Bench:
Mr. Justice Bhishmadev Chakrabortty
And
Mr. Justice Murad-A-Mowla Sohel

First Miscellaneous Appeal No. 268 of 2023
with
Civil Rule No. 65(fm) of 2020

Amar Krishna Saha .....appellant
-Versus-
Heirs of late Nasim Ajfor Ahmmed @ Nasim Ashraf 1 (Ka) Rokosona Rozy and others
..... respondents

Mr. Md. Rafiqul Islam with
Mr. Md. Alamgir Hossen, Advocates
..... for the appellants

Mr. Chanchal Kumar Biswas with
Mr. Sougata Guha, Advocates
..... for respondents 1 and 2

Judgment on 26.11.2025

Bhishmadev Chakrabortty, J:

Since the Rule has arisen out of the aforesaid first miscellaneous appeal and the parties thereto are same, both have been heard together and being disposed of by this judgment.

The appeal at the instance of the pre-emptee is directed against the judgment and order of the Joint District Judge, Court 1, Khulna passed on 28.08.2019 in Miscellaneous Case 69 of 2013 allowing the case for pre-emption.

After filing of the appeal the appellant filed an application for staying operation of the impugned judgment and order upon which the Rule was issued and an interim order was passed which still subsists.

The predecessor of respondents 1-3 herein filed the case for pre-emption of the land described in the schedule to the case stating that .36 acres of land of SA khatian 3351 originally belonged to Nesar Uddin Ahmed. He died leaving behind his wife Mymunnessa, two sons Nasim Ajfar Ahmed (the pre-emptor) and Nasir Aslam Ahmed opposite party 3 and a daughter Halima Ahmed as heirs. The aforesaid heirs inherited the land left by the deceased according to their share. Mymunnessa died leaving behind 2 sons pre-emptor Nasim Ajfar Ahmed, opposite party 3 Nasir Ahmed and the daughter Halima Ahmed and they inherited the property accordingly. Halima Ahmed during possession and enjoyment of her share exchanged it with the pre-emptor and opposite party 3 and thus the above two sons of Naser Ahmed got the whole property. During possession and enjoyment of his share pre-emptor gifted .0330 acres to opposite party 2 Amina Afsari, his daughter in 2010 and subsequently executed a heba on 18.09.201 on support of such gift. Amina Afsari during possession and enjoyment in the gifted share sold it to the pre-emptee Amar Krishna Saha at a consideration of Taka 10.00 lac behind the back of the pre-emptor. To defeat the case for pre-emption she had shown the consideration money at Taka 12.00 lac. The pre-emptee entered into the suit land on 12.04.2013 and was taking measurement of it. On the quarry of the pre-emptor he disclosed that he purchased the suit land from opposite party 2 Amina Afsari. Subsequently opposite party 2 admitted of selling the property to the pre-emptee. The pre-emptor

took definite information on 18.04.2013 about the said sale. The pre-emptor is a co-sharer in the suit land by inheritance and the pre-emptee is a stranger purchaser. The case land is required for the enjoyment of the pre-emptor's other land. The pre-emptor had less land than that of the ceiling prescribed by the law. Hence, the case for pre-emption under section 24 of the Non Agricultural Tenancy Act, 1949 (the Act, 1949).

Opposite party 1 pre-emptee, the appellant herein contested the case by filing written objection. In the written objection he admitted the fact of ownership of Naser Uddin Ahmed over .36 acres of land of SA Khatian 3351 and getting the land by the pre-emptor as an heir of his father and mother. But he stated that the pre-emptor got total .1440 acres in his share. The pre-emptor sold therefrom .0330 acres to opposite party 7 Rashid and same quantum of land to Sankar Sarkar opposite party 6. Both the purchasers mutated their names and open separate khatians. The pre-emptor further transferred .0330 acres to his younger sister Sumiya Afsari through a heba. He further gifted .0330 acres through another heba to his elder daughter Amina Afsari and handed over its possession to her. He then executed and registered a deed of heba on 18.09.2011 in support of the gift. He handed over all the necessary documents of land to the donees with all power. Amina Afsari through a miscellaneous case mutated her name, separated the khatian in her name in place of her father and had been possessing the same by paying rent to the concerned. In need of

money he sold out it to this pre-emptee through a registered *kabala* dated 10.01.2013 at a consideration of Taka 12 lac. Opposite party 2 before selling the case land requested the pre-emptor to purchase it but he refused the proposal for want of money and other reasons. The pre-emptee after purchase filled the low land with earth and turned it into a land for erecting house by expending Taka 6.00 lac. He mutated his name in respect of the case land and paid rent to the government. The pre-emptor has no necessity of the land. He sold other lands to third parties adjacent to the case land. He filed the miscellaneous case at the ill advice of some vested quarters and hence the case would be rejected.

The trial Court framed 7 issues to adjudicate the matter in dispute. In the trial the pre-emptor examined 2 witnesses and produced his documents exhibits-1-7. On the other hand the pre-emptee also examined 2 witnesses and his documents are exhibits-Ka-Ja. However, the Joint District Judge by the judgment and order under challenge in this miscellaneous appeal allowed the case for pre-emption.

Mr. Md. Rafiqul Islam, learned Advocate for the pre-emptee-appellant taking us through the materials on record submits that the impugned deed although executed and registered in 2013 but entered into the volume in 2018 under section 60 of the Registration Act. The subsequent purchaser, *i.e.,* the pre-emptor separated his *jama* before the deed entered into the volume, therefore, when cause of auction of

filing the case arose *jama* was already separated and hence the pre-emptor had no *locus standi* to file the case. Mr. Islam then refers to the cases of Abul Kasem Md. Kaiser vs. Ramjan Ali and others, 21 ALR (AD) 18 and the case of Kabir Ahmed Chowdhury and another vs. Sreemoti Sukladas Bhowmic and others, 18 ADC 530 and relying on the *ratio* laid therein submits that in the aforesaid cases the Hon'ble appellate division held that in a case under section 24 of the Act, 1949 if the pre-emptor or his predecessor losses ownership in the case *jote,* the pre-emptor is to be treated is not a co-sharer and as such his right to pre-empt exists no more. In the case in hand the co-sharership of the pre-emptor has been seized on mutation in respect of the land under pre-emption by the vendor Amina Afsari and subsequently by the pre-emptee. The pre-emptor had lost his *locus standi* to file the instant case for pre-emption. The aforesaid proposition of law was not at all addressed and considered by the trial Court. Since the pre-emptor had lost his co-sharership in the suit land by separation of *jama,* the trial Court ought to have rejected the case for pre-emption and by not doing so erred in law. The appeal, therefore, be allowed and the judgment and order passed by the trial Court be set aside.

Mr. Chanchal Kumar Biswas, learned Advocate for pre-emptor's heirs, respondents 1 and 2 on the other hand supports the judgment and order of allowing pre-emption by the trial Court. He refers to the cases of Aminullah (Md) and others vs. Serajul Huq and

others, 65 DLR (AD) 82; Asad Ali (Md) and another vs. Golam Sarwar and others, 66 DLR (AD) 315; the leave granting order passed in Civil Review Petition 149 of 2020 and Habibur Rahman Bhuiyan (Md) and others vs. Galman Begum and others, 64 DLR (AD) 133 and submits that in the cases reported in 65 DLR (AD) 82 and 66 DLR (AD) 315, the appellate division clearly viewed that the provision of section 24 of the Act, 1949 and section 96 of the State Acquisition Tenancy Act, 1950 (SAT Act, 1950) are not same. Section 24 relates to the land while section 96 relates to holding. The word land in section 24 Act, 1949 means a co-sharer in the plot not the holding as mentioned in section 96 of the SAT Act, 1950. An application under section 24 of the Act, 1949 can be filed by a pre-emptor in respect of plot which may be a part of another khatian. He submits that the judgment passed by the appellate division comprising of three hon'ble judges reported in 21 ALR (AD) 18 has been challenged in Civil Review Petition 149 of 2020 and leave has been granted on that particular point. He further submits that the judgment reported in 18 ADC 530 has been passed by the same three judges of the appellate division taking a similar view. He finally submits that in case of conflict of two decisions of the appellate division on similar point of law, the law settled by the larger bench shall prevail which has been settled in case reported in 64 DLR (AD) 133. In this particular case since the judgment passed in 65 DLR (AD) 82 comprising of six hon'ble judges of the appellate division, the

principle laid therein shall prevail over other judgments of the appellate division passed by less number of judges. The trial judge correctly relied on the principle laid 66 DLR (AD) 315 and held that although in the mutation case the *jama* in the name of the vendor had been separated but the pre-emptor remained a co-sharer in the land. Therefore, the pre-emptor had *locus standi* to file the case for pre-emption. In the premises above, this appeal having no merit would be dismissed.

We have considered the submissions of both the sides, gone through the materials on record, the provision of law and *ratio* of the cases cited by the parties.

It is found that Mr. Islam, learned Advocate for the appellant advanced his argument on two folds. Firstly, he submits that the transfer was made in the year 2013 but the deed entered into the volume in 2018. The case for pre-emption was filed in 2013, *i.e.,* before the cause of action arose. The *jama* in the name of subsequent purchaser was separated before cause of action arose in 2018. So the case for pre-emption filed in the year 2013 which ought to have been filed in the year 2018 is a premature one as the time of arising cause of action the *jama* was separated. The pre-emptor had no *locus standi* to file the case in 2018 when the deed entered into the volume. The aforesaid submissions of the learned Advocate for the appellant bears no substance because by now it is well settled by our apex Court in numerous cases that if a pre-emption case is filed before entering the

deed into the volume, it will be treated as prematured one and on the entry of the deed into the volume the case is to be treated the matured and pre-emption case will not fail for it. Therefore, the appellant cannot get any advantage on the plea that the case was prematured at the time of its filing or the pre-emptor had no *locus standi* in 2013. The second fold of argument of Md. Islam is that as per the *ratio* laid in the cases of 21 ALR (AD) 18 and 18 ADC 530 the pre-emptor, on separation of *jama* of his vendor in respect of the case land through a mutation case lost his co-sharership had no *locus standi* to file the case. In this regard, we are of the view that the provisions laid in section 24 of the Act, 1949 and section 96 of the SAT Act, 1950 are quite distinct. Section 24 of the Act, 1949 provides for one or more co-share tenant of such 'land' while section 96 of the SAT Act, 1950 provides for 'holding'. In the case reported in 21 ALR (AD) 18, the appellate division consisting of three hon'ble judges held- *"By separating the jama the pre-emptor and/or his predecessor having already lost her/his character of co-sharership in the case jote, so the pre-emptor is no more a co-sharer and as such his right to pre-empt as a co-sharer does not exist anymore".* A similar view has been taken by the appellate division comprising of the same three judges in 18 ADC 530 case. It is found that the case reported in 21 ALR (AD) 18 has been challenged in Civil Review Petition 149 of 2020 and leave has been granted comprising of eight hon'ble judges of the appellate division. Particularly leave has been granted on the point

that the bench of three judges of the appellate division took the aforesaid view by ignoring the law and a series of decisions of the appellate division on similar point. Therefore, the law laid down by the bench comprising of three judges of the appellate division is under challenge and *in seisin* of the appellate division and to be disposed of in course of time. Moreover, in the case of 64 DLR (AD) 133 the appellate division held that a view taken by a larger bench shall prevail over the decision on similar point passed by another bench comprising of less number of judges. In that view of the matter, we find that law laid down the case reported in 65 DLR (AD) 82 comprising of six judges of the appellate division shall prevail over the view taken in 21 ALR (AD) 18 and 18 ADC 530 case by three judges. The law laid in 65 DLR (AD) 82 and the *ratio* of the cases of Md. Mojaffar Khan vs. Yousuf Khan, 11 DLR (SC) 78; Sarfuddin Chowdhury vs. Abdul Karim, 52 DLR 41 ; SM Bashir Uddin vs. Jahirul Islam Chowdhury, 35 DLR (AD) 230 and Abdul Rouf vs. Ahamuda Khatun, 33 DLR (AD) 323 provides that in a pre-emption case filed under section 24 of the Act, if a co-sharer tenant owns a portion of the land in any plot, he is to be treated as co-sharer in the entire plot even if the land of that plot is recorded in more than one khatian and in the event of transfer a portion of the land of that plot appertains to another khatian a co-sharer tenant can file a pre-emption case under section 24 of the Act. His claim should not be brushed aside on the fact that he does not have any interest in the khatian.

In the instant case we find that vendor Amina Afsari after getting the land by way of heba from his father mutated her name and opened a separate khatian. But such mutation and separation of khatian do not come within the meaning of 'land' as prescribe in section 24 of the Act, 1949. The trial Judge correctly scrutinised the evidence, other materials on record and related law and found that the pre-emptor after making heba to his daughters had .014 acres of land in the khatian and he is a co-sharer in the suit land and he has *locus standi* to file case for pre-emption under section 24 of the Act, 1949 because such kind of separation of *jama* is no separation in the eye of law.

In view of the discussion made hereinabove, we find no substance in the submissions of the learned Advocate for the appellant. The miscellaneous appeal, therefore, bears no merit. Accordingly, it is dismissed. No order as to costs. The connecting Rule is according disposed of and the order of stay stands vacated.

Communicate this judgment and send down the lower Court records.

Murad-A-Mowla Sohel, J:

I agree.

Rajib