

District-Sirajganj.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 2496 of 2024.

Md. Abdur Rashid.

---- Preemptee-Appellant -Petitioner.

-Versus-

Most. Shahera Khatun Bibi.

---- Pre-emptor-Respondent-Opposite Party.

Md. Shaheb Ali and others.

---- Opposite Parties.

Mr. Md. Solaiman Hossain, Advocate with

Ms. Asma Hossain, Advocate

----For the Petitioner-Preemptee-Appellant.

Mr. Sajal Ahmed, Advocate

----For the Pre-emptor-Respondent-Opposite Party.

Heard On: 10.11.2025, 12.11.2025, 13.11.2025.

And

Judgment Delivered On: 19.11.2025.

Md. Toufiq Inam, J.

This Rule was issued upon the opposite party to show cause as to why the Judgment order and dated 25.02.2024 passed by the learned Joint District Judge 2nd Court, Sirajganj in Miscellaneous Appeal No 13/2020 affirming the Judgment and order dated 20.02.2020 in Miscellaneous Pre-emption Case 25 of 2014 passed by the court of the learned Assistant Judge Raiganj, Sirajganj, should not be set aside.

The case land is part of certain holdings recorded in S.A. Khatian No. 20 and R.S. / C.S. plots (C.S. 426, R.S. 368 etc.) comprising in the aggregate 339 decimals. Ownership of the said jote is shown in the names of one Mozibar Rahman (opposite party No. 3) and Sharifun Nessa (opposite party No. 4). The dispute concerns a portion (notably 154 decimals of C.S. 426 and pieces in R.S. 368) which was sold by the vendor(s) by various deeds to different persons at different times. The pre-emptor claims that she purchased by registered instruments certain acreage (66 + 33 decimals etc.), and later transferred part thereof, and that subsequently the petitioner/pre-emptee purchased the suit land from one of the intermediate purchasers (opposite party No. 2) without giving the pre-emptor opportunity to pre-empt. The pre-emptor instituted Misc. Pre-emption Case No. 25 of 2014 and claimed right to pre-empt by depositing the purchase price and compensation.

At the trial the pre-emptor adduced two witnesses and exhibited documents marked 1–10. The pre-emptee adduced one witness and relied on documents marked ক-ঘ. The trial court after examining the evidence held for the pre-emptor. The appellate court affirmed. Against which the petitioner obtained this Rule.

At the outset, Ms. Asma Hossain, the learned Advocate on behalf of Mr. Md. Soliaiman Hossain for the pre-emptee-petitioner submits that

the appellate court's judgment is perverse, built on misreading of evidence and misapplication of settled legal principles. that the pre-emptor refused to purchase the land when the vendor first approached her, and such refusal attracts the doctrine of waiver, acquiescence and estoppel. She submits that the pre-emptor's husband was involved in negotiations and was fully aware of the impending sale, and that the purchaser acted only after the pre-emptor denied interest. She further argues that both parties being co-sharers by purchase, the pre-emptee stands on equal footing with the pre-emptor and deserves protection in equity. She attempts to rely on general principles of fairness, contending that the pre-emptor, having refused the opportunity to buy, should not now be allowed to disturb the purchaser's title. She also briefly argues that the application is defective due to non-joinder of necessary parties and alleges that the pre-emption application was not filed within limitation.

Per Contra, Mr. Sajal Ahmed, learned advocate for the pre-emptor-opposite parties submits that the pre-emptor is an undisputed co-sharer raiyat by purchase in the holding, and the pre-emptee himself admitted this before the trial court.. He further submits that the right of pre-emption accrues only after completion of the impugned sale, and any alleged conduct prior to accrual of the right cannot amount to waiver or acquiescence. Referring to *60 DLR (AD) 73* and *55 DLR (HCD) 604*, he argues that the plea of waiver is legally untenable. The

learned Advocate further submits that the principle laid down in 45 *DLR (AD) 133* is that a pre-emptee who does not file a counter-application cannot claim equitable relief or parity by invoking co-sharership by purchase. He prays for restoration of the trial court's order.

This court has considered the rival submissions and perused the records. The evidence presented at trial shows that the pre-emptor examined two witnesses and produced documents marked Exts. 1–10. The pre-emptee examined one witness and produced documents marked Exts. Ka–Gha. The plea of limitation, though urged in the appellate court, was never raised before the trial court, nor was any evidence led. There is nothing to rebut the statutory presumption that the application was filed within time.

The defence plea that all necessary parties were not impleaded is equally without merit. The trial court, upon scrutiny of the khatian, dag details, and genealogy, found that all co-sharers with inheritable or purchasable interest were impleaded. No specific omission was identified by the pre-emptee-petitioner, nor was any prejudice shown. The record supports the finding that the array of parties was complete.

The assertion that the pre-emptor is not a co-sharer raiyat is contradicted by the documents and the pre-emptee's own admission. Exts. 5, 6, 3, 4 and 7 clearly establish that the pre-emptor purchased land within the same jote and dag from the original vendors, and thereby became a co-sharer raiyat by purchase. During submissions before the trial court, the pre-emptee's learned counsel expressly acknowledged that both parties are co-sharers by purchase.

The defence plea of waiver, acquiescence or estoppel rests on an alleged oral refusal by the pre-emptor to purchase the land. P.W.1, the pre-emptor's husband, denied all such suggestions and no admission could be extracted in cross-examination. O.P.W.1, the pre-emptee, claimed that the vendor proposed sale to the pre-emptor, but failed to specify the time, place, circumstances, or any witness present. No documentary support was produced. Such vague assertions fall far short of the standard of proof required to establish waiver.

More critically, the defence theory is legally untenable. It is well-settled that the right of pre-emption accrues only after the completion of a sale. *60 DLR (AD) 73* unequivocally holds that pre-sale conduct cannot extinguish a right that had not yet come into existence. Even assuming oral refusal, *55 DLR (HCD) 604* confirms that such refusal does not amount to legal waiver or acquiescence.

The argument that both parties being co-sharers by purchase stand on equal footing and hence the pre-emptee should be insulated from pre-emption is likewise untenable. A pre-emptee who merely contests a pre-emption application but does not file a counter-application for proportionate pre-emption cannot invoke equitable principles to shield himself against the statutory claim. Equity assists the vigilant, not those who sleep upon their rights. If the pre-emptee genuinely intended to assert a competing right to retain the land on the basis of co-sharership, the law affords him a specific procedural mechanism-filing a counter-application seeking proportionate pre-emption. Only by availing such remedy he can place himself in a position to demand equitable consideration.

In the present case, the pre-emptee did not seek such relief. He neither asserted a right to proportionate pre-emption nor took any procedural step to protect his alleged co-sharership interest. Having failed to activate the statutory machinery in his favour, he cannot now, at the revisional stage, rely on general notions of equity to defeat a claim that is otherwise maintainable on both facts and law. Equity cannot be used as a shield to nullify a statutory right, especially when the party invoking it has consciously chosen not to exercise the very right that might have justified such protection. The pre-emptee, therefore, cannot claim a benefit which he never sought, and his plea of co-sharership by purchase is of no avail to resist the pre-emption.

The cumulative evidence supports the conclusion that the sale was completed without notice to the pre-emptor, that the pre-emptor is a co-sharer raiyat, and that the rights under Section 96 accrued to her on the date of transfer. No legal or factual bar to the exercise of that right has been established. The trial court appreciated the evidence properly, applied the law correctly, and reached a sound and reasoned conclusion. The appellate court correctly affirmed the trial courts judgment, leading to no failure of justice and nor attracting revisional interference under Section 115 of the Code of Civil Procedure.

For these reasons, **the Rule is discharged.**

The impugned judgment and order of the learned appellate court as well as the trial court are upheld. cannot be sustained and are liable to be set aside. The order of the trial court allowing the application for pre-emption is restored.

The interim order of stay stands vacated.

There will be no order as to costs.

Let the Lower Court Records be sent down along with a copy of this judgment at once.

(Justice Md. Toufiq Inam)