

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 753 of 2023

Mizanur Rahman (Akkas)

... Petitioner

-Versus-

Mawlana Md. Delowar Hossain and others

... Opposite parties

No one appears for the petitioner

Mr. Md. Zulfiquer Matin, Advocate

... for opposite party number 1

Judgment on 10.12.2024

This rule was issued on an application under Section 115(1) of the Code of Civil Procedure to examine the legality of judgment and order dated 27.10.2022 passed by the Additional District Judge, First Court, Faridpur in Miscellaneous Appeal Number 46 of 2013 dismissing the appeal on affirming those dated 22.10.2013 passed by the Senior Assistant Judge, Nagarkanda, Faridpur in Miscellaneous Case Number 83 of 2006.

The matter was fixed for hearing by order dated 20.08.2024. It was taken up for hearing on 25.11.2024, when no

one for the petitioner appeared. However, for securing the ends of justice, this court passed an order for placing the matter in the daily cause list with the name of the learned advocate for the petitioner. Accordingly, the matter was appearing in the cause list with name of the petitioner's Advocate. It was called on for hearing on 01.12.2024, but no one for the petitioner appeared. Learned advocate for the opposite party number 1, however, appeared and made his submission in part. Thereafter it appeared in the list as a part heard matter on 02.12.2024, when learned Advocate for opposite party number 1 concluded his submission, still no one for the petitioner appeared. Under the circumstances, the matter is being disposed of in absence of the petitioner.

Facts for disposal of the rule, in brief, are that opposite party number 1 as preemptor filed an application under Section 96 of the State Acquisition and Tenancy Act, 1950 (for short, SAT Act) for preemption of the land as described in the preemption application. The preemptor's case was that he was a co-sharer of the case land by way of purchase and opposite party number 1 (petitioner herein) was a stranger thereto. Opposite party number 2, another co-sharer of the case land transferred it by sale deed number 1634 dated 08.03.2005 to opposite party number 1 in a secret manner. By virtue of the said sale deed,

opposite party number 1 went in possession of the case land on 22.08.2006, when the preemptor came to know about the transfer. The sale deed was recorded in the volume book of the Registry Office on 13.06.2006. Hence the case.

Opposite party number 1 contested the case by filing a written objection contending, *inter alia*, that some of the co-sharers, namely, Meherunnesa and others were not made parties in the application. Therefore, the case was bad for defect of party and was also barred by limitation. His further case was that before transferring the case land, opposite party number 2 had proposed the preemptor to purchase the case land. As he was not willing to purchase the case land, it was transferred to opposite party number 1. The preemptor's claim was, therefore, barred by the principle of waiver and estoppel.

On the aforesaid pleadings, the trial framed issues and proceeded with trial. In course of the trial, the parties recorded oral evidence and adduced documentary evidence in order to prove their respective cases.

On conclusion of trial, learned Senior Assistant Judge found there was no defect of party and that the case was not barred by limitation inasmuch as the unamended Section 96 SAT Act would apply in the present case as the land was transferred

before the amended section came in force on 20.09.2006. In respect of the objection on waiver, the trial court believed the evidence of PW 1 and discarded the objection. Learned trial Judge thus allowed the preemption case by judgment and order dated 22.10.2013. Being aggrieved, the pre-emptee preferred Miscellaneous Appeal Number 46 of 2013 before the District Judge, Faridpur. Learned Additional District Judge, First Court, Faridpur ultimately heard the appeal and dismissed the same affirming that of the trial court.

Mr. Md. Zulfiqur Matin, learned advocate for opposite party submits that the preemptor was able to prove that he was a co-sharer of the case land and it was transferred without any notice to him. Since the case was well within time and was proved by legal evidence, the courts below allowed the preemption case. The courts below committed no error of law and as such the rule is liable to be discharged.

I have considered the submissions of the learned advocate and gone through the record. It appears that the preemptor himself deposed as PW 1 and adduced his sale deed dated 11.12.2004 in evidence, which proved him as a co-sharer by purchase. He also proved the mutated record in his name that was done on 22.08.2006. It was pleaded and proved by evidence

that the sale deed in question was produced for registration before the Sub-Registrar on 08.03.2005, recorded in the volume book on 13.06.2006 and the pre-emptor filed the case on 10.10.2006. Since the cause of action for filing the case arose before the amended law came in force on 20.09.2006, the limitation would be computed under the unamended law. The trial court rightly found the case to be within time. The appellate court also considered the evidence and concurred with the findings of the trial court.

I do not find any error of law in allowing the preemption case by the trial court and dismissing the appeal by the appellate court.

Accordingly, the rule is discharged. The order of stay granted earlier stands vacated.

Send down the records.