title Appeal No. 34 of 2014 in the Court of District Judge, Satkhira who after hearing the appeal by impugned judgment and decree dated 04.01.2022 allowed the appeal reversing the judgment and decree passed by the trial Court holding that no notice was served upon the plaintiffs regarding the sale of the suit land and that the plaintiffs as co-sharer of the suit land are entitled to purchase the land exercising their right of pre-emption and that

the defendants are strangers and that the plaintiffs proved the case of pre-emption by adducing evidence against which the defendants-petitioners obtained the Rule.

Learned Advocate Mr. Mozammel Hossain, appearing along with learned Advocate Mr. Md. Harun-Or-Rashid on behalf of the defendant-petitioners, submits that the plaintiffs failed to prove the pre-conditions of the pre-emption, i.e., talab-i-mowasibat and talab-i-ishhad in the presence of two witnesses and the appellate Court below, without setting aside the finding of the trial Court regarding the non-compliance of the talab-i-mowasibat and talab-i-ishhad mechanically passed the impugned judgment and decree reversing the judgment and decree passed by the trial Court. He further submits that on consideration of the evidence of both the parties, the trial Court arrived at a finding that the plaintiffs failed to prove the pre-conditions of pre-emption under the Mahomedan Law, but, on a misconception of law, the appellate Court illegally held that no notice was served upon the plaintiffs before selling the suit land and arrived at a wrong decision in decreeing the suit for pre-emption and committed on an error of law resulting in an error in the decision occasioning failure of justice. He prayed for making the Rule absolute by setting aside the impugned judgment and decree passed by the appellate Court below.

Learned Advocate Mr. M.M. Shafiullah appearing along with learned Advocate Mr. Md. Shahid Hasan on behalf of the plaintiff-opposite party No. 1 submits that in the plaint, it has been specifically asserted that the demands under the Mahomedan Law had been made to the defendant Nos. 1 and 2 in presence of several witnesses but inadvertently, the plaintiffs could not examine all those witnesses during trial of the case to prove the talab-i-mowasibat and talab-i-ishhad and he prayed for sending the case on remand to the trial Court to allow the plaintiffs to examine those witnesses who were present at the time of talab-i-mowasibat and talab-i-ishhad.

I have considered the submission of the learned Advocate Mr. Mozammel Hossain who appeared along with the learned Advocate Mr. Md. Harun-Or-Rashid on behalf of the defendant-petitioners and the learned Advocate Mr. M.M. Shafiullah who appeared along with the learned Advocate Mr. Md. Shahid Hasan on behalf of the plaintiff-opposite party No. 1, perused the evidence adduced by the parties, the impugned judgments and decrees passed by the Courts below and the records.

On perusal of the evidence, it reveals that the plaintiff-opposite party No. 1 is a co-sharer of the suit land, and the defendant Nos. 1 and 2 purchased 33 decimals of land sold by the defendant No. 3 by deed No. 1814 dated 01.04.2010 (exhibit 2). Both the Courts below arrived at a concurrent finding of fact that the

plaintiffs are co-sharer of the suit land and the defendant Nos. 1 and 2 are strangers. The trial Court dismissed the suit, holding that the plaintiffs failed to prove the pre-conditions of the pre-emption under Mohamedan Law, i.e., talab-i-mowasibat and talab-i-ishhad in the presence of two witnesses, but the appellate Court below, without setting aside the said finding of the trial Court, reversed the judgment and decree passed by the trial Court.

Under the Mahomedan Law, the pre-emptor shall prove that before filing the case, he/she made the demands, i.e talab-i-mowasibat, and subsequent talab-i-ishhad in presence of two witnesses and compliance of those conditions is indispensable. If the pre-emptor fails to strictly prove either of the conditions, he is not entitled to get the decree of pre-emption.

In our jurisdiction, as well as in Indian jurisdiction, the book written by D.F Mulla on 'Principles of Mahomedan Law' is considered as the authoritative book of the Mohamedan Law. At this stage, it is relevant here to quote page No. 357 of the book 'Principles of Mahomedan Law', 23rd Edition, written by D.F Mulla, which is quoted below;

“Who may claim pre-emption?

The following three classes of persons and no others are entitled to claim pre-emption, namely:-

(1) a co-sharer in the property³¹ [*shafi-i-sharik*];

A *mukarraridar* (lessee in perpetuity) holding under a co-sharer has no right to pre-empt as against another co-sharer;

(2) a participator in immunities and appendages, such as a right of way or a right to discharge water [*shafi-i-khalit*]; and

(3) owners of adjoining immovable property [*shafi-i-jar*], but not their tenants, nor persons in possession of such property without any lawful title [Baillie, 481]. A *wakif* or *mutawalli* is not entitled to pre-empt, as the *wakf* property does not vest in him.

The first class excludes the second, and the second excludes the third. But when two or more pre-emptors belong to the same class, they are entitled to an equal share of the property with respect to which the right is claimed [Baillie, 500].

Exception.-The right of pre-emption on the third ground, viz., that of vicinage, does not extend to estates of large magnitude, such as villages and zamindaris, but is confined to houses, gardens, and small parcels of land. The right, however, may be claimed by a *co-sharer*.”

P.W. 1 Most. Rokeya Bibi (plaintiff No. 1) stated that on 22.03.2010, corresponding to 8 Chaitra 1417 BS, Abdul Gafur, husband of defendant No. 17, came to the house of her husband Erfan Sarder and, in the presence of Masuduzzaman and defendant No. 17 Mosammat Rabea Bibi told her that defendant No. 3 Zabeda Bibi sold the suit land to the defendant Nos. 1 and 2. At that time, she stated that she is a co-sharer of the land and she will fall in mosibat if she cannot buy the land. At that time, Hakim Sheikh and Hazrat came and she along with Hakim Sheikh, Hazrat Ali, defendant No. 17, Masuduzzaman, her husband Erfan Sarder and Abdul Gaffar went to the house of defendant Nos. 1 and 2 and found the defendant Nos. 1 and 2 in their house and made the demand talab-i-ishhad but during cross-examination, she admitted that she went to the house of defendant No. 1 Sazzad and he found him alone which proved that no talab-i-ishhad was made to the defendant No. 2 Mosammat Rukea Bibi.

To prove a case of pre-emption, the plaintiffs shall prove that in the presence of at least two witnesses, she made the talab-i-ishhad in reference to the talab-i-mowasibat made earlier. In the plaint, P.W. 1 stated that she, along with Gaffar and other witnesses, went to the house of defendant Nos. 1 and 2 to make the demand, i.e talab-i-ishhad, but P.W. 2 Abdul Gaffar, stated that he did not go to the house of defendant Nos. 1 and 2. P.W. 3 was only present at the time of the subsequent demand i.e talab-i-ishhad made to the defendant No. 1. Therefore, I am of the view that the plaintiffs failed to prove that they made the demand i.e talab-i-ishhad to the defendant Nos. 1 and 2 in the presence of two witnesses as required under the Mohamedan Law.

In a case of pre-emption under the Mahomedan Law, no notice is required to be served to the pre-emptor. Rather, the plaintiff-pre-emptor shall prove that he/she made the initial demand talab-i mowasibat, and subsequently the final demand, i.e talab-i-ishhad, in the presence of two witnesses. Although in the plaint, it has been asserted that the plaintiffs made the demands, i.e the talab-i mowasibat and talab-i-ishhad, following the requirement under the Mohamedan Law, but the plaintiffs failed to prove the said assertion during the trial of the case.

The above view of this Court lends support from the decision made in the case of Shamsuddin Ahmed @ Tota Mia and others vs. Abdul Latif Bhuiyan, being dead, his heirs; Asia Khatun and others, judgment dated 22.02.1980 reported in 1 BCR 1981 (AD) 257, in which our Apex Court has opined in the following terms;

“Essential part for a valid claim for pre-emption is 'demands'; and the demands are to be made as provided under the Mohammedan law. No person is entitled to purchase by pre-emption unless.

(1) he has declared his intention to assert the right immediately on receiving information of the sale. This formality is called talab-i-mowasibat, the literal meaning demand of jumping; and unless,

(2) he was with the least practicable delay affirmed the intention, referring expressly to the fact that the talab-i-mowasibat had already made, and has made a formal demand-

(a) either in the presence of the buyer, or the seller, or on the premises which are the subject of sale, and

(d) in the presence of at least two witnesses. This formality is called talab i-ishhad, demand with the invocation of witnesses.”

The above view of our Apex Court has been consistently followed in our jurisdiction as well as in the Indian jurisdiction. If the pre-emptor failed to prove the talab-i-mowasibat, and the talab-i-ishhad in the presence of two witnesses, he/she is not entitled to get a decree of pre-emption. In the instant case, the trial Court on consideration of the evidence of both the parties arrived at a finding that the pre-emptor failed to prove the pre-conditions of the pre-emption but the appellate Court below erroneously held that no notice regarding the purchase was served upon the plaintiffs by the defendants and without setting aside the finding of the trial Court regarding the non-compliance of the pre-conditions of pre-emption i.e talab-i-mowasibat and talab-i-ishhad mechanically set aside the impugned judgment and decree passed by the trial Court and thereby the appellate Court below committed an error of law resulting in an error in the decision occasioning failure of justice.

As regards the submission of the learned Advocate Mr. M.M. Shafiullah engaged on behalf of the plaintiff-opposite party No. 1 regarding sending the case on remand to the trial Court, I am of the view that no remand can be allowed to fill up the lacuna of either party. Therefore, I find little substance in the submission of the learned Advocate Mr. M.M. Shafiullah.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgment and decree passed by the appellate Court below are hereby set aside.

The judgment and decree passed by the trial court are hereby affirmed.

The order of stay granted earlier by this Court at the time of issuance of the Rule is hereby vacated.

However, there will be no order as to costs.
Send down the lower Court's records at once.