

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No.5082 of 2014

Md. Mosharof Hossain being dead his heirs:

1(a) Pachu Shaikh and otherspetitioners

-Versus-

Md. Waliar Shaikh and others

.....opposite parties

No one appears for either party

Judgment on 01.02.2024

In this Rule the heirs of the vendor have challenged the judgment and order of affirmance passed by the Courts below in a pre-emption case allowing pre-emption.

Opposite party 1 herein as pre-emptor filed the miscellaneous case under section 96 of the State Acquisition of Tenancy Act for pre-emption of the land sold by opposite party 3, the vendor to opposite parties 1 and 2, the pre-emptees. In the case the pre-emptor claimed that his father Abdul Malek who was also the father of the vendor obtained the suit land by a *kabulyat* dated 08.03.1939. SA *khatian* Nos. 364 and 361 were prepared in Malek's name. He died leaving behind three sons Mosharaf Hossain opposite party 3, the pre-emptor Habibur Rahman Shaikh and Aliar Rahman Shaikh opposite party 4 and wife Maju Bibi. Subsequently Maju Bibi died and consequently the pre-emptor and opposite parties 3 and 4 became the co-sharer in the suit *jote* by way of inheritance. Opposite party 3 very secretly sold the suit

land measuring an area of .48 acres to pre-emptees on 21.11.2002 who are strangers in the *jote*. The pre-emptor came to learn about the said transfer and filed this case within the period of limitation.

Opposite party 3, the vendor contested the case by filing written objection contending that he mortgaged the suit land to the pre-emptees at Taka 15 thousand and an agreement for reconyence was signed between the parties. As per the terms of the agreement pre-emptee 2 registered a sale deed in respect of .24 acres of land on 07.06.2006 to opposite party 3. Since it is not a *kabala*, the pre-emption application is not maintainable.

To prove the case, the pre-emptor examined one witness while the vendor examined 2. Learned Assistant Judge on perusal of the documents and oral evidence of the parties allowed the case for pre-emption. In appeal, the aforesaid judgment and order of pre-emption was affirmed against which the vendor approached this Court with the present revision and obtained this Rule.

No one appears for either party. Since this is a very old matter against judgment and order of a pre-emption case, it is taken up for disposal on merit.

I have gone through the judgments passed by the Courts' below and grounds taken in the revisional application. On perusal of the judgments it is found that the vendor-petitioner did not deny

that pre-emptor is not a co-sharer in the suit *jote*. He did not state that notice under section 89 of the SAT Act was served upon the pre-emptor. It is further found that the pre-emptor filed the case within the period of limitation and the case is not bad for defect of parties.

The only point raised by the vendor is that the deed in question is not a *kabala* but it is a deed of mortgage and pre-emptee 2 subsequently by a *kabala* transferred .24 acres of land to the vendor, and as such, the application for pre-emption does not lie. It transpires that the deed dated 20.11.2002 exhibit-3 is a registered *kabala* by which .48 acres of land was transferred to the pre-emptees. The agreement for reconveyance exhibit-Ka dated 20.11.2002 is an unregistered document. Considering the contents of the disputed *kabala* exhibit 'Ka' it cannot not be considered as a mortgage deed under section 95 of the SAT Act. It further appears that pre-emptee 2 transfereed .24 acres of land by a *kabala* dated 07.06.2006 to the previous vendor. The aforesaid *kabala* was registered at the fag end of trial of the pre-emption case. In the attending facts and circumstances, I find that the deed of agreement and *kabala* dated 07.06.2006 were subsequently made only to frustrate the pre-emption case.

I find that the Courts below on proper assessment of evidence and documents allowed the case for pre-emption and

rejected the plea of the vendor that they mortgaged the land to opposite parties 1 and 2. I find no misreading and non consideration of the evidence on record for which the decision passed by the Courts below could have been otherwise. I find nothing to interfere with the concurrent findings of the Courts below. No ground has specifically taken in the revisional application to that effect.

Therefore, I find no merit in this Rule. Accordingly, the Rule is discharged without any order as to costs.

Communicate this judgment and order to the Court concerned.