

Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 2691 of 2024
Most. Amina Begum....Petitioner
-Versus-
Md Lutfor Rahman Lota and others....Opposite parties
No one appears.
....For the petitioner
Mr. Kingshuk Das, Advocate
...For the opposite party No. 1

Heard on 21.04.2026, 28.04.2026, 05.05.2026 and 06.05.2026
Judgment delivered on 10.05.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 at the instance of the pre-emptee petitioner Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 28.03.2024 passed by the Joint District Judge, Court No. 2, Tangail in Pre-emption Miscellaneous Appeal No. 79 of 2011 affirming the judgment and order dated 12.09.2011 passed by the Assistant Judge, Modhupur, Tangail in Pre-emption Case No. 09 of 2011 allowing the pre-emption case shall not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The opposite party No. 1 filed Pre-emption Miscellaneous Case No. 9 of 2011 in the Court of Assistant Judge, Modhupur, Tangail under section 96 of the State Acquisition and Tenancy Act, 1950 impleading the petitioner as opposite party for pre-emption of 10 decimals of land of SA Khatian No. 73, SA Dag No. 599 stating that father of the pre-emptor Abdul Kader was the owner of 43 decimals of land of the suit dag and the pre-emptor is the co-sharer of the said land. He also purchased 14 decimals of land by registered deed No. 1823 dated 11.04.1999. The defendant Nos. 2 and 3 sold 10 decimals of the suit land by registered sale deed No. 3050 dated 28.06.2005 beyond the knowledge of the pre-emptor, and as the co-sharer by inheritance in the suit land, he is entitled to pre-emption.

The petitioner filed written objection in the said miscellaneous case stating that the pre-emptee is the co-sharer and the father of the pre-emptor, by registered deed No. 302 dated 11.01.1967 and deed No. 2204 dated 19.03.1994, transferred his entire share. The pre-emptor did not inherit any property and not the co-sharer of the suit land. The pre-emptee is the co-sharer and, with full knowledge of the pre-emptor, purchased the land.

During trial, the pre-emptor examined 2 P.Ws and the pre-emptee examined 5 D.Ws. After concluding trial, the trial Court by judgment and order

dated 12.09.2011 allowed the pre-emption case holding that the pre-emptor is the co-sharer of the suit land and that the Dag No. 262 of SA Khatian No. 73 has no nexus with the suit land and the defendant Nos. 2 and 3 did not serve notice under section 89 of the State Acquisition and Tenancy Act, 1950 to the pre-emptor. Against the said judgment and order passed by the trial Court, the pre-emptee-petitioner filed Pre-emption Miscellaneous Appeal No. 79 of 2011 in the Court of the District Judge, Tangail who by impugned judgment and order dated 28.03.2024 affirmed the judgment and order passed by the trial Court holding that the land sold by deed No. 302 dated 11.01.1967 is not identical to the suit land and the trial Court legally passed the impugned judgment and order holding that the pre-emptor is the co-sharer of the suit land and the pre-emptee failed to prove that the seller had given proposal to the pre-emptor to sold his land.

No one appears on behalf of the pre-emptee-petitioner.

Learned Advocate Mr. Kingshuk Das appearing on behalf of the pre-emptor-opposite party No. 1 submits that the pre-emptor- opposite party No. 1 is the co-sharer of the suit land and the land sold by registered deed No. 302 dated 11.01.1967 and deed No. 2204 dated 19.03.1994 are not identical and both the Courts below arrived at a concurrent finding of fact that the petitioner is the co-sharer of the suit land and no notice was served upon the pre-emptor regarding selling the suit land. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Kingshuk Das who appeared on behalf of the pre-emptor-opposite party No. 1, perused the evidence adduced by both the parties, impugned judgments and orders passed by the Courts below and the records.

On perusal of the evidence, it reveals that 10 decimals of land of SA Khatian No. 73, SA Dag No. 599 was sold by the defendant Nos. 2 and 3 to the defendant-petitioner by deed No. 3050 dated 28.06.2005 (exhibit Kha). The suit land belonged to Karimunnesa Bewa. Late Abdul Kader, father of the pre-emptor-opposite party No. 1, is the son of said Karimunnesa Bewa. After the death of Karimunnesa Bewa, the father of the pre-emptor, late Abdul Kader, inherited the suit property. It is found that the 28 decimals of land of Khatian No. 16, Dag No. 1649 was sold by registered deed No. 302 dated 11.01.1967 (exhibit Gha) and 10 decimals of land of SA Khatian No. 73, Dag No. 599 sold by deed No. 2204 dated 19.03.1994 (exhibit Ga) are not identical, and the petitioners are the heirs of late Abdul Kader who inherited the property of his mother Karimunnesa Bewa. Therefore, the pre-emptor-opposite party No. 1 is the co-sharer of the suit land.

In the plaint, it has been stated that the pre-emptee neither informed the pre-emptor nor served notice upon the pre-emptor about the impugned sale.

Nothing has been stated in the written objection that notice was served upon the pre-emptor regarding the impugned sale. It is claimed that the pre-emptee sold the suit land with prior knowledge of the pre-emptor. O.P.W. 1 Nazrul Islam stated that the plaintiff was aware of the disputed sale. No statement is made by O.P.W. 1 as to how the plaintiff was aware of the sale. O.P.W. 1 did not say that before purchase, notice was sent to the plaintiff regarding the disputed sale. I am of the view that no notice was served upon the pre-emptor before transferring the land by the deed No. 3050 dated 28.06.2005 (exhibit Kha) and the pre-emptor was not aware of the sale before execution and registration of the said deed.

Both the Courts below arrived at a concurrent finding of fact that the pre-emptor-opposite party No. 1 is the co-sharer by inheritance of the suit land and land sold by deed No. 302 dated 11.01.1967 (exhibit Gha) and deed No. 2204 dated 19.03.1994 (exhibit Ga) are not identical and no notice was served upon the pre-emptor-opposite party before selling the suit land to the defendant Nos. 2 to 3. I do not find any misreading and non-reading of material evidence adduced by both the parties to interfere with the concurrent finding of facts arrived at by the Courts below.

I find no merit in the Rule.

In the result, the Rule is discharged.

However, there will be no order as to costs.

The ad-interim order of stay granted at the time of issuance of the Rule on 11.06.2024 is hereby vacated.

Send down the lower Court's records at once.