

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice Md. Mansur Alam

First Miscellaneous Appeal No. 343 of 2008

In the Matter of:

Memorandum of appeal from the original order.

-and-

In the Matter of:

Mukunda Chandra Mondal and another.

.....Pre-emptor-appellants.

-Versus-

Md. Abdul Barek being dead his legal heirs
Jahanara Begum and others.

.....Pre-emptee-respondents.

Mr. Nawz Sharif, Advocate

..... For the appellants.

None appears.

.....For the respondents.

**Heard on 04.05.2025, 05.05.2025 and
Judgment on 05.05.2025.**

Sheikh Abdul Awal, J:

This First Miscellaneous Appeal at the instance of the pre-emptor-appellants is directed against the judgment and order dated 18.08.2008 passed by the learned Joint District Judge, 5th Court, Dhaka in Pre-emption Miscellaneous Case No. 10 of 2005 disallowing the pre-emption case.

The short fact relevant for disposal of this Appeal is that the appellant, Mukunda Chandra Mondal and another as pre-emptors filed Miscellaneous Case No. 10 of 2005 against the pre-emptee purchasers and others in the Court of the learned Joint District Judge, 5th Court, Dhaka for pre-empting the case land as described in schedule of the pre-emption application on the allegation that the pre-emptors are co-sharer to the case land by inheritance , pre-emptee opposite party No. 7 (vendor) secretly transferred the case land to the pre-emptee Nos. 1-6 without serving any notice on the pre-emptor appellants, the pre-emptors need the case land and hence the case.

Pre-emptee-purchasers contested the case by filling written objection denying all the material allegations made in the pre-emption application.

At the trial the pre-emptors examined 4 witnesses as PWs and pre-emptee-purchasers examined 2 witnesses as OPWs and both the parties also exhibited some documents to prove their respective cases.

The learned Joint District Judge, 2nd Court, Shariatpur upon hearing the parties and on considering the materials on record by his judgment and order dated 18.08.2008 disallowed the miscellaneous case (pre-emption) on the ground that the pre-emptors are not co-sharer in the case land and that they are not entitled to get the case land under pre-emption.

Being aggrieved by the aforesaid impugned judgment and order dated 18.08.2008, the pre-emptor-appellants preferred this First Miscellaneous Appeal before this Court.

Mr. Nawz Sharif, the learned Advocate appearing for the pre-emptor-appellants submits that the pre-emptors are co-sharer to the case jote, there is nothing on record to suggest that pre-emptee respondents before transfer the case land served notice upon the pre-emptors or pre-emptors denied to purchase the case land although the learned Joint District Judge, 5th Court, Dhaka most illegally held that the pre-emptors are not co-sharer to the case jote and the property in question was not secretly transferred. The learned Advocate to fortify his submission has relied on the decision reported in 35 DLR 338.

No one appears to oppose the appeal.

Having heard the learned Advocate for the appellants, perused the pre-emption application, written objection, evidence of PWs and DWs and having gone through the materials on record including the impugned judgment and order, the only question that calls for our consideration in this appeal is whether the trial Court committed any error in disallowing the pre-emption.

On scrutiny of the record, it appears that the PWs in their respective evidence stated nothing that the pre-emptors are co-sharer to the case jote and without serving any notice upon the pre-emptors transferred the case land to pre-emptee purchasers. It further appears that PWs in their respective deposition stated nothing that the pre-emptee purchasers are stranger to the case jote. Moreover, OPW-1 in his deposition stated that- “নাঃ ভূমি বেচা কেনা বিষয়ে স্থানীয় লোকজন সহ মজহর পক্ষ জ্ঞাত ছিল। মজহর পক্ষ এর আর্থিক সামর্থ্য নাই বিধায় ক্রয় করতে পারে নাই নাঃ ভূমি।”

In view of the above, it cannot be said pre-emptee vendor secretly transferred the land in question beyond the knowledge of others. It is found that the trial Court as first court of fact on due consideration of the entire evidence and materials on record arrived at a finding that:

“Since the khatian has been separated from the khatian of the petitioners, it can be said that the petitioners are not the co-sharers in the disputed khatian. Hence, this point is decided in the negative i.e. against the petitioners.

Since petitioners are not the co-sharers in the disputed khatian, they are not entitled to get relief for pre-emption regarding the disputed property.”

This being purely a finding of fact based on proper assessment of the evidence on record. In this pre-emption case, the pre-emptors could not prove that they are a co-sharer and the property was secretly transferred, thus their claim to pre-emption will likely be unsuccessful. The learned Judge of the trial court appears to have considered all the material aspects of the case and justly dismissed the pre-emption case. The decision cited by the learned Advocate for the appellant is distinguishable on facts. No interference is, therefore, called for.

In the result, the appeal is dismissed without any order as to costs.

Send down the LC Records at once.

Md. Mansur Alam, J:

I agree.