

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Miscellaneous Appeal No. 288 of 2021

In the matter of:

Chandan Chowdhury

... Appellant

-Versus-

Ujjal Kumar Dutta and others.

... Respondents.

None appears

... For the appellant

Mr. Ranjit Kumar Dhar, Advocate

.... For the respondent no. 1

Heard on 21.01.2023 22.01.2024

and Judgment on 22.01.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J.

At the instance of the preemptee in preemption Miscellaneous Case No. 43 of 2010, this appeal is directed against the judgment and order dated 12.03.2020 passed by the learned Joint District Judge, Patiya, Chattogram in the said Miscellaneous case allowing the preemption in favour of the preemptor opposite-party no. 1.

The precise case of the parties so have been stemmed from the impugned judgment and order are:

The case land under preemption originally belonged to one, Jatindra Lal and Rabindra Lal whose name RS record was prepared.

Subsequently, Jatindra Lal died leaving behind a son namely, Probod Dutta and BS record was also prepared in his name Rabindra Lal died leaving behind widow namely, Hironmoyee-a BS recorded tenant who subsequently vide sale deed bearing no. 13117/80 sold out her portion of land to one, Onima Rani, wife of Probod Dutta. Subsequently, Hiromoyee died leaving behind Probod Dutta and her husband's brother's son and thereafter Probod and Onima Rani died leaving behind 4 sons, the petitioner, and the opposite party nos. 2-4. Since dispute arose among the preemptor and opposite party no. 2 in regard to partition of the case land, the opposite party no. 2 then sold his share of land that is, 14.75 decimals of land vide registered sale deed dated 14.06.2010 to the preemptee opposite party no. 1 who is a stranger purchaser in the case holding. Though the case land was sold out by the opposite party no. 2 but without giving any notice to the preemptor and the possession of sold out land has not been handed over to the preemptee. Subsequently, the preemptor on 16.06.2010 offered the opposite party no. 1 the price of the case land with interest but he refused the said proposal though he has no necessity of the case land. On the other hand, the preemptor is of urgent need of the case land and hence the case was filed on 24.06.2010.

The present petitioner who is the preemptee opposite party no. 1 contested the case by filing a written objection denying all the material averment so made in the petition for preemption contending *inter alia* that, the case land along with other lands originally belonged to 4 brothers, the preemptor and the opposite party nos. 2-4. It has further been stated that, they (the preemptor and the opposite party nos. 2-4)

took loan of taka 2,00000/- from the preemptee for the treatment of their mother but instead of paying back the money, they made an offer to sell out the case land and they received taka 6,00000/- with a promise to sell the case land by executing and registering a sale deed but subsequently out of four brothers, the opposite party no. 2 sold his share of land that is, 14.75 decimals of land to him by registered sale deed dated 14.06.2010. Subsequently, another brother of the preemptor, that is, opposite party no. 3 also sold out his share of land that is, 14.75 decimals of land to the preemptee vide registered sale deed dated 19.06.2011 and having purchased 29.50 decimals of land in total, the preemptee opposite party got mutation of the case land by obtaining mutation khatian no. 6260. Thereafter several transfer was made among the partites. It has further been stated that, the preemptee has land adjacent to the case land as of homestead and the preemptor has not added all the BS recorded tenants and other co-shares in the case holding as parties to the case and thus the case was bad for defect of parties. It has lastly been stated that, the preemptor has got no necessity of the case land but in the event of increasing the market value of the case land, the preemptor filed the case which is liable to be dismissed.

In order to dispose of the case, the learned judge of the trial court framed as many as three different issues and the preemptor examined two witnesses including himself and produced several documents which were marked as exhibit nos. 1-5. On the contrary, the preemptee-opposite party no. 1 also examined himself and another witness as OPW-1 and OPW-2 and produced mutation khatians as exhibit 'ka' series and

'kha' series. The learned judge upon considering the materials and evidence on record by the impugned judgment and order allowed the preemption case holding that, the preemptor is the co-sharer by inheritance in the case holding when the preemptee is a stranger purchaser and the case is not bad for defect of parties which was filed within the period of limitation. It is at that stage, the preemptee as appellant preferred this appeal.

Though the matter has been appearing in the list at the top for hearing and we heard the learned counsel for the preemptor-respondent no. 1 yesterday enlisting the matter for passing judgment today, even with the name of the learned counsel for both the parties, yet the learned counsel for the preemptee-appellant did not bother to turn up before this court.

On the contrary, Mr. Ranjit Kumar Dhar, the learned counsel appearing for the preemptor respondent no. 1 upon reading out the impugned judgment and order and by showing the evidences chiefly contends that, since it is not disputed fact that the preemptor is a co-sharer by inheritance and the preemptee is the stranger purchaser so there has been no scope not to allow the preemption in favour of the preemptor.

The learned counsel further contend that, since the preemptee became a co-sharer by purchase long after selling out the case land as well as filing of the preemption Miscellaneous case, so the preemptee cannot be regarded as any co-sharer in the case holding and the learned

judge has rightly addressed that point and dismissed the contention so taken by the preemptee before him.

The learned counsel lastly contends that, since the mutation was made on 27.03.2013 vide mutation case no. 2993/2012 that is, long after selling out the case land as well as filing of the preemption case, so the provision of section 117 of State Acquisition and Tenancy Act will not operate in the instant case and finally prays for dismissing the appeal sustaining the preemption infavour of the preemptor so passed by the learned judge of the trial court.

Though the learned counsel for the preemptee petitioner did not turn up to press the appeal but we have gone through the grounds so have been couched in the memorandum of appeal. It has been argued in the said appeal that, since the preemptor did not file the Miscellaneous case challenging selling out of the case land by the opposite party no. 3 who is the full brother of the preemptor and also sold out 14.75 decimals land to the preemptee on 19.06.2011, so the preemption case was barred by the principle of partial preemption. It has further been contended that, since the preemptor did not implead all the BS recorded tenants, so the Miscellaneous case is also barred under section 96(2) of the State Acquisition and Tenancy Act.

We have given our anxious thought to the contention taken in the grounds of the memorandum of appeal as well as considered the submission so placed by the learned counsel for the preemptor respondent no. 1. Aside from that, we have also perused the deposition so have been made by the witnesses led by both the preemptor as well as

preemptee and the documents exhibited by the parties in particular, the mutation khation no. 6260 which were marked on the part of the preemptee as of exhibit nos. 'kha-1' and 'kha-2'. It is not disputed that, the preemptor is the co-sharer by inheritance from the BS recorded tenant. On the other hand, the preemptee is the stranger purchaser who claimed to have homestead adjacent to the case holding. It is also the claim of the preemptee that, after purchasing the land from opposite party no. 3 measuring an area of 14.75 decimals of land, he became the co-sharer by purchase in the case holding and his right will be prevailed over the preemptor. But the said transfer was made in favour of the preemptee on 19.06.2011, that is long after selling out the case land in favour of the preemptee no. 1, vis-a-vis filing of the preemption Miscellaneous case. So, under no circumstances can the preemptee be regarded as any co-sharer by purchase to be prevailed over the preemptor's claim who filed the preemption case as a co-sharer by inheritance. Because, under section 96(1) of the State Acquisition and Tenancy Act a co-sharer by inheritance has been given the highest priority to preempt the case land over a co-sharer by purchase. Furthermore, an argument has been made in the appeal that, since the preemptor did not pray for preemption for his entire purchased land that is, 29.50 decimals of land so the partial preemption cannot be allowed. But we also don't find any legal substance in the said contention because it is the absolute latitude of the preemptor to file a case on his own need and so if the preemptor does not pray for preemption of the land subsequently sold out, it does not *ipso facto* implies that, the preemption

case be barred by principle of partial preemption. Then again, it is the contention so taken in the grounds of the appeal that, all the BS recorded tenant has not been made party in the preemption case but on going through the document so have been exhibited on the part of the preemptor, we find from exhibit no. 2, that the BS khatian no. 4258 has been exhibited and all the co-shares therein has been made parties having no scope to operate the provision of section 96(2) of the State Acquisition and Tenancy Act. While allowing the preemption case, the learned judge of the trial court also placed his reliance in the decision reported in 45 DLR AD 26 where it has been propounded that, the right of preemption accrues only on the date of transfer of the disputed land not by any subsequent acquisition claiming to be co-shareship. Herein the instant case, though the preemptee no. 1 claimed to be a co-sharer by way of purchasing 14.75 decimals of land from the brother of the preemptor, that is from opposite party no.3 but he purchased so long after the disputed kabala was registered that is, on 19.06.2011. So the said decision of the Appellate Division is squarely applicable in the facts and circumstances of the instant case. Though the learned judge of the trial court in his judgment did not discuss the evidence so adduced by the preemptor and the preemptee but on going through the testimony so made by the witnesses of the preemptor as well as the preemptee, we don't find any deviation of the assertion by the witnesses of the preemptor in asserting his case who have very categorically supported the case of the preemptor. On the other hand, the preemptee could not prove that the preemptor ever took loan from the preemptee on account

of providing treatment to his mother and in failure to repay the same, they (preemptor and the opposite party nos. 2-4) offered to sell the case land. Having said that, since the preemption case has been filed within time and it has not been found to be bad for defect of parties nor the preemptee became a co-sharer in the case holding so we don't find any iota of illegality or impropriety in the impugned judgment and order which is liable to be sustained.

In the result, the appeal is dismissed however without any order as to costs.

Let a copy of this judgment and order along with the lower court records be sent to the court concerned forthwith.

Mohi Uddin Shamim, J.

I agree.