

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Revisional Jurisdiction)

**Present:**

**Mr. Justice S.M. Masud Hossain Dolon**

**Civil Revision No. 1648 of 2002**

Md. Ana Miah and another  
... Pre-emptee-petitioners.

-Versus-

Sree Ramprosad Das and others  
..... Pre-emptor-opposite parties.

None appears

**Judgment on: 08.07.2024.**

This Rule has been issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 16.01.2002 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Gaibandha in Miscellaneous Appeal No. 28 of 1999 affirming the judgment and order dated 23.03.1999 passed by the learned Senior Assistant Judge (in charge) Saghata, Gaibandha in Miscellaneous Case No. 10 of 1997 should not be set-aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Short facts for disposal of the Rule, are that the opposite party as Pre-emptor filed a Miscellaneous Case being No. 10 of 1997 under section 96 of the State Acquisition and Tenancy Act, 1950 before learned Senior Assistant Judge (in charge), Saghata, Gaibandha against the petitioner for pre-emption of the suit land stating, inter alia, that the land measuring 1.27 acre of R.S. Khatian No. 143, during owning

and possessing by the Opposite party No.3 and 4, the Opposite Party No.4 (Pre-emptee) decided to sale out .33 acre of his share and the Opposite Party Nos. 5-7 (Pre-emptee) purchased the same and during owning and possessing of the same, the pre-emptor and the Opposite Party No.8 and 9 purchased the same from the Opposite Party Nos.5-7. The Opposite Party No.3 sold out .31 acre of land from his share to the Opposite Party Nos. 5-7 and subsequently the Opposite Party Nos. 5-7 transferred the same to the Pre-emptor and his full brother, the opposite Party No.8 and 9. Thereafter the pre-emptor and the Opposite Party Nos. 8 and 9 purchased .32 acre of land from the Opposite Party No. 4 by registered Kabala deed dated 20.2.1975 and in this way the pre-emptor is the co-sharer of the suit khatian by purchased. The Opposite Party No.1 and 2 purchased .16 acre of land from the opposite party No.3 who is a stranger purchaser of the suit holding and the pre-emptor was not aware of that sale, that on 30.12.96 the pre-emptor came to know about the sale by obtaining certified copy of the registered Kabala deed from the S.R. Office and filed this application for pre-emption.

The Opposite Party Nos. 1 and 2 contested the suit by filing written statement and denying all the material allegations and contending inter alia, that the case is not maintainable in the present form, it is barred by limitation and bad for defect of parties. The specific case of the Opposite Party Nos. 1 and 2 in short is that the

Opposite Party No. 3 during owning and possessing of the suit holding proposed to sale the case land to the Pre-emptor but he disinterested to purchased the same and managed the Opposite Party No.1 and 2 to purchase the suit land and fixed up the valuation amicably. After purchase of the suit land the Opposite Party Nos. 1 and 2 developed the case land for the of purpose of cultivation. The Petitioner is he knew about the sale long before and thereafter he filed the present case very illegally and hence the present case is liable to be dismissed.

The learned Assistant Judge (in charge), Saghata, Gaibandha after scrutinized oral and documentary evidences submitted by the parties in support of their respective claims allowed the application for pre-emption case. Against which Pre-emptee filed Miscellaneous Appeal being No. 28 of 1999 before the learned District Judge, Gaibandha who transferred the same to the court of learned Joint District Judge, 1<sup>st</sup> Court, Gaibandha for disposal of the case. The learned Joint District Judge, 1<sup>st</sup> Court, Gaibandha after hearing the parties dismissed the appeal and affirmed the judgment and order passed by the learned Assistant Judge (in charge), Saghata, Gaibandha, challenging that the suit order the Pre-emptee petitioner filed the instant Revisional application and obtained the Rule.

None appears.

I have perused the lower court records, judgment and order passed by the learned Trial Court and that of Appellate court. After

considering both oral and documentary evidences adduced and produced by both parties to the original suit it appears that both the courts below having given concurrent findings that the pre-emptee purchasers have totally failed to prove their own case. After careful examination of the evidences and other materials on record it appears that the pre-emptor claims that the pre-emptee opposite party No. 3 was selling the 16 decimals of land to the pre-emptee opposite party No. 1 and 2 without the knowledge of the pre-emptor or any notice was sent to the pre-emptor. I have perused from the record that when the opposite party No. 3 was the owner and occupier of the case land, he sold the said case land to the opposite party No. 1 and 2 without notice to the pre-emptor. Subsequently pre-emptor came to know about the sale of the case land and filed the suit. Although pre-emptee purchaser claims the land sold through the pre-emptor, but could not provide any evidence in support of that claim and also after buying the land, made it suitable for cultivation by fixing it up and down and there is no prove of it.

Section 96 of the State Acquisition and Tenancy Act which runs as follows:-

Section 96 (1) If a portion or share of a holding of a raiyat is sold to a person who is not a co-sharer tenant in the holding, one or more co-sharer tenants of the holding may, within two months of the service of the notice given under section 89, or, if no notice has been served under section 89, within two months of the date of the knowledge of

the sale, apply to the Court for the said portion or share to be sold to himself or themselves:

Here, in the present case was filed on 19.03.1997 so, there is no bar to file the instant Pre-emption case under section 96 of the State Acquisition and Tenancy Act, 1950. Though the amended section 96 of the State Acquisition and Tenancy Act required only inherent owner can file an application under section 96 of the State Acquisition and Tenancy Act, 1950. In the case in hand the pre-emptor purchaser is a co-sharer by purchaser but still he can file pre-emption case.

In such view of the matter, I do not find any illegality in the impugned judgments and order passed by both the two courts below.

In view of the discussion made above, I do not find any merit in this Rule.

Accordingly, the Rule is discharged.

The order of stay granted earlier by this court is here by vacated.

Send down the L.C.R along with a copy of this judgment to the concerned court for information and necessary action.