

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.6497 OF 2023

In the matter of:

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

And

Khan Ashraful Alam

... Petitioner

-Versus-

Md. Golam Hossain Khan and others

... Opposite parties

Mr. Md. Mostafa Kamal, Advocate

... For the petitioner.

Mr. Surojit Bhattacharjee, Advocate

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

Heard on 05.12.2024 and Judgment on 09.12.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 06.11.2023 passed by the learned District Judge, Faridpur in Miscellaneous Appeal No.37 of 2023 dismissing the appeal and thereby affirming the judgment and order dated 19.06.2023 passed by the learned Assistant Judge, Alfandanga, Faripur in Pre-emption Miscellaneous Case No.27 of 2021 to allow the suit should not be set aside 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 opposite party as petitioner instituted above case for pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950 against registered kabala deed dated 21.12.2020 transferring 7.50 decimal land by the opposite party No.1 to opposite party No.2.

It was alleged that the petitioner is a co-sharer by inheritance and opposite party No.1 is a stranger to above holding. Above case for pre-emption was filed within the statutory period of time and the petitioner did not get any notice of above transfer.

Opposite party No.1 contested the case by filing a written objection alleging that the disputed holding was separated by Mutation Case No.AC(L)1445(IX-1)/2020-21 and a new proposed Khatian No.1063 was created. The petitioner is not a co-sharer in above new holding. It was further stated that the case is bad for defect of parties.

At trial the petitioner examined 1 witness and his documents were marked as Exhibit Nos.1-5. On the other hand opposite party examined 3 witnesses and his documents were marked as Exhibit Nos.Ka-Ja.

On consideration of the facts and circumstances of the case and evidence on record the learned Assistant Judge allowed the case.

Being aggrieved by above judgment and order of the trial Court opposite party No.1 preferred Miscellaneous Appeal No.37 of 2023 to the learned District Judge, Faridpur who dismissed appeal and affirmed the judgment and order of the trial Court.

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

Mr. Md. Mostafa Kamal, learned Advocate for the petitioner submits that in his evidence PW1 has admitted that he did not implead all brothers and sisters of opposite party No.2 in this case. As such this case was bad for defect of parties. The learned Advocate further submits that opposite party No.2 had splitted up S.A. Khatian No.209 of the disputed land and created a new porposed Khatian No.1063 for the disputed holding and petitioner was not a co-sharer in above proposed khatian. As such the petitioner had no locus standi to maintain this case for pre-emption. But the learned Judges of both the Courts below failed to appreciate above evidence on record properly and the learned Assistant Judge most illegally allowed the case and the learned District Judge most illegally dismissed the appeal and affirmed above flawed judgment and order of the trial Court which is not tenable in law.

On the other hand Mr. Surojit Bhattacharjee, learned Advocate for the opposite party No.1 submits that on consideration of materials on record the learned Judges of both the Courts below have concurrently held that the petitioner is a co-sharer by inheritance and opposite party No.1 is a stranger to the disputed holding. As far as the claim of defect of party is concerned opposite party No.1 did not make out a case of defect of parties at trial. There is nothing on record to show that any necessary party was not impleaded in this case. On correct appreciation

of evidence on record the learned 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.

Opposite party No.1 while giving evidence as OPW1 has admitted in cross examination that the petitioner is a co-sharere by inheritance in the disputed holding. It is admitted that opposite party No.1 is a stranger to the above holding. As far as split up of S.A. Khatian No.209 and creation of a new khatian is concerned it is admitted that the disputed land originally belonged to S.A. Khatian No.209 and it turns out from the schedule of the disputed kabala deed (Exhibit No.Ka) that the land of S.A. Khatian No.209 was transferred. Even if it is admitted that a new khatian No.1063 was proposed but not finalized that does not mean that the disputed holding of S.A. Khatian No.209 was splitted up in accordance with the provision of Section 117 of the State Acquisition of Tenancy Act, 1950.

In above view of the materials on record I hold that the concurrent findings of both the Courts below that disputed holding was not splitted up and a new khatian was not created being based on evidence on record this Courts cannot in its revisional jurisdiction interfere with above concurrent finding.

As far as the allegation of defect of parties is concerned the learned Advocate for the petitioner could not mention the names of the

co-sharers of the disputed holding who were not impleaded in this case. As such the concurrent findings of the Courts below that the case does not suffer from defect of parties appears to be based on materials on record.

It turns out from both the petition for pre-emption and the impugned kabala deed (Exhibit No.Ka) that two separate pieces of land from two separate plots were transferred by above kabala deed and the nature, character and value of above land were separately mentioned. It has been stated in the schedule of impugned kabala deed dated 21.12.2020 (Exhibit No.Ka) that disputed 0.50 decimal land appertaining to plot No.888 is a shop and disputed 7 decimal land of plot No.888 land is cultivable land. The price of above shop was Taka 6,00,000/- and the price of above cultivable land was Taka 2,50,000/- and the price of the shop was Taka 1,50,000/-.

As mentioned above this is a case under Section 96 of the State Acquisition and Tenancy Act, 1950 which deals with the pre-emption of agricultural land. Since $\frac{1}{2}$ decimal land transferred by above kabala deed was not agricultural land this case was not tenable in respect of above $\frac{1}{2}$ decimal land and the shop constructed on above land. The opposite party No.1 was entitled to get an order for pre-emption for cultivable 7 decimal land and the petitioner was entitled to withdraw deposited money for above land only. But the learned District Judge has most illegally dismissed the appeal and affirmed the flawed

judgment and order of the trial Court for total $7\frac{1}{2}$ decimal land which is not tenable in law.

In above view of the materials on record I find substance in this revisional application under Section 15(1) of the Code of Criminal Procedure and the Rule issued in this connection deserves to be made absolute in part.

In the result, this Rule is hereby made absolute in part.

The impugned judgment and order dated 06.11.2023 passed by the learned District Judge, Faridpur in Miscellaneous Appeal No.37 of 2023 affirming the judgment and order dated 19.06.2023 passed by the learned Assistant Judge, Alfandanga, Faripur in Pre-emption Miscellaneous Case No.27 of 2021 is set aside and above pre-emption case is allowed in part only for cultivable 7 decimal land and petitioner may withdraw Taka 2,50,000/- out of the deposited money and opposite party No.1 shall withdraw remaining deposited money.

However, there is no order as to costs.

Send down the lower Courts records immediately.