

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice Md. Mansur Alam

First Miscellaneous Appeal No. 212 of 2019

In the Matter of:

Memorandum of appeal from the original order.

-and-

In the Matter of:

Mrs. Salma Begum and another.

.....Pre-emptor-appellants.

-Versus-

Md. Monowar Hossain Choukidar and others.

.....Pre-emptee-respondents.

Mr. Sk. Shaifuzzaman (Zaman) with

Mr. Shamsur Rahman, Advocates

..... For the appellants.

None appears.

.....For the respondents.

**Heard on 04.11.2024, 26.11.2024 and
Judgment on 01.12.2024.**

Sheikh Abdul Awal, J:

This First Miscellaneous Appeal at the instance of the defendant-appellants is directed against the judgment and order dated 08.04.2019 passed by the learned Joint District Judge, 2nd Court, Shariatpur in Miscellaneous Case No. 01 of 2015 disallowing the pre-emption case.

The short fact relevant for disposal of this appeal is that the appellants as pre-emptors filed Miscellaneous Case No. 01 of 2015 against the pre-emptee purchaser and others in the Court of the learned Joint District Judge, 2nd Court, Shariatpur under section 24 of the State Acquisition and Tenancy Act, 1950 for pre-empting the case on the allegation that the case land was originally recorded in the name of Jahan Ali Gain, who died leaving behind wife, son and daughters. Pre-emptee opposite party No.2 transferred the case land to pre-emptee opposite party No.1 Md. Monowar Hossain by a registered kabala dated 13.10.2008 without serving any notice upon the co-sharers including the pre-emptors. Pre-emptee opposite party No.1 is a stranger to the case jote. Pre-emptors for the first time on 25.11.2014 came to know about the transfer of the case land and thereafter they filed the case within 4 months from the date of knowledge on 13.01.2015 after exhausting all the legal formalities.

Pre-emptee-purchaser as opposite party No.1 contested the case by filling written objection denying all the material allegations made in the pre-emption application contending, inter-alia, that the case is not maintainable in its present form and manner, the case is hopelessly barred by limitation and the pre-emptors having knowledge of transfer from the very beginning although they filed the case on false statements under section 24 of the State Acquisition and Tenancy Act, 1950 after long lapse of 7 years and as such, the case is case is liable to be dismissed.

At the trial the pre-emptor No.1 herself was examined as PW-1 and another one was examined as PW-2 and pre-emptee

also examined 2 witnesses as OPWs and both the parties exhibited some documents to prove their respective cases.

The learned Joint District Judge, 2nd Court, Shariatpur upon hearing the parties and on considering the materials on record by his judgment and order dated 08.04.2019 disallowed the miscellaneous case (pre-emption) on the ground of limitation.

Being aggrieved by the aforesaid impugned judgment and order dated 08.04.2019, the pre-emptor-appellants preferred this First Miscellaneous Appeal before this Court.

Mr. Sk. Shaifuzzaman, the learned Advocate appearing for the pre-emptor-appellants submits that the learned Joint District Judge, 2nd Court, Shariatpur under misconception of law and facts most illegally dismissed the case on the wrong finding that the case is hopelessly barred by limitation, in-fact the pre-emptors filed the case within 4 months from their date of knowledge. The learned Advocate further submits the trial Court held that the pre-emptors having failed to disclose the date of knowledge as well as source of knowledge and place although PW-2 stated in his evidence that he came to know as to transfer of the case land from one Kashem Chowkidar in the house of Joydal Dewan and thus finding of the trial Court that the pre-emptors having failed to disclose the date of knowledge as well as source of knowledge and place is perverse being contrary to the evidence on record. The learned Advocate further submits that OPW-1 stated in his evidence that he did not know whether the notice was served upon the pre-emptors and others although the trial Court without considering this vital aspect of the case most illegally dismissed the pre-emption case on wrong findings that the case is barred by

limitation. The learned Advocate to strengthen his submission has relied on the decision reported in 29 DLR 178.

No one appears to oppose the appeal on repeated calls.

Having heard the learned counsel for the petitioners and having gone through the materials on record, the only question that calls for our consideration in this appeal is whether the trial Court committed any error in finding that the case is barred by limitation.

Admittedly, in this case pre-emptee opposite party No.2 transferred the case land to opposite party no.1 (pre-emptee purchaser) on 13.10.2008 and it is on record that both the parties are well known with each other and pre-emptee seller is full brother of pre-emptor No.2 and both are resident of the same house and pre-emptors filed the case long lapse of 7 years on 13.01.2015. It further appears that pre-emptee purchaser after purchasing the case land mutated his name and paid rent to the Government in accordance with law. It also appears that the seller opposite party No.2 clearly mentioned in the deed that possession of the case land has been handed over to pre-emptee purchaser.

The trial Court as first court of fact on due consideration of the entire evidence and materials on record came to its findings that that- “দলিল সম্পর্কে জানার বিষয়ে প্রার্থী ছালমা বেগম পি.ডব্লিও-১ হিসাবে তার জবানবন্দীতে বলেছেন, ২৫/১১/১৪ তাং দলিলের বিষয় জানতে পারেন। কিন্তু তিনি তার জবানবন্দীতে কোন স্থানে এবং কোন সময়ে জানতে পারেন তা বলেননি। তার দরখাস্তেও এ বিষয়ে বলা নেই। সাক্ষীদেরকে কে ডেকে নিয়েছেন তা দরখাস্তেও এমনকি সাক্ষ্য বলা নেই। তার অপর সাক্ষী হামিদ বেপারী তাকে সমর্থন করে সাক্ষ্য দিয়েছেন। কিন্তু তিনিও দলিল সম্পর্কে জানার স্থান ও সময় সম্পর্কে কিছুই বলেননি। প্রতিপক্ষের ভাই কাশেম

চৌকিদার দলিলের কথা প্রকাশ করে বলা হয়েছে। কাশেম চৌকিদার তার সাক্ষ্য বিষয়টি স্বীকার করেনি। এমনকি তাকে জেরায় এধরনের বিষয়ে তার মনোযোগ আকর্ষণ করে সত্যতা প্রমানের চেষ্টা করা হয়নি।”

This being purely a finding of fact based on proper assessment of the evidence on record. Furthermore, in this case we find nothing on record to suggest that the pre-emptors by adducing reliable evidence having succeeded to prove the exact date when they came to know about the transfer of the case land. The pre-emptee by way of written objection and by adducing evidence challenged the date of knowledge and asserted the pre-emptors had earlier knowledge of the kabala in question. In the present case admittedly the application for pre-emption was filed long 7 years after the transfer in question and a heavy burden lies on the pre-emptors to discharge the onus of proof that he filed the case within four months from the date of knowledge. The pre-emptors having failed to discharge the initial onus by adducing cogent and reliable evidence. In the facts and circumstances of the case the trial Court committed no wrong in holding that the pre-emptors failed to prove their alleged date of knowledge by adducing reliable legal evidence. Therefore, we are unable to accept the plea as taken by the pre-emptors.

The decision cited is distinguishable on facts.

The learned Judge of the trial court appears to have considered all the material aspects of the case and justly dismissed the pre-emption case on the ground of limitation. No interference is, therefore, called for.

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

Send down the LC Records at once.

Md. Mansur Alam, J:

I agree.