

District: Dinajpur

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

Present

**Mr. Justice Sardar Md. Rashed Jahangir**

**Civil Revision No. 559 of 2024**

In the matter of :

Md. Shamsuzzoha

... Petitioners

-Versus-

Mst. Baby Sultana (Baby Ara) and others

...Opposite parties

Mr. Md. Hamidur Rahman, Advocate

...For the petitioner.

Mr. Mohiuddin Md. Abdul Kader, Advocate

...For the opposite parties

**Heard on: 06.03.2025 and**

**Judgment on: 16.03.2025**

Rule was issued on an application under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1 and 2 to show cause as to why the order No. 50 dated 04.10.2023 passed by the Additional District Judge, Third Court, Dinajpur in Miscellaneous Appeal No. 49 of 2011, allowing the application for amendment of the pre-emption application filed by the pre-



emptor-appellant should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The present opposite party Nos. 1 and 2 as pre-emptors filed Miscellaneous Case No. 02 of 2008 before the Court of Assistant Judge, Fulbari, Dinajpur under section 96 of the State Acquisition and Tenancy Act, 1950 to pre-empt the property sold vide registered deed No. 3515 dated 03.12.2007.

Case of the pre-emptors briefly are that Bhupendranath and others were the S.A. recorded owners of the property under S.A. khatian No. 91. Father of the pre-emptor No. 1 and opposite party Nos. 2-5, Hamin Uddin Shah along with his brothers purchased the aforesaid property on 14.10.1965 and thereafter a partition deed being No. 14819 dated 19.08.1972 was executed and through which Hamin Uddin Shah got the entire property of the aforesaid plot along with others. Hamin Uddin Shah died intestate leaving



behind 2(two) daughters, pre-emptor No. 1 and opposite party No. 7, 4(four) sons, opposite party Nos. 2-5 and 1(one) wife opposite party No. 6, upon whom the property was developed by way of inheritance; the property of plot No. 1135 having been owned by Afzal Hossain, Fazlur Rahman, Enamul Haque and Golam Mostofa, the brothers of pre-emptor No. 1 and the aforesaid property measuring an area of 1.54 acres having been mutated in their name vide Mutation Case No. IX-I/708/1987-88 dated 31.05.1988 and accordingly, a separate khatian being No. 317 has been prepared in their name. The pre-emptor along with her husband purchased .77 decimals of land out of the said property from opposite party Nos. 2-5 and thereby enjoying the exclusive possession of their purchased property. In this way, the pre-emptor No. 1 is the co-sharer by inheritance of the holding and pre-emptor Nos. 1 and 2 are the co-sharers by purchase of the holding. The opposite party No. 2 without notifying the pre-



emptors and behind their back sold his entire share of  $.38\frac{1}{2}$  decimals of land to opposite party No. 1 on 03.12.2007 vide deed No. 3515. The pre-emptors came to know about the said transfer on 22.01.2008 from one Abdus Samad Mondol and thereafter, on query and obtaining relevant papers, getting the definite knowledge filed the present case for pre-emption. It is further averred that the opposite party No. 1 is a stranger and the pre-emptors are co-sharers by inheritance as well as by purchase and they are entitled to the order of pre-emption.

The pre-emptee opposite party No. 1 contested the case by filing written objection denying all the material averments of the pre-emption application. The specific case of the pre-emptee is that the seller-opposite party No. 2 offered for sale the case land and the pre-emptee purchased the property within the knowledge of all concerned including the pre-emptors and before selling the



property opposite party No. 2 also made offer to the pre-emptors to purchase the land but they refused. The pre-emption case is not maintainable.

On conclusion of hearing, learned Assistant Judge, Fulbari, Dinajpur by his judgment and order dated 23.03.2011 rejected the pre-emption application.

Having being aggrieved, the pre-emptors preferred Miscellaneous Appeal No. 49 of 2011 before the District Judge, Dinajpur and subsequently, the said miscellaneous appeal has been transferred to the Additional District Judge, Third Court, Dinajpur for hearing.

The pre-emptor-appellants on 27.04.2023 filed an application for amendment of the pre-emption application, proposing to expunge certain averments of the original pre-emption application and thereby to incorporate a new statement in



that place. For better understanding, the relevant portion of the application of amendment is reproduced in below:

“মূল মোকদ্দমার আরজী সংশোধনের বিষয়ঃ-

১)মূল মোকদ্দমার আরজীর ২য় পাতায় ২নং দফার উপর হইতে নিচে ১৩ নং

লাইনে লিখিত-

‘প্রার্থীনির ভ্রাতাগন যথা- ১। আফজাল হোসেন, ২। ফজলুর রহমান, ৩।

এনামুল হক, ৪। গোলাম মোস্তফা দখল ভোগ করিতে থাকাকালিন খাজনাদি

পরিশোধের সুবিধার্থে খারিজ করিয়াছেন যাহার খারিজ কেস নং IX-

I/৭০৮/৮৭-৮৮, তাং- ৩১/০৫/৮৮, খতিয়ান নং-৩১৭ প্রাপ্ত হইল এবং

নালিশী দাগের সম্পত্তি আপোষ সূত্রে চার ভ্রাতা  $38\frac{1}{2}$  শতক করিয়া ভোগ দখল

করিতেন।’ শব্দগুলি কাটিয়া দিতে হইবে এবং তদন্তে লিখিতে হইবে ‘প্রার্থীনি

ও ভগ্নি ৭নং প্রতিপক্ষ ও ভ্রাতা ২-৫ নং প্রতিপক্ষ ও মাতা ৬নং প্রতিপক্ষ

এজমালিতে দখল ভোগ করেন। চলমান বি,এস রেকর্ড প্রার্থী সহ সকলের নামে

একত্রে হইয়াছে। যাহার ডি,পি খতিয়ান নং ১৮৭।’ কথাগুলি লিখিতে হইবে।”



Learned Additional District Judge, Dinajpur on 04.10.2023

by her judgment and order allowed the application for amendment, directing to amend the original pre-emption application in the manner as sought for. Challenging which the pre-emptee-petitioner filed this revisional application and obtained the Rule.

Mr. Md. Hamidur Rahman, learned Advocate for the petitioner submits that learned Additional District Judge, Dinajpur at the time of allowing the amendment application failed to consider that through the application for amendment, the pre-emptors proposed to expunge the relevant statements incorporated in the original pre-emption application supporting which the pre-emptor No. 1 disposed before the Court in the witness box and learned Judge of the trial Court upon considering the said averments together with the evidences being pleaded holding that



the pre-emption application is not maintainable. He further submits that learned Judge of the appellant Court below failed to consider that the pre-emptors are not allowed in law to alter their original averment of the case which amounts to change the nature and character of the application and as such, the order of the Additional District Judge, Dinajpur is liable to be set-aside.

He next submits that the pre-emptors in the pre-emption application admitted that the opposite party Nos. 2-5 vide Mutation Case No. IX-I/708/87-88 dated 31.05.1988 mutated their name and thereby a separate holding under khatian No. 317 having been prepared in their name and thus, it is the pre-emptors who admitted through their averments as well as in evidence that the co-sharership of pre-emptor No. 1 having been ceased through the creation of separate holding and now, the pre-emptors are not allowed in law to alter their admission through amendment of



their pleadings, resulting to change the basic character of the pre-emption case.

In support of the submission, he referred the case of Akitullah and others Vs. Zafala Begum and others, reported in 10 BLT(AD)132; the case of Md. Lehajuddin Vs. Md. Salim Mia and others, reported in 13 BLT(AD) 33 and the case of Bangladesh Vs. Md. Aslam and others, reported in 44 DLR 69.

On the other hand, Mr. Mohiuddin Md. Abdul Kader, learned Advocate for the opposite parties submits that the appeal is a continuation of the original proceeding and the Court of appeal below was quite competent under the authority of section 107 of the Code of Civil Procedure in entertaining the application for amendment as like as the Court of original jurisdiction and in the instant case the Court of appeal below to secure the ends of justice allowed the application for amendment justly and legally



and as such, the instant revisional application is devoid of merit and the Rule should be discharged.

Heard learned Advocates of both the parties, perused the revisional application.

It appears that the original application for pre-emption was filed under section 96 of the State Acquisition and Tenancy Act, 1950 and the pre-emptors averred in the said application at paragraph No. 2 in the following manner: “আপোষসূত্রে নালিশী ১১৩৫ নং দাগের সম্পত্তি ১নং প্রার্থিনীর ভ্রাতাগণ যথা (১) আফজাল হোসেন, (২) ফজলুর রহমান, (৩) এনামুল হক এবং (৪) গোলাম মোস্তফা দখল ভোগ করিতে থাকাকালীন খাজনাদি পরিশোধের সুবিধার্থে খারিজ করিয়াছেন, যাহার খারিজ কেস নং- IX-I/৭০৮/৮৭-৮৮ তাং- ৩১/৫/৮৮ খতিয়ান নং ৩১৭ প্রাপ্ত হইলেন” and during hearing, the pre-emptor No. 1, Baby Sultana was examined in the witness box as P.W. 1 in support of the pre-emptors’ case and upon consideration



of her evidence learned Assistant Judge, Fulbari, Dinajpur found  
as below:

“এবার প্রার্থিনীর উত্তরাধিকারী সূত্রে শরীক দাবির বিষয়ে আলোচনা করা যাক-

প্রার্থী Pt. W. ০১ হিসেবে তার জাবনবন্দীতে বলেন যে, এই অবস্থায়  
আমার বাবা দখল করা কালে মারা গেলে ৪ পুত্র আফজাল, ফজল, এনামুল ও  
গোলাম মোস্তফা ও ২ কন্যা আমি বেবী সুলতানা ও জিন্নাতুন থাকি। আপোষে  
নালিশী ১১৩৫ নং দাগের জমি ১নং প্রার্থিনীর ভাই ফজলু, আফজাল, এনামুল ও  
গোলাম খারিজ করেছেন যার খতিয়ান নং-৩১৭। নালিশী দাগের জমি আপোষে ঐ  
৪ ভ্রাতা  $38\frac{1}{2}$  শতক জমি দখল করেন।

সুতরাং যেহেতু প্রার্থিনী Pt. W. ০১ হিসাবে তার জাবনবন্দিতে স্বীকার  
করেছেন তার পিতার মৃত্যুতে ৪ পুত্র আফজাল, ফজলু, এনামুল ও গোলাম মোস্তফা  
ও ২ কন্যা ১নং প্রার্থিনী ও জিন্নাতুন থাকে এবং উক্ত ৪ ভ্রাতা ভাই-বোনদের মধ্যে  
আপোষে নালিশী জমি পেয়ে ঐ ৪ ভ্রাতা মিলে ৩১৭ নং খারিজ খতিয়ান খুলেছেন।  
সুতরাং Pt. W. ০১ এর স্বীকৃতমতে উক্ত ৪ ভ্রাতা নালিশী দাগের সমুদয় জমি  
পেয়ে ৩১৭ নং খারিজ খতিয়ান চালু করার মাধ্যমে নালিশী দাগের জমি মূলজমা



অর্থাৎ এস,এ খতিয়ান হতে পৃথক হয়ে নতুন জমার অন্তর্গত হয়েছে। আর ৩১৭

নং খারিজ খতিয়ানের মাধ্যমে নালিশী জমির জমা একটি পৃথক জমায় পরিনত

হয়েছে। আর Pt. W. ০১ যেহেতু স্বীকার করেছেন নালিশী জমির ঐ নতুন জমায়

শুধুমাত্র তার ৪ ভাই এর নামে হয়েছে বিধায় উক্ত নতুন জমা সৃষ্টি হওয়ার পর

প্রার্থীনা নালিশী জোতজমায় আর কোন ওয়ারিশসূত্রে শরীক প্রজা নন।”

And upon the aforesaid findings, learned Judge of the trial Court rejected the application of pre-emption; against which the pre-emptors preferred Miscellaneous Appeal No. 49 of 2011 before the District Judge, Dinajpur. Subsequently, the said miscellaneous appeal has been transferred to the Additional District Judge, Third Court, Dinajpur for disposal and before the Additional District Judge, the pre-emptors-appellants filed the application to amend their pleadings in the manner as has been quoted herein before. Learned Additional District Judge without examining the judgment of the trial Court as well as the evidences



on record and thereby failing to appreciate the purports of the application allowed the amendment, without applying his judicial mind.

By the original pre-emption application, the pre-emptors specifically asserted and admitted certain facts and pre-emptor No. 1 in her evidence, while examining in the witness box, categorically deposed in support of the aforesaid assertions. Relying upon the averments as well as evidence of pre-emptor No. 1, the trial Court arrived at a definite finding and thereby rejected the pre-emption application as being not maintainable and now, the pre-emptors are not allowed in law to alter their aforesaid admission as well as the averments amounting to change the basic character of the pre-emption application.

In the premise above, this Court finds merit in the Rule.

Accordingly, the Rule is made absolute.



The order No. 50 dated 04.10.2023 passed by the Additional District, Third Court, Dinajpur in Miscellaneous Appeal No. 49 of 2011 allowing the application for amendment is hereby set aside.

However, on the submission of learned Advocate for the pre-emptors-appellants-opposite parties, the Additional District Judge, Third Court, Dinajpur is hereby directed to hear and dispose of the Miscellaneous Appeal No. 49 of 2011 positively within 6(six) months, without allowing either of the parties any unnecessary adjournment.

Communicate the judgment and order at once.