

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

*And*

*Ms. Justice Tamanna Rahman Khalidi*

*First Miscellaneous Appeal No.272 of 2019*

Md. Abdul Motaleb being dead his heirs- Md.  
Mostafizur Rahman and others

... Appellants

-Versus-

Md. Tipu Sultan and others

... Respondents

**With**

*First Miscellaneous Appeal No.83 of 2020*

Md. Tipu Sultan and others

... Appellants

-Versus-

Md. Abdul Motaleb being dead his heirs-Md.  
Mostafizur Rahman and others

... Respondents

**With**

*Civil Rule No.977 (fm) of 2019*

Md. Tipu Sultan and others

... Petitioners

-Versus-

Md. Abdul Motaleb and others

... Opposite parties

Mr. A. H. M. Obaydul Kabir, Advocate

...For the appellants of First  
Miscellaneous Appeal No.272 of 2019 and respondent

Nos.1 and 2 of First Miscellaneous Appeal No.83 of 2020.

Mr. Shahjahan Saju with  
Mr. Bibek Chandra, Advocates

... For the respondent Nos.1 and 2 of First Miscellaneous Appeal No.272 of 2019 and appellants of First Miscellaneous Appeal No.83 of 2020.

**Heard on 21.01.2026 and Judgment on 25.01.2026**

**S M Kuddus Zaman, J:**

First Miscellaneous Appeal No.272 of 2019 and First Miscellaneous Appeal No.83 of 2020 having arising out of the identical judgment and order dated 26.11.2017 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Jhenaidah in Miscellaneous Case No.3 of 2016 above two First Miscellaneous Appeals are heard together and being disposed of by this single judgment.

Appellants of First Miscellaneous Appeal No.83 of 2020 filed an application for an order of stay and on that application Civil Rule No.977(fm) of 2019 was issued. Above Rule is also being heard and disposed of by this judgment.

Facts in short are that appellants of First Miscellaneous Appeal No.272 of 2019 as petitioners submitted above petition under Section 24 of the Non Agricultural Tenancy Act, 1949 for pre-emption against registered kabla deed dated 22.09.2015 executed by opposite party No.2 alleging that petitioners are co-sharers by purchase in above land of S.A. Khatian No.197 from Khandaker Kutub Uddin vide two registered

kabla deeds dated 15.07.2008 and 09.07.2002 respectively. Opposite party No.1 purchased 1.04 acres land by impugned kabla deed dated 02.09.2015 from four separate schedules but the petitioners are co-sharers for land of schedule No.2 excepting Plot No.757. As co-sharer of schedule No.2 of above kabla deed petitioners seeks pre-emption for 24.12 decimal land. Opposite party Nos.2 and 3 transferred above land to opposite party No.1 who is a stranger to above land without any notice to the petitioners and petitioners came to know about above transfer on 01.10.2015.

Opposite party No.1 contested above case by filing written statement alleging that after purchase of above land opposite No.1 mutated his name and created separate khatian being No.197/1 and the petitioners are not co-sharers of above khatian. It was further stated that opposite party Nos.2-3 offered the petitioners to purchase above land on 25.08.2015 but due to financial constrained they refused to purchase above land and assured that they would not file any case for pre-emption if above land was sold to other persons. As such the instant case is barred by the principal of waiver and acquiescence.

At trial petitioners and opposite parties examined one witness each. Documents of the petitioners were marked as Exhibit Nos.1-6 and those of the opposite parties were marked as Exhibit Nos."Ka" to "Ga".

On consideration of the facts and circumstances of the case and materials on record the learned Joint District Judge allowed above case in part for 17.12 decimal land.

Being aggrieved by above judgment and order of the trial Court above petitioners as appellants preferred Miscellaneous Appeal No.272 of 2019 and opposite party No.1 preferred First Miscellaneous Appeal No.83 of 2020 as mentioned above.

Mr. A. H. M. Obaidul Kabir, learned Advocate for the appellants of First Miscellaneous Appeal No.272 of 2019 submits that undisputedly petitioners purchased land of schedule No.2 by registered kabla deeds dated 09.07.2001 and 15.07.2008 from S.A. recorded tenants Kutub Uddin Khandaker and Wahed Khandaker and thereby they became co-sharer to disputed land. Opposite party No.1 purchased 1.04 acres land described in four separate schedules by impugned kabla deed dated 22.09.2015 from another two S.A. recorded tenants namely Shakhawat Hossain and Liakat Khandaker. It is also admitted that opposite party No.1 was a stranger to the land of schedule No.2 of above kabla deed. This case for pre-emption was filed on 11.01.2016 within the statutory period of limitation. It has been alleged that opposite party Nos.2 and 3 approached the petitioners to purchase above land before selling out the same to opposite party No.1 but the petitioners refused to purchase the same. But opposite party No.1 did not make any endeavor to substantiate above claim by legal evidence.

The petitioners are not co-sharers to Plot No.757. As such they sought part pre-emption only for the land of Plot Nos.595, 601 and 754. On consideration of above facts and circumstances of the case and materials on record the learned Judge of the trial Court should have decreed above suit for 24.12 decimal land. But the learned Judge reduced the share of opposite party No.1 in Plot No.757 and increased the same in other three plots. The learned Judge on correct assessment of materials on record rightly held that instead of 13 decimal from Plot No.757 a total 21 decimal land will be reduced and allowed the case in part for 17.12 decimal. The appellants concedes that above finding for 17.12 decimal land was correct but the learned Judge of the trial Court committed an error in not returning the deposited money of the petitioners for 7 decimal land which is not tenable in law.

On the other hand Mr. Shahjahan Saju, learned Advocate for respondent Nos.1 and 2 of First Miscellaneous Appeal No.272 of 2019 submits that the disputed land is situated within the Jhenaidah Pourashava but above land is agricultural in character and not urban land. As such this case under Section 24 of the Non Agricultural Tenancy Act, 1948 is not tenable in law. The learned Advocate further submits that by impugned kabla deed dated 22.09.2015 a total 1.04 acre land was transferred and petitioners sought pre-emption for 24.12 decimal land. The total consideration money of the impugned kabla deed was Taka 43,80,000/- but the petitioners deposited only Taka

10,22,480/- along with compensation without determination of the consideration for 24.12 decimal land by the Court which is not tenable in law. Since the petitioners did not deposit total consideration money of the impugned kabla deed along with compensation thereof above case was liable to be dismissed. Opposite party Nos.2 and 3 before transfer of above land to opposite party No.1 went to the house of the petitioners on 25.08.2015 and offered them to purchase above land but the petitioners refused due to purchase financial constrained and assured that they would not file any case for pre-emption if above property was transferred to other persons. While giving evidence as OPW No.1 Mr. Tipu Sultan has reiterated above claims in his evidence. On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge should have dismissed above case but the learned Joint District Judge failed to appreciate above materials on record correctly and most illegally allowed above case in part which is not tenable in law.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that opposite party Nos.2 and 3 transferred 1.04 acres land to opposite party No.1 by registered kabla deed dated 22.09.2015 and the petitioners filed above case for pre-emption under Section 24 of the Non Agricultural Tenancy Act, 1948 on 11.01.2016 within the statutory period of limitation. It is also admitted that the

petitioners filed above case for partial pre-emption for 24.12 decimal land of schedule No.2 of above kabla deed dated 22.09.2015 (Exhibit-2).

It has been stated that the petitioners were co-sharers for three plots of schedule No.2 of above kabla deed which is not disputed by opposite party No.1. It is not disputed that above land of schedule No.2 of above kabla deed is situated within the territorial limits of Jhenaidah Pourashava and above fact has been stated in the disputed kabla deed dated 22.09.2015 (Exhibit-2). It turns out from S.A. Khatian No.197 that above land schedule No.2 is not agricultural land. In his written objection opposite party No.1 did not raise any objection as to the nature and character of land of schedule No.2 nor they challenged the filing of the case under Section 24 of the Non Agricultural Tenancy Act, 1949. Nor any evidence was adduced to substantiate the claim that disputed land agricultural land or above case for pre-emption under the Non Agricultural Tenancy Act, 1949 was not tenable in law. In above view of the materials on record we are unable to find any substance in the submissions of the learned Advocate for the respondents that above case for pre-emption under Section 24 of the Non Agricultural Tenancy Act, 1949 is not tenable in law.

It turns out from impugned kabla deed dated 22.09.2015 (Exhibit-2) that value of 38.12 acres land of schedule No.2 has been mentioned to be Taka 15,39,000/-. The petitioners sought part pre-emption for 24.12 decimal land out of 38.12 decimal and they valued above land

proportionately at Taka 10,22,480/- along with compensation. Opposite party No.1 did not raise any objection as to above valuation of 24.1 decimal land in their written objection or in the evidence of DW1 Tipu Sultan. The learned Judge of the trial Court on analysis of evidence on record found that the manner and method of valuation of 24.1 decimal land by the petitioners were correct and accordingly accepted the same. The claim of the learned Advocate for the respondent that above valuation was incorrect or the petitioners should have deposited total Taka 15,39,000/- at the time filing of this appeal are all outside of the pleadings and without any evidence.

The learned Judge of the trial Court accepted the claims of the petitioners that the value for 24.12 decimal land and compensation thereof at the rate of 5% was Taka 10,22,480/- and the case was allowed in part for 17.12 decimal land. As such the learned Judge should have ordered for return of proportionate price for 7 decimal land of schedule No.2 to the petitioners. But the learned Judge has committed an error in not passing an order for return of money for above 7 decimal land which is not tenable in law. In above view of materials on record we find substance in the submissions of the learned Advocate for the appellants of First Miscellaneous Appeal No.272 of 2019 that the petitioners are entitled to get back proportionate value for 7 decimal land.

O.P.W.1 Tipu Sultan has produced a certified copy of S. A. Khatian No.197/1 (Exhibit No.1) and claimed that by above khatian the holding was separated and petitioners being not co-sharers of above Khatian above case was not tenable in law. As mentioned above this case for pre-emption was filed within the statutory period of limitation and right to pre-emption under the Non Agricultural Tenancy Act, 1949 relates to the land not to the holding as is available under State Acquisition and Tenancy Act, 1950. As such we are unable to find any substance in above claim of the opposite party.

In the written objection opposite party No.1 stated that before transfer of above property by impugned kabla deed dated 22.09.2015 opposite party Nos.2 and 3 went to the house of the petitioners and offered them to purchase above land but they refused to purchase. But in his cross examination as DW1 Tipu Sultan stated that he was not present when PW2 and PW3 approached the petitioners to purchase above land nor he knows the date of above occurrence. Opposite party No.1 did not make any endeavor to substantiate above claim by legal evidence at trial.

In above view of the facts and circumstances of the case and materials on record we find substance in First Miscellaneous Appeal No.272 of 2019 which deserves to be allowed in part but we do not find any substance in First Miscellaneous Appeal No.83 of 2020 which is

liable to be dismissed and connecting Civil Rule No.977(fm) of 2019 is liable to be discharged.

In the result, First Miscellaneous Appeal No.272 of 2019 is allowed in part and First Miscellaneous Appeal No.83 of 2020 is dismissed on contest and connecting Civil Rule No.977(fm) of 2019 is discharged.

The learned Joint District Judge is directed to return the proportionate price of 7 decimal land to the petitioners out of the deposited money at once.

However, there will be no order as to cost.

**Tamanna Rahman Khalidi, J:**

I agree.

MD. MASUDUR RAHMAN  
BENCH OFFICER