

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO. 3839 OF 2022**

In the matter of:

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

And

Jahanara Begum

... Petitioners

-Versus-

Md. Abu Kawsar and others

... Opposite parties

Mr. Md. Mubarak Hossain with

Mr. Rajib Kanti Aich, Advocates

.... For the petitioner.

Mr. Md. Sadekur Rahman Jibon, Advocate

.... For the opposite party No.1.

**Heard on 21.08.2024.**

**Judgment on 22.08.2024.**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 19.04.2022 passed by the Additional District Judge, 2<sup>nd</sup> Court, Cumilla in disallowing the Miscellaneous Appeal No.16 of 2020 and thereby affirming the judgment and order dated 30.01.2020 passed by the learned Assistant Judge, Brahmanpaa, Cumilla in disallowing the Miscellaneous Pre-emption Case No.08 of 2017 and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as petitioner filed above case under Section 96 of the State Acquisition and Tenancy Act for pre-emption of 9 decimal land transferred by registered kabala deed dated 10.06.2015 by opposite party No.2 in favour of opposite party No.1. It was alleged that the petitioner was a co-sharer by inheritance but opposite party No.1 a stranger to above holding and above transfer was made beyond the knowledge of the petitioner.

Opposite party No.2 contested the suit by filling a written objection alleging that the disputed holding was spilted up and separate B.S. khatian has prepared in the name of the opposite party No.1 and the class of the disputed land was changed as viti. The petitioner was no more a co-sharer of the above holding. The opposite party is living in above dwelling house alongwith the members of his family by constructing a home.

At trial the petitioner and the opposite party examined two witnesses each. Documents produced and proved by the petitioner were marked as marked Exhibit Nos.1-4 and those of the defendants were marked as Exhibit Nos.Ka – Uma.

On consideration of the facts and circumstances of the case and materials on record the learned Assistant Judge dismissed the suit holding that the disputed S.A. Khatian No.100 was splited up and the

disputed land has been recorded separately in the name of the opposite party in B.S. Khatian No.66.

Being aggrieved by and dissatisfied with above judgment and order of the learned Assistant Judge petitioner preferred Miscellaneous Appeal No.16 of 2020 to the District Judge, Cumilla which was heard by the learned Additional District Judge who dismissed the appeal and upheld the judgment and order of the trial Court.

Being aggrieved by above judgment and order of the Court of appeal below the appellant as petitioner moved to this Court and obtained the Rule.

Mr. Mubarak Hossain, learned Advocate for the petitioner submits that undisputedly the petitioner is the co-sharer by inheritance in the disputed S.A. Khatian No.100 and opposite party No.1 is stranger to the same and above case was filed within the statutory period of time. As such the learned Additional District Judge should have allowed the appeal set aside the erroneous judgment and order of the trial Court and allowed the preemption. But the learned Judge failed to appreciate above materials on record correctly and most illegally dismissed the appeal and affirmed the flawed judgment and order of the Trial Court which is not tenable in law.

Mr. Sadekur Rahman Jibon, learned Advocate for the opposite party No.1 submits that admittedly the petitioner filed this case for pre-emption of 9 decimal land of S.A. Khatian No.100. But above land has been separately recorded in the name of the opposite party No.1 in separate B.S. Khatian No.66. Since the disputed holding does not exist in the S.A. Khatian anymore the claim of pre-emption petitioner does not have any leg to stand.

The learned Advocate further submits that in the petition for pre-emption that the petitioner did not mention that if the pre-emption was allowed and the disputed land was added to his ownership that will not exceed the limit of retainable land as mentioned in Section 90 of the State Acquisition and Tenancy Act, 1950. As such the learned Additional District Judge has rightly dismissed the appeal and affirmed the judgment and order of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It turns out from the application submitted by the petitioner under Section 96 of the State Acquisition and Tenancy Act, 1950 for pre-emption of disputed 9 decimal of land that no statement has been made by the petitioner that if the pre-emption is allowed and disputed land is

added to his ownership his total land shall not exceed the limit of retainable land as provided in Section 90 of the State Acquisition and Tenancy Act, 1950. Section 96 of the State Acquisition and Tenancy Act, 1950 provides two conditions to be qualified to file an application for pre-emption. Those conditions are enumerated in clause No. A and B respectively in Section 96(1) of the Transfer of the Property Act. Proviso A Provides that the applicant must have the competence to acquire and retain the land under pre-emption and that after addition of the land under pre-emption the total land of the pre-emptor shall not exceed the limit of retainable land as provided in Section 90 of the State Acquisition and Tenancy Act, 1950.

The petitioner did not make any statement in his application for pre-emption that if the disputed land is added to his ownership then his total total land shall not exceed the quality of retainable land as provided in Section 90 of the State Acquisition and Tenancy Act, 1950. As such this application of the petitioner was barred by Section 90 of the State Acquisition and Tenancy Act, 1950.

It is admitted that although the case was filed before final publication of the B.S. Khatian of the disputed land but before determination of the case the trial Court found that the B.S. Khatian has been finally published and the disputed holding has been split up

and disputed 9 decimal land has been separately recorded as viti land in the name of the opposite party in B.S. Khatian No.66.

As such the petitioner ceased to be a co-sharer of the holding of B.S. Khatian No.66 and the holding of S.A. Khatian No.100 no more exists.

On consideration of above facts and circumstances of the case and materials on record I hold that the learned Additional District Judge on correct appreciation of materials on record rightly dismissed the appeal and upheld the judgment and order of the trial Court which calls for no interference.

I am unable to find any substance in this application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

However, there is no order as to costs.

Send down the lower Court's records immediately.