

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr Justice Abdur Rahman

Civil Revision No. 1042 of 2023

In the matter of:

Md. Mojnu Mridha

.....Preemptee-Appellant

Petitioner

-Versus-

Mosammat Surutjan Bibi and others

...Preemptor-Respondents

Opposite parties

Mr K.M. Zabir, Counsel

.....For the Petitioner

Mr Md. Mesbahul Islam Asif, Counsel

...for the opposite parties.

Date of Hearing: 28.06.2026 and 02.07.2026 A.D.

Date of Judgment: 05.07.2026 A.D., Sunday,

21 Ashar, 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This Rule was issued at the instance of the petitioner under section 115(1) of the Code of Civil Procedure, 1908, calling upon the opposite party 1 to show cause as to why the judgment and order dated 08.09.2022 passed by the learned Additional District Judge, Rajshahi, disallowing the appeal, in Miscellaneous Appeal 66 of 2019, by affirming the judgment and order dated 27.08.2019 passed by the learned Senior Assistant Judge, Baghmara, Rajshahi in Miscellaneous Case 12 of 2014, allowing the preemption.

At the time of issuance of the Rule, this Court was also pleased to stay the further proceedings in Miscellaneous Case 12 of 2014 pending before the learned Senior Assistant Judge, Baghmara, Rajshahi, for a period of six months from the date of the order.

The relevant facts, shorn of unnecessary details, are that the suit property originally belonged to Mohor Sonar,

Jinjiri Bibi and Gunjuri Bibi. Upon the death of Mohor Sonar, his interest devolved upon his widow, Gunjuri Bibi, his daughter, Surutjan Bibi, and his sister, Jinjiri Bibi. Subsequently, Gunjuri Bibi died, leaving behind her sole heir, namely, Surutjan Bibi. Jinjiri Bibi also died, leaving behind her two sons, Md. Afsar Ali Piyada and Lagir Ali Piyada. After the death of Lagir Ali Piyada, his heirs succeeded to his interest in the property.

The main contention of the pre-emptor is that without serving any notice upon her, defendant No.2 transferred the case land vide registered deed 2332 dated 05.03.2014 in favour of the present petitioner, who is admittedly a stranger purchaser. Upon learning of the transfer, she instituted Miscellaneous Case 12 of 2014 under section 96 of the State Acquisition and Tenancy Act, seeking pre-emption of the transferred land.

Thereafter, the petitioner-pre-emptee entered an appearance and contested the proceeding by filing a written objection that denied the material allegations in

the application. It was contended, *inter alia*, that the application suffered from a defect of parties; that the applicant had already transferred her entire share in the holding and thereby ceased to be a co-sharer, and she had prior knowledge of the transfer but intentionally declined to purchase the property; and after purchase, the petitioner constructed a dwelling house over the land and has been possessing the same.

Upon due consideration of the oral and documentary evidence adduced by the parties, the learned Senior Assistant Judge, by judgment and order dated 27.08.2019, allowed the application for pre-emption.

Being aggrieved thereby, the petitioner preferred Miscellaneous Appeal 66 of 2019 before the learned District Judge, Rajshahi, which was subsequently transferred to the learned Additional District Judge, 3rd Court, Rajshahi for hearing and disposal. Upon hearing the

parties, the appellate Court dismissed the appeal by judgment and order dated 08.09.2022 and affirmed the judgment and order of the trial Court.

Being dissatisfied with the concurrent findings of the Courts below, the petitioner has invoked the revisional jurisdiction of this Court.

Mr K.M. Zabir, the learned Counsel appearing on behalf of the petitioner, submits that both the Courts below failed to appreciate the evidence on record in its proper perspective and thereby committed errors of law and facts resulting in an erroneous decision occasioning failure of justice.

He contends that after purchasing the disputed land, the petitioner constructed a residential house thereon and has been residing on the property; therefore, the application for pre-emption under section 96 of the State Acquisition and Tenancy Act was not maintainable.

Mr Zabir further submits that the opposite party had already transferred her entire share in R.S. Khatian 380 and consequently lost her status as a co-sharer. Moreover, the case is barred by the principle of waiver and acquiescence. He also posits that, during cross-examination, the opposite party admitted that the lands had long been separately possessed under separate khatians, thereby clearly demonstrating that she had neither a subsisting title nor possession in the suit property. Accordingly, he prays that the impugned judgments and orders be set aside.

On the contrary, Mr Md. Mesbahul Islam Asif, the learned Counsel appearing on behalf of the opposite party 1, supports the impugned judgments. He submits that both the Courts below, upon proper appreciation of the evidence on record, concurrently found that the opposite party is a co-sharer by inheritance, and the application for pre-emption was instituted within the statutory period of

limitation, and the petitioner is a complete stranger purchaser.

He further submits that the petitioner failed to produce any cogent evidence to establish either prior notice of the transfer or the alleged construction of a dwelling house over the suit land. He therefore prays for the discharge of the Rule.

I have heard the learned counsel for the respective parties and perused the revisional application, the impugned judgments, and the Subordinate Courts' Records.

The learned trial Court, while deciding the points for determination of the case regarding prior knowledge of the transfer, observed that although the petitioner claimed to have informed the pre-emptor before the sale, he failed to disclose when, where and in whose presence such information was communicated. No independent witness was examined to substantiate the alleged notice,

nor was any written refusal by the pre-emptor produced before the Court. The trial Court, therefore, rightly held that the burden of proving prior knowledge, as contemplated under section 103 of the Evidence Act, rested upon the petitioner, and that he failed to discharge it. Consequently, the Court held that the application was not barred by the doctrines of acquiescence, waiver or estoppel.

The appellate Court independently re-appraised the evidence on record and concurred with the findings of the trial Court. It specifically found that the opposite party inherited her interest in the disputed holding from Mohor Sonar and thus remained a co-sharer in the tenancy. The appellate Court further found that the impugned transfer was effected on 04.03.2014, whereas the application for pre-emption was instituted on 31.03.2014, well within the period prescribed under section 96 of the State Acquisition and Tenancy Act. Accordingly, it affirmed the findings of the trial Court on all material issues.

From the concurrent findings recorded by the Subordinate Courts, it appears that the following facts stand conclusively established:

- (i) the opposite party is a co-sharer in the holding by inheritance;
- (ii) the application for pre-emption was instituted within the statutory period of limitation;
- (iii) the petitioner is a stranger purchaser to the tenancy;
- (iv) the petitioner failed to prove that the pre-emptor had prior knowledge of the transfer;
- (v) the plea that the proceeding suffered from a defect of parties was found to be without substance; and
- (vi) no proof of development of the case property is available on the face of the record.

However, it is well settled that this Court, while exercising revisional jurisdiction under section 115(1) of the Code of Civil Procedure, 1908, does not function as a Court of appeal to reappraise the evidence merely

because another view is possible. Unless the concurrent findings of fact are shown to have been arrived at by misreading the evidence, non-consideration of material evidence, *coram non-judice*, or by committing an error of law occasioning failure of justice, interference in revision is wholly unwarranted.

In the instant case, the petitioner has failed to demonstrate that either of the Subordinate Courts misread the evidence or ignored any material piece of evidence. On the contrary, both the Courts have meticulously examined the pleadings, oral testimony and documentary evidence before arriving at concurrent findings of fact. Those findings are based upon evidence on record and are neither perverse nor contrary to law.

Accordingly, I find no illegality, impropriety or jurisdictional error in the impugned judgments warranting interference by this Court in the exercise of its revisional jurisdiction.

As a result, the Rule is discharged.

There shall, however, be no order as to costs.

The petitioner is at liberty to withdraw the amount deposited towards the consideration money of the preempted property from the trial Court, if not already withdrawn, in accordance with law.

Let the Subordinate Courts' Records (SCR) be transmitted forthwith to the Courts concerned, together with a copy of this judgment.

(Abdur Rahman, J)