Present:-
Mr. Justice Mahmudul Hoque

Civil Revision No.2838 of 2023

Mohammad Saiful Alam
... Petitioner
-Versus-
Abdul Momen and others
...Opposite-parties
Mr. Tirtha Salil Pal with
Mr. Faisal Dastagir, Advocates
...For the petitioner
Mr. Chanchal Kumar Biswas, Advocate
...For the opposite-party Nos. 1 and 2.

Judgment on 4th August, 2025.

In this application under Section 115(4) of the Code of Civil Procedure, by granting leave to revision to the petitioner, Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 14.05.2023 passed by the learned Additional District Judge, 2nd Court, Chattogram in Civil Revision No.331 of 2022 disallowing the same and thereby affirming the judgment and order dated 06.09.2022 passed by the learned Joint District Judge, 1st Court, Chattogram in Pre-emption Miscellaneous Case No.242 of 2022 rejecting the application under Order VII Rule 11 of the Code of Civil Procedure should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the opposite-parties, as petitioner, filed Pre-emption Miscellaneous Case No.242 of 2022 in the Court of Joint District Judge, 1st Court, Chattogram against the present petitioner and others, as opposite party, for pre-emption of the case property under Section 24 of the Non Agriculture Tenancy Act, claiming that the case property originally belonged to one Rabiya Khatun wife of Moulavi Abdul Aziz Khan Bahadur who died leaving son Saifuddin Mohammad Khaled and daughter Hasina Khatun. Hasina Khatun died leaving brother Saifuddin Mohammad Khaled and husband Shahid Uddin. Shahid Uddin again married to Jahanara Begum as 2nd wife. Shahid Uddin and Saifuddin Mohammad Khaled by a Registered Partition Deed No.176 dated 07.01.1957 got the property partitioned between them and the property fell in the share of Shahid Uddin. After death of Shahid Uddin his wife, 4 daughters and said Saifuddin Mohammad Khaled again executed and registered a Partition Deed No.5945 dated 29.10.1989 and by the said deed the property was given in the share of Jahanara Begum and her 4 daughters, B.S. Khatian No.662 stand recorded in their names as per their share, the petitioners are nephews of Jahanara Begum. Jahanara Begum died

leaving 4 daughters who as per Mohammadan Law of inheritance, inherited $\frac{2}{3}$ rd property left by Jahanara Begum. The petitioner being nephews inherited $\frac{1}{3}$ rd share of the property left by Jahanara Begum, as such, the petitioners are co-sharer in the case property. But the daughter of Jahangara Begum transferred entire property to the petitioner-pre-emptee without service of notice upon the pre-emptor, consequently, they filed the instant case seeking pre-emption of the case property. In the case, the pre-emptor filed an application for temporary injunction against the opposite party-pre-emptee.

The pre-emptee appeared in the case and filed written objection against the application for injunction and also on the same day filed an application under Order VII, Rule 11(a) and (d) praying for rejection of application of pre-emption. On the ground that the pre-emptors are not co-sharers in the case property as Jahanara Begum during her life time by oral gift transferred the property in favour of 3 daughters and in support of oral gift she made an affidavit duly notarized on 15.02.2001. As such, the pre-emptor being not co-sharers in the case property had no locus standi to file the present case and there is no cause of action for the instant case.

The pre-emptors filed written objection against the application for rejection of pre-emption petition. The trial court heard the application and after hearing by the judgment and order dated 06.09.2022 rejected the same.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, the petitioner filed Civil Revision No.331 of 2022 before the Court of learned District Judge, Chattogram. Eventually, the revision was transferred to the Court of learned Additional District Judge, 2nd Court, Chattogram for hearing and disposal who after hearing by the impugned judgment and order dated 14.05.2023 rejected the same affirming the judgment and order of the trial court. At this juncture, the petitioner moved this Court by filing this application under Section 115(4) of the Code seeking leave to revision and obtained the present Rule and order of stay.

Mr. Tirtha Salil Pal with Mr. Faisal Dstagir, learned Advocates appearing for the petitioner at the very outset submit that admittedly the case property belonged to vendors' mother Jahanara Begum. The pre-emptors claimed that Jahanara Begum died leaving 4 daughters who as per law of inheritance got $\frac{2}{3}$rd of the property

left by Jahangara Begum and rest $\frac{1}{3}$ rd of the property inherited by them as nephews of Jahanara Begum, as such, they are co-sharer in the case property.

On the other hand, the opposite party claimed that Jahanara Begum during her life time made an oral gift of the case property in favour of 3 daughters i.e. vendors of the petitioner pre-emptee who got their names mutated in the khatian, paid rents to the government. Thereafter, they transferred the case property to the opposite party No.1-pre-emptee and the pre-emptee after purchase has been possessing the same with the knowledge of all. It is the definite case of the pre-emptee that the pre-emptors admitting transfer made by vendors in favour of pre-emptee field the case seeking pre-emption. It is fact that entire property has been transferred by the vendors. Therefore, nothing left to be inherited by the petitioner to seek pre-emption of the property transferred to the pre-emptee. Moreover, since the property transferred by way of gift to the vendors by their mother during her life time there is no question left for the pre-emptors to inherit any portion of the property from Jahanara Begum. As such, the case as framed in one hand has no cause of action as the

deed of sale has not yet been registered under Section 60 of the Registration Act and certificated by the Registering Officer and the case is barred by law as the pre-emptor inherited no property from Jahanara Begum and not co-sharers in the case property. The trial court as well as the revisional court below while rejecting the application for rejection of petition in pre-emption case, unfortunately did not consider the said facts and by ignoring provisions of law that to seek pre-emption, the petitioners must be co-sharer in the land and there must be a cause of action for filing the case, but in the instant case on that grounds the pre-emptors have no cause of action and no co-sharership in the case property, therefore, the petition in pre-emption case is liable to be rejected.

Mr. Chanchal Kumar Biswas, learned Advocate appearing for the opposite-party Nos.1 and 2-pre-emotors submits that admittedly case property belonged to Jahanara Begum. It is also admitted that Jahanara Begum died leaving 4 daughters out of which 3 daughters transferred the case property in favour of opposite party No.1-pre-emptee. As per law of inheritance, on the death of Jahanara Begum the pre-emptors as nephews inherited $\frac{1}{3}$ rd share of the property from

their aunt Jahanara Beugm. In the absence of male heirs 3 daughters of Jahangara Begum inherited $\frac{2}{3}$ rd share of the property. Without service of notices and knowledge of the pre-emptors, 3 daughters of Jahanara Begum sold entire property to the pre-emptee, as such, the opposite parties, as pre-emptors being co-sharer filed the instant case seeking pre-emption. The plea whatever has been raised by pre-emptee to the effect that Jahanara Begum during her life time made an oral gift in favour of 3 daughters is a matter of evidence which can be decided at the time of trial only. But for the reason of claiming that the vendors got the property from their mother by oral gift cannot be a ground for rejection of petition in pre-emption case without trial and recording evidences. As such, both the courts below rightly rejected the application and have not committed any illegality or error of law in the decision occasioning failure of justice. It is also argued that for prematurity of cause of action petition in pre-emption case cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure rather the court should wait for attaining maturity of cause of action for the suit under Section 60 of the Registration Act as decided by the apex court.

Heard the learned Advocates of both the parties, have gone through the petition in pre-emption case, application under Order VII Rule 11 of the Code of Civil Procedure, written objection thereto and the impugned judgment and order of the trial court as well as the revisional court.

This is a case under Section 24 of the Non Agriculture Tenancy Act, filed by the pre-emptors seeking pre-emption of the case property transferred by the vendors in favour of the pre-emptee opposite party No.1. Both the parties admitted that the case property belonged to one Jahanara Begum who died leaving 4 daughters. The pre-emptors are her nephews (brother's sons). As per Mohammadan Law of inheritance, in the absence of male (son) heirs, daughters obtained $\frac{2}{3}$ rd of the property left by their mother or father, $\frac{1}{3}$ rd share of the property will go to the brother or brother's sons. In the instant case, it is admitted that the pre-emptors are brother's sons of Jahanara Begum and the vendors are daughters of Jahanara Begum. As per law of inheritance as claimed by the pre-emptors, the vendors 3 daughters inherited $\frac{2}{3}$ rd share of the property left by Jahanara

Begum and $\frac{1}{3}$ rd share inherited by them as nephews of Jahanara Begum. The pre-emptee by filing written objection against application for injunction as well as in the application under Order VII Rule 11 of the Code of Civil Procedure claimed that Jahanara Begum during her life time made an oral gift in favour of her 3 daughters transferring the case property and to that effect she by a declaration duly notarized by the notary public declared that she gifted the property orally in favour of her 3 daughters.

Had the gift made by Jahanara Begum by a registered deed, question of evidence would not have arisen at this stage. Since the gift as claimed by the pre-emptee was made by Jahanara Begum orally and by an affidavit declared the oral gift and not mentioned in the recital of the sale deed under pre-emption, whether the property was actually gifted by Jahanara Begum during her life time in favour of the vendors required to be proved on trial of the case giving opportunity to both the parties to prove the same. But before recording evidence and proof of oral gift as claimed by the pre-emptee, at this stage it cannot be conclusively determined that the petitioner pre-emptors lost their co-sharership in the case property. If

it is proved that Jahanara Begum during her life time transferred the property in favour of her 3 daughters by way of oral gift, the pre-emptors will loss co-shareship in the property and the case will be dismissed and if they can prove that there is no oral gift as claimed by the pre-emptee the case will be sustained if they inherited $\frac{1}{3}$ rd share of the property left by Jahanara Begum. Because of this situation, the petition in pre-emption case, at this stage is not liable to be rejected in lemini without trial of the case. The trial court as well as the revisonal court while rejecting the application and affirming the judgment and order of the trial court rightly held that the grounds whatever taken by the pre-emptee in the application for rejection of plaint is not at all attracted the grounds embodied in Order VII Rule 11 of the Code of Civil Procedure.

Another question has been raised as to prematurity of cause of action for the case as the sale deed has not yet been registered under Section 60 of the Registration Act and certificated by the registering officer. In this regard I like to say that as per Section 48 of the Transfer of Property Act transfer takes effect from the date of execution of deed. With the execution and registration of a sale deed

owner of the property lost his right, title and interest in the property vesting the same in the purchaser. After purchase the purchaser acquired title in the property and he also acquired right to get his name mutated in the khatian, payment of rents, enjoyment by erecting houses thereon and got right to transfer the same to any other persons even before entering the sale deed into volume under section 60 of the Registration Act. Because of not entering a sale deed in the volume under section 60 of the Registration Act, there is no law to treat the purchaser not to be an owner of the property and has no right to transfer the same to any other persons. Whenever, a deed is registered under the Registration Act, transferring the property in favour of purchaser, the purchaser acquired title in the property by virtue of the sale deed. In case of filing a pre-emption case cause of action finally accrues on the date of completion of the procedure of registration of the deed under section 60 after entering into volume, sealed, signed and certificated by the registering officer being followed by us as an established precedent handed down by past Judges not provided in section 24 of the Non-agricultural Tenancy Act. This principle is only applicable, as we understand, in a pre-emption case for the purpose of cause of action and counting

the period of limitation for filing a case, not in respect of transfer of the property under the Transfer of Property Act. Cause of action is a bundle of fact. For filing a pre-emption case two situations have been mentioned in Section 24 of the Act, those are; a co-sharer of the land may, within four months of the service of the notice given under section 89, or, if no notice has been served under section 89, within four months of the date of knowledge of the transfer, apply to the court for the said portion of land “transferred” by a co-sharer. No provisions provided in Section 24 of the Act that “a co-sharer of the land may within four months from the date of registration of sale deed under section 60 of the Registration Act may apply to the court for the said portion of land. In the event of service of notice under section 89 upon the pre-emptor and receipt of the same by the co-sharer whether limitation can be saved by not filing case on the ground that the deed under section 60 of the Registration Act has not been sealed, signed and certificated by the registering officer on the date of receipt of notice by the pre-emptor. If it is so, limitation mentioned in section 24 will be of no use and will become redundant and the intention of legislature will be frustrated. Apart from this if a sale deed valued at Tk. 99/- only not required to be registered under

the registration act and usually not sealed, signed and certificated by registering officer or a sale deed after its registration and before entering into volume, sealed, signed certificated by the registering officer the registration complex in its entirety burnt into ashes the said deed will not enter into the volume, signed, sealed and certificated by the registering officer, till the Day of Resurrection, in that case which date would be cause of action for filing the case has not been addressed and decided by the apex court in any case as yet. It is also not decided whether a pre-emption case lies against an unregistered deed of sale or against a sale deed burnt before entering into volume, signed, sealed and certificated by registering officer. Moreover, there is no law that a property cannot be sold by an unregistered sale deed not required to be registered before amendment of Section 17 of the Registration Act or the purchaser will not acquire title in the property sold.

If a deed is executed and registered in the month of January and the pre-emptor filed pre-emption case in the month of March before sealed, singed and certificated by registering officer under section 60 of the Registration Act, question of prematurity comes. If

the sale deed in question registered under section 60 of the Act and entered into volume after 5 years, why the pre-emptor and pre-emtees as well as the court should wait upto such date for accruing cause of action for disposal of the case giving an undue advantage to the pre-emptor and a long rope with which to hang the pre-emptee, after such a lapse of time? Is there any provision of law provided in any act about consequences if such situation arises? Cause of action for filing case against a registered deed or unregistered sale deed for the same nature of cases (pre-emption) cannot be different and selectively chosen for each individual cases as the legislature provides no such provisions in law. However, beyond this, we are unable presently to explore further scenario of avenue or redress under the law given that such point was not raised or submitted upon at any length by the parties to the present petitioner, leaving those to be decided and or revisited by the apex court.

It is also to be noted that in all legal proceedings, reference of any transfer made mentioning the deed number and date of registration i.e. the date of presentation for registration not the date of completion of registration under section 60 of the Registration Act

as the transfer is effective from the date of transfer not from the date of completion of registration. In Section 24 of the Non-agricultural Tenancy Act word “transferred” has been mentioned, not the words added “and sale deed registered”.

Therefore, I find that the trial court and the revisional court committed no illegality in the decision occasioning failure of justice.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioner calling for interference of by this Court.

In the result, the Rule is discharged, however, without any order as to costs.

Order of ***stay*** granted at the time of issuance of the Rule stand vacated.

The trial court is hereby directed to dispose of the Pre-emption Miscellaneous Case No.242 of 2022 within a shortest possible time giving top most priority preferably within 6(six) months from the date of receipt of this judgment and order and without allowing unreasonable adjournment to the parties.

Communicate a copy of the judgment to the Court concerned at once.

Helal-ABO