

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No. 3975 of 2018

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure

- AND -

IN THE MATTER OF:

Most. Shefaly Khatun

..... Defendant-Petitioner

-Versus -

Md. Abdul Jalil and others

..... Plaintiff-Opposite Parties

No one appears

..... For the petitioner

Mr. Md. Meshbahul Islam, Advocate

..... For the Opposite Parties

1`

Heard on 16.11.2023, 19.11.23
and Judgment on 22.11.2023

Md. Kamrul Hossain Mollah, J:

On an application by the petitioner, under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party No. 1 to show cause as to why the judgment and order dated 29.08.2018 passed by the learned Joint District Judge, Shahzadpur, Sirajganj in Miscellaneous Appeal No.22 of 2015 disallowing the appeal by affirming

the judgment and order dated 21.04.2015 passed by the learned Senior Assistant Judge, Shahzadpur, Sirajganj in pre-emption Case No.49 of 2008 in allowing the pre-emption should not be set-aside and/or pass 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 this Court stayed the impugned judgment and order dated 29.08.2018 passed by the learned Joint District Judge, Shahzadpur, Sirajganj in Miscellaneous Appeal No. 22 of 2015 for a period of 06 (six) months from date.

Facts necessary for disposal of the Rule, in short, are that the opposite party No. 1 Pre-emptor filed an application under section 96 of the State Acquisition and Tenancy Act, 1950 for getting the suit land measuring of 30 decimals comprising plot Nos. 443 and 444 appertaining to R.S. Khatian No. 252 of Mouja-Nandalalpur, Police Station-Shahzadpur, District- Sirajgonj (hereinafter referred to as suit property) by virtue of pre-emption. According to the opposite party No.1 pre-emptor an area measuring 10 decimals of land comprising plot No.443 and an area measuring 79 decimals of land consisting plot No.79 of R.S. khatian No.252 as well some other lands totaling 1.34 acres stood in the name of the opposite party No.1 Pre-emptor Abdul Jalil and his two brothers, Jalal Uddin and Aynal Haq of whom Aynal kept his share of 30 decimals of land i.e. the suit land caught with one Shahid Ali, a resident of village-Bera Kuchachia. On 07.11.2008 Shahid Ali disclosed that he owned the suit land by way of purchase. On coming to know this opposite party No.1 obtained certified copy of the Kobala dated 13.11.2008 and became sure that Shahid Ali purchased the suit land in the name of his wife Shefaly Khatun

(petitioner) by executing a registered Kabala being No. 4917 dated 03.10.2007. The Opposite party No. 1 Pre-emptor was not informed anything about the sale of the suit land. The opposite party No. 1 pre-emptor being co-sharer in the case joma has preferred the pre-emption case.

The purchaser petitioner pre-emptee contested the case by filing written objection and pleaded, inter alia, that R.S. recorded tenants of the suit joma purchased the suit by executing a registered Kabala being No.3696 dated 23.04.1969 and as such they are in fact co-sharer in the disputed joma by purchase. A co-sharer by purchase retains no right of preemption under the newly amended law of preemption. Apart from this initially Aynal Haq offered to sale out the case land to the petitioner, but he signified his inability to purchase and verbally assured that he would take no objection if the land is sold to others.

Thereafter the petitioner purchased the case land from a total consideration of Tk. 1,20,000/- and by virtue of the registered Kobala dated 03.10.2007. The petitioner falsely claimed that suit land was transferred by way of caught and in order to avoid limitation he invented the story. Therefore, instant pre-emption proceeding is liable to be rejected.

During the course of trial, the plaintiff as opposite party No. 1 adduced oral evidence of 3 witnesses including himself as PW-1 and exhibited certain documents marked as Exhibited 1-3 whereas the contesting the petitioner examined 2 witnesses and exhibited certain documents marked as Exhibited 'Ka', 'Kha', Kha (1) and Kha (2).

After conclusion of the trial the learned Senior Assistant Judge, Shahzadpur, Sirajgonj after hearing the parties allowed the Pre-emption Case 49 of 2008 by his judgment and order dated 21.04.2015.

Being aggrieved by and dissatisfied with the judgment and order dated 21.04.2015 the petitioner as appellant preferred Miscellaneous Appeal No.22 of 2015 before the learned Joint District Judge, Shahzadpur, Sirajgonj. After hearing both the parties the learned Joint District Judge, Shahzadpur, Sirajgonj dismissed the said Appeal and affirmed the judgment and order dated 21.04.2015 passed by the learned Senior Assistant Judge, Shahzadpur, Sirajgonj in Pre-emption Case No.49 of 2008 by his judgment and order dated 29.08.2018.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 29.08.2018 passed by the learned Joint District Judge, Shahzadpur, Sirajgonj in Miscellaneous Appeal No.22 of 2015 dismissing the Appeal, the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and stay.

No one appears on behalf of the petitioner pre-emptee to press the Rule, when the matter was taken up for hearing, although it appears in the daily cause list several times.

Mr. Md. Mesbahul Islam, the learned Advocate appearing for the opposite parties pre-emptor submits that the opposite party No. 1 filed an application under section 96 of the State Acquisition and Tenancy Act, 1950 for getting the case land measuring of 30 decimals comprising plot

Nos. 443 and 444 appertaining to R.S. Khatian No. 252 of Mouja-Nandalapur, Police Station- Shahzadpur, District- Sirajgonj (hereinafter referred to as suit property) by virtue of pre-emption. According to the opposite party No.1 Pre-emptor an area measuring 10 decimals of land comprising plot No.443 and an area measuring 79 decimals of land consisting plot No.79 of R.S. khatian No.252 as well some other lands totaling 1.34 acres stood in the name of the opposite party No.1 pre-emptor Abdul Jalil and his two brothers, Jalal Uddin and Aynal Haq of whom Aynal kept his share of 30 decimals of land i.e. the case land caught with one Shahid Ali, a resident of village-Bera Kuchachia. On 07.11.2008 Shahid Ali disclosed that he owned the suit land by way of purchase. On coming to know this opposite party No.1 obtained certified copy of the Kobala dated 13.11.2008 and became sure that Shahid Ali purchased the suit land in the name of his wife Shefaly Khatun (petitioner) by executing a registered Kabala being No. 4917 dated 03.10.2007. The Opposiite party No. 1, Pre-emptor was not informed anything about the sale of the suit land. The opposite party No. 1 pre-emption being co-sharer in the case joma has preferred the above pre-emption case and the learned Courts' below rightly passed their judgment and order, which is maintainable in the eye of law. Accordingly, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of the Courts' below, the submissions of the learned Advocate for the opposite parties, the papers and documents as available on the record.

It appears from the materials on record that the learned trial Judge allowed the Miscellaneous (Pre-emption) Case No.49 of 2008 on contest against the opposite party No.1 and ex parte against the rest without any order as to costs. The petitioner claimed that the petitioner pre-emptee and his two brothers purchased the case jote lands by executing a registered kabala being No.3696 dated 23.04.1969 and accordingly, R.S. record got prepared in their names and in that way they are co-sharer in the disputed joma by purchase. A co-sharer by purchase has no right of pre-emption under the newly amended law of pre-emption and therefore, the case of the plaintiff must fail. On the contrary, the opposite party No.1 claimed that the petitioner being a recorded tenant in the latest R.S. khatian is definitely a co-sharer tenant in the disputed holding and ought not to be deprived of enjoying the right of pre-emption.

Further, it appears from the sub-section (1) of section 96 of the State Acquisition Tenancy Act that one or more co-sharer tenants of the holding may file the application for pre-emption, but the proviso added to this sub-section restricted the right and it has been provided that no application under this section shall lie unless the application is filed by a co-sharer tenant by inheritance and a person to whom the sale of the holding can be made under section 90 of the Act. The proviso apparently appears to be in conflict with the main provision i.e., sub-section (1) and triggered the controversy as to who shall be considered as co-sharers by inheritance and who shall be considered as co-sharers by purchase because status of the co-sharers cannot be ascertained from the record of rights i.e., the khatian. On this point, no decision of any superior Courts could be found nevertheless,

the real purpose and spirit of creation of the right of pre-emption and the intention of the legislature should not be overlooked. The purpose of pre-emption is to check sub-division and fragmentation of holdings so that any landed property sold to a stranger may revert to the co-sharers in the holding and real co-sharers remain in enjoyment of the property and strangers cannot interfere with their right of possession vide some decisions reported in the case of Md. Rajab Ali Sheikh and another vs Md. Redoyanul Islam and others 14 BLT(HCD)2006 357, Abdus Sobhan Sheikh Vs. Kazi Moulana Jahedullah and others 5MLR(HCD)2000 140, and Mainul Haque vs Banglaesh 51 DLR(1999)136. One of the cardinal principles of Interpretation of Statute is that a law should be interpreted in such a way that it should be rather saved than destroyed. It deserves mentioning here that right of pre-emption is initially created for the recorded tenants and mutation khatian holders and then it is given to their heirs. By now, it is settled proposition of law that 'no person can inherit better title/position than that which his predecessor had'. Therefore, if the recorded co-sharer himself cannot pre-empt, then how his heirs can inherit the said right relying upon the right of the recorded co-sharer tenant? So, a person who is a recorded co-sharer in the holding on the basis of previous purchase naturally cannot be deprived of enjoying the right of pre-emption. If his pre-emption is allowed, the property will come back to a co-sharer of the holding. So, till the question is decided by our Apex Court, it cannot be definitely said that a co-sharer by purchase who already became a recorded co-sharer of the holding before the sale as referred to in sub-section (1) of section 96 of the SAT Act will not be entitle to file an application for pre-

emption. For what has been discussed above I am of the considered view that the intent of the legislature is not to deprive the recorded tenants and since admittedly the opposite party No.1 pre-emptor is a recorded co-sharer tenant of the disputed holding in the latest R.S. records, he is quite eligible to apply for pre-emption.

In the light of the discussion, decisions, findings and observations made above, it is abundantly clear that instant application for pre-emption is very well maintainable and the opposite party No.1 pre-emptor is entitled to get the relief.

Considering the above facts, circumstances and materials on record, I find that the learned Joint District Judge, Shahzadpur, Sirajganj passed the judgment and order dated 29.08.2018 in Miscellaneous Appeal No.22 of 2015 rightly and there is no scope to interference there and I find substance in the submission of the learned Advocate for the opposite parties.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and order dated 29.08.2018 passed by the learned Joint District Judge, Shahzadpur, Sirajganj in Miscellaneous Appeal No.22 of 2015 dismissing the Appeal and thereby affirming the judgment and order dated 21.04.2015 passed by the learned Senior Assistant Judge, Shahzadpur, Sirajganj in Pre-emption Case No.49 of 2008 in allowing the pre-emption is hereby upheld and confirmed.

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

Let a copy of this judgment and order with L.C.R be sent to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer