

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3563 of 2023.

In the matter of:

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

And

Abdur Rashid Bepari

...Petitioner

-Versus-

Abdul Baten Mridha and others

...opposite parties

No one appears

...For both the petitioner

Mr. Md. Moshihur Rahman, Advocate

....For the opposite party Nos.1-2.

Heard & Judgment on: 21.11.2024.

This rule was issued calling upon the opposite party Nos.1-2 to show cause as to why the being Order No.47 of 31.05.2023 passed by the learned Joint District Judge, 1st Court, Munshigonj in Miscellaneous Appeal No.44 of 2015 rejecting the application for accepting additional written objection and re-calling the O.P.W. No.1 should not be set aside and/or pass such other order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as petitioner instituted above Miscellaneous Case No.10 of 2015 under Section 96 of the State

Acquisition and Tenancy Act for pre-emption against registered kobla deed dated 17.10.2005 executed by opposite party Nos.2-3 in favor of opposite party No.1 transferring 5.75 decimal land.

It was alleged that the petitioner was a co-share in the disputed holding but the purchaser opposite party No.1 was a stranger to the same. Above case was contested by opposite party No.1 by filling a written objection. On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge allowed above case and granted pre-emption.

Being aggrieved by above judgment and order of the trial court opposite party No.1 as appellant preferred Miscellaneous Appeal No.44 of 2015 to the district judge, Munshiganj which was transferred to the 1st court of Joint District Judge, Munshiganj for hearing and disposal.

In above appeal the appellant filed an additional written objection wherein he has provided a new description of his genology and alleged that he was a co-sharer by inheritance in the disputed joma and above case was not tenable in law and filed another petition for recall of P.W.1 for further examination.

The learned joint district judge rejected above two petitions by impugned order dated 31.05.2023.

Being aggrieved by above judgment and order of the learned judge of the court of appeal below above appellant as petitioner moved to this court and obtained this rule.

No one appears on behalf of the petitioner at the time of hearing of this civil revision although the matter appeared in the list for hearing on several dates.

Mr. Md. Moshihur Rahman learned Advocate for opposite parties No.1-2 submits that the petitioner has mentioned about an ex-parte judgment and decree of Partition Suit No.999 of 2021 which was instituted after filing of this pre-emption case and since above pre-emption case was allowed on contest before above ex-parte judgment and decree of above partition suit the learned Joint District Judge rightly rejected above petitions which call for no interference.

I have considered the submissions of the learned Advocate for the opposite parties and and carefully examined all materials on records.

It turns out from record that the appellant submitted two petitions one was an additional written objection wherein the appellant provided a

genology of his family and mentioned about several transfers of the land of disputed holding and claimed that he was a co-sharer by inheritance in above holding.

In order to substantiate above claim the appellant wanted to give further evidence by recalling opposite party witness No.1.

It is true that the petitioner also mentioned about Partition Suit No.999 of 2021 which he filed as a plaintiff and which has been decreed ex-parte after the passing of the judgment and order of this pre-emption case.

A civil appeal is considered as continuation of the original proceedings and our Civil Procedure Code provides for amendment of the pleadings at any stage of the proceedings provided the proposed amendment does not defeat any right already accrued in favor of the opposite party. There is nothing on record to show that if above additional written objection is accepted and additional evidence is recorded then any right already accrued in favor of the responded will be defeated.

As soon as the additional written objection of the petitioner is accepted the opposite party shall get an opportunity to amend his miscellaneous

petition, if any, and cross examine the opposite party witness No.1 after further examination and adduce further evidence.

On consideration of above facts and circumstances of the case and materials on records I hold that the ends of justice will be met if above two petitions of the petitioner are allowed and the opposite party gets an opportunity to amend his pre-emption application, cross examine opposite party witness No.1 after further examination and adduce further evidence and then above appeal is disposed of on merit.

In above view of the materials on record I find substance in this petition under section 115(1) of the code of civil procedure and the rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute.

The Order No.47 of 31.05.2023 passed by the learned Joint District Judge, 1st Court, Munshigonj in Miscellaneous Appeal No.44 of 2015 is set aside.

The learned Joint District Judge is directed to allow above two petitions of the petitioner and then provide an opportunity to the opposite party to amend his petition if any and adduce further evidence and then proceed with the disposal of the

appeal on merit in accordance with law expeditiously within a period of 06 (six) months.

Let the lower courts' records be transmitted down at once.

Md. Kamrul Islam
A.B.O