

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Jahangir Hossain.

Civil Revision No.3468 of 2006

Md. Shameem Hossain and others
.....Petitioners.

Vs.

Belayet Hossain Sheikder and others.

..... Opposite-Parties.

None appears

..... For the petitioner.

Mr. Md. Rayhan Kabir, A.A.G

..... For the state

Judgment on 23rd May, 2023.

This Civil Revision No. 3468 of 2006 has been filed under section 115(1) of the Code of Civil Procedure. The rule was issued on 27.08.2006 as follows:

Let a Rule be issued calling upon the opposite party No.01 to show cause as to why the judgment and order dated 02.04.2006 passed by the learned Joint District Judge, 3rd Court, Patuakhali in Miscellaneous Appeal No. 63 of 2001 passed by Assistant Judge Dashmina, Patuakhali in Miscellaneous Case No. 03 of 1994 should

not be set aside and / or such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of the rule the operation of the impugned judgment and order was stayed.

L.C.R has been received by this court on 09.09.2014 and found the record correct as per office order.

None appears at the time of hearing although the matter is on the cause list with the name of learned Advocate. The matter is taken up for disposal on merit.

The relevant fact of the case for disposal of this Revision is that plaintiff filed a preemption suit against the respondent for the said schedule property. The opposite party registered Kabala dated 09.07.1993. The kabala deed was executed and registered without giving the share notice to the petitioner. The petitioner came to know for the first time from Moslem Sarder on 15.02.1994. After that the petitioner filed this preemption case against the respondents opposite party. Present petitioners opposite party purchased 1312 decimals land in different times from recorded tenants of the S.A. Khatian No. 181 and possessing that land from execution of kabala. They also purchased 186 decimals by kabala deeds dated 01.07.1993 and 07.03.1983 from two recorded tenants. The petitioner is the ancestral heirs of recorded tenant Abdul Jallar

Sikder, the another heirs of Safujaan Bibi sold out the schedule land to the opposite party.

Upon such fact and circumstances the plaintiff filed the said preemption case against the opposite party hence the case.

We have elaborately examine the petition for preemption case and the W.O filed by the opposite party and the judgment passed by the trial court as well as the Appellate court and other relevant papers annexure with the record.

It appears the learned Assistant Judge in his judgment categorically stated the owners and the predecessor's right of the land.

He also stated the fact of the W.O filed by the respondent No. 01-03. Seven issuances have been framed in this case and all the issues have been discussed elaborately and disposed the issues by assigning the reasons and evidences of this case. Lastly all the issues have been decided in favour of the opposite party that is the respondent No. 01-03 and against the plaintiff petitioner.

It appears in the main suit petitioner failed to prove about the plaintiffs co-sharers upon the land.

On the other hand it appears from the record and the judgment that the opposite party No. 1-3 proves there are the co-shares upon the said /schedule property. It has been transpired from all the evidences and the determination of the judgment of

Appellate Court that the petitioner neither the co-sharer nor the demand of knowledge is prove in this case. In the impugned judgment of the Appellate Court correctly assess the judgment of trial court and lawfully and legally uphold the judgment of the trial court in Misc case No. 3/1994 dated 03.7.2001 which was passed after remand by the Appeal Court.

As such I do not find any illegality in the impugned judgment or to interfere on the said judgments.

Upon such the impugned judgment is upheld and the Civil Revision No. 3468 of 2006 is rejected on merit.

The stay order granted at the time of issuance of the Rule is hereby vacated.

Upon such the Rule is discharged on merit.

The learned Trial Court will proceed in accordance with law.

Send down the lower court record together with the copy of the judgment of the court below at once.