In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 6656 of 2024

IN THE MATTER OF :
An application under section 115(1) of the Code of Civil Procedure

-And-

In the Matter of:
Mst. Rizia Khatun @ Rizia Islam
... Pre-emptor-Petitioner

-Versus-

Mst. Dulari Khatun and others
...Pre-emptee -Opposite Parties

Mr. Md. Rezaul Karim, Advocate
... For the petitioner

Ms. Salina Akter, with
Mr. Uzzal Bhowmick, Advocates
... For the Opposite Parties

Judgment on: 18.01.2026

Md. Riaz Uddin Khan, J-

At the instance of the pre-emptor-petitioner this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 20.03.2024 (decree signed on 27.04.2024) passed by the Additional District Judge, 2nd Court, Rajshahi in Title Appeal No. 18 of 2023 dismissing the appeal and thereby affirming the judgment and decree dated 14.11.2022 passed by the Senior Assistant Judge, Sadar, Rajshahi in Other Class Suit No. 251 of 2021 rejecting the plaint under Order VII, Rule 11(d) of the Code of Civil Procedure should not be set aside and/or pass such other or further order or orders as to this Court may deem fit and appropriate.

Brief facts for disposal of this Rule are that the present petitioner as the pre-emptor filed the instant suit claiming herself as a co-sharer by contiguous land, Shafi-e-Jar, she claimed the pre-emption of the suit property which has been sold out to stranger by Kabla dated 02.12.2019. The opposite party pre-emptee by appearing before the court filed a written statement denying all the material facts as claimed in the plaint and thereafter on 27.04.2022 filed an application under Order VII Rule 11(d) read with section 151 of the Code of Civil Procedure for rejection of the plaint.

After hearing both the parties the trial court was pleased to reject the plaint by his judgment and decree dated 14.11.2022 on the finding that there was no cause of action to file the suit for pre-emption under Muslim law as it was not maintainable against purchasers who are by faith Hindus.

Against the said judgment and decree dated 14.11.2022 passed by the trial court the pre-emptor filed Title Appeal No. 18 of 2023 before the District Judge, Rajshahi which was ultimately heard by the Additional District Judge, 2nd Court, Rajshahi who upon hearing by the impugned judgment and decree dated 20.03.2024 dismissed the appeal and thereby affirmed the judgment and decree passed by the trial court.

Being aggrieved by and dissatisfied with the said judgment and decree dated 20.03.2024 the pre-emptor filed the instant Civil Revision before this Court and obtained the Rule as stated at the very outset.

Mr. Md. Rezaul Karim, the learned advocate appearing for the petitioner submits that in the present case the plaint has been rejected under Order VII, Rule 11(d) of the Code of Civil Procedure as barred by law but both the courts below failed to consider that there is no statutory bar in entertaining Muslim pre-emption rather the special statutes relating to pre-emption like the State Acquisition and Tenancy Act, 1950 and The Non Agricultural Tenancy Act, 1949 have saved Muslim pre-emption as a whole and as such the bar of section 9 of the Code of Civil Procedure is not applicable in the present case. According to him the statutes such as section 24(10) of the Non Agricultural Tenancy Act, 1949 and section 96(17) of the State Acquisition and Tenancy Act, 1950 have not taken away the right of pre-emption conferred on any person by the Muslim Law as such no impediment can be created by judicial decision as to application of personal law.

The learned advocate next submits that in the present case among the 7 purchasers 2 purchasers are Muslims and 5 purchasers are Hindus. The pre-emptor and vendor are Muslims and as such the principle that Muslim pre-emption is not applicable against Hindu purchaser is not applicable in the present case.

The learned advocate further submits that right of pre-emption is introduced in Muslim legal system to prevent the introduction of a stranger among co-sharers and neighbors likely to cause inconvenience; according to judgment passed in Gobind Dayal Vs. Inayatullah reported in ILR 1885 (All) 775 if pre-emption arises against a Muslim stranger then it should be strongly

applicable against a Hindu stranger; in case of introduction of stranger the comfort of living and movement of a co-sharer may hamper hence the right is required to be enforced against the Hindu stranger also.

The learned advocate then submits that ratio of the decision as reported in 67 DLR 302 and 73 DLR 395 should not be taken as bar against application of personal law as those decisions of the Court of same jurisdiction is not binding upon the this Court.

Mr. Karim finally submits that as per Article 41 of the Constitution every citizen has the right to profess, practice or propagate any religion and as such the right cannot be curtailed by judicial pronouncement as the Constitution is the supreme law of the land, so no one can be prevented from practicing one's personal law, it is the liberty of a person whether he prefers statuary law or personal law and the court cannot interfere with it. According to the learned advocate Article 111 of the Constitution has been enunciated to maintain discipline in justice dispensation system and the word "law" as used in article 111 of the Constitution does not cover the definition of law as in Article 152 of the Constitution.

Ms. Salina Akter along with Mr. Uzzal Bhowmick, the learned advocate appearing for the pre-emptee opposite parties submits that the point raised by the learned advocate for the petitioner has already been decided by several decisions of this Court and in support of her contention she placed two decisions of this Court namely in the case of Onil Kuar Podder and others Vs. Mostafa Unuch reported in 67 DLR 302 and in

the case of Serajul Islam Vs. Sheikh Azad Hossain reported in 73 DLR 395 and submits that this Court should not embark upon the same point which has already been decided by this Court to decide it again. It is settled that the judgment having *ratio decidendi* passed by the superior Courts is law which is known as Judge made law. The learned advocate lastly submits that both the courts below elaborately discussed the reasons for not applying the Muslim pre-emption against a non Muslim relying upon the judgments passed by this Court, hence the Rule is liable to be discharged.

I have heard the learned advocates for both the parties, perused the application. In the present case, the pre-emptor as a Muslim claiming herself as a co-sharer of contiguous land filed the case for land measuring .0613 acre of RS dag Nos. 32 and 30 under RS Khatian no.7 invoking Muslim law against the pre-emptee purchasers, majority of whom are Hindus, 5 purchasers out of 7 are Hindus. Upon an application filed under Order-VII, Rule-11 read with section 151 of the Code of Civil Procedure for rejection of plaint, the trial court rejected the plaint on the finding that right of pre-emption under Muslim law cannot be applicable against the Hindus. On appeal the appellate court also dismissed the appeal on the same finding. Both the courts below came to the finding relying upon the decision reported in 73 DLR 395.

Now, the only question before this Court has been raised whether the courts below were right in rejecting the plaint without trial by taking evidence. In this sub-continent when there was no statutory law the right of pre-emption was exercised by introducing

the Muslim law of pre-emption and since the rulers were Muslims in most part of the sub-continent particularly in the area of Allahabad the people were given right of pre-emption by the judicial pronouncement by the Allahabad High Court but that was not the case in the Calcutta High Court. The people of this area (now Bangladesh), in the legal arena once followed the decisions of Calcutta High Court and thereafter the Dhaka High Court and now the Supreme Court of Bangladesh after independence. These Courts consistently held that the Muslim personal law cannot be applied against non Muslim. In the case of "Onil Kuar Poddar" reported in 67 DLR 302, a Division Bench of this Court elaborately discussed the history and back ground of the pre-emption of this sub-continent relating to Muslim and non Muslim and that decision has been followed by another decision reported in 73 DLR 395. In Onil Kuar Poddar case after referring a case held in 1792, Ramrutun Sing Vs. ChunderNaraen Rai reported in (1)(ISDA Rcp,1) and considering many more decisions of the High Courts of this sub-continent including Gobind Dayal case (supra) their lordships finally came to the conclusion:

> *Now the question in hand whether pre-emptor rightly invoke his pre-emption right under Muhammadan law against a Hindu, a non Muslim purchaser. This law point can be easily answered in this way as to whether Hindu purchaser be the pre-emptor can pre-empt the transfer under Muhammadan law. The answer is emphatic "No". Since the Hindu purchaser*

or any non Muslim cannot invoke Muhammadan law in any of their daily affairs, their right to all aspects including righr to hold property invoking such law, (i.e. Muhammadan law) cannot be taken away. Muhammadan law is personal law and anybody come within the four corners of Muhammadan law, then provision of personal law shall prevail. Mahmud J, in the decision of Full Bench, 7 ILR All 775 also observed "My idea is that the administration of law by Kazis during the Muhammadan period gave mode currency to huq-i-shufa, and its advantage became so apparent to the Hindus that they attempted to naturalize it by working on its principles in Tantra in question, where an interpolation could easily be affected without any fear of detection. This must have happened three or more centuries ago." Mahmud j, in applying Muhammadan law of pre-emption to a non Muslim, particularly to a Hindu, observed as: "it may be said in this way that so long the Muhammadan government ruled this sub-continent right of pre-emption was extended to all classes of persons without any distinction of creed, colour or birth as Muhammadan law was law of the sub-continent."

> *Thus it is settled that Muhammadan can claim benefit of the law of pre-emption under Muhammadan law but the Hindu purchaser cannot claim the benefit of that law.*
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> *Thus we see in the instant case vendor is a Muslim and purchaser is a Hindu. By this time much water follows in the river Buriganga and by this time Pakistan was created and thereafter, Bangladesh got independence. State Acquisition and Tenancy Act along with Non Agricultural Tenancy Act came into operation giving statutory right of pre-emption, and pre-emptor could invoke the provision of statutory law but we do not understand why the plaintiff being an advocate instead of invoking statutory law jumped to personal law against a non Muslim. Since the appellant could not invoke the provision of Muhammadan law their purchase cannot be defeated by taking shelter of Muhammadan law.*

From above quoted paragraphs of the decision it is crystal clear that the Court has given cogent reasons as to why a right of pre-emption under Muslim law cannot be exercised against the non Muslim or Hindu. Since the point has already been decided by two separate Division Benches of this Court, I do not think it proper or there is any reason to reopen the matter again for discussion. However, we do understand why nowadays some people try to invoke Muslim personal law

of preemption is simple, at the moment after amendment of section 96 of the State Acquisition and Tenancy Act only co-sharer by inheritance has the right of pre-emption but in Muslim Law co-sharer of contiguous land can also claim right of pre-emption.

Our Constitution in Article 41 states (1) subject to law, public order and morality- (a) every citizen has the right to profess, practice or propagate any religion, (b) every religious community or denomination has the right to establish, maintain and manage its religious institutions. (2) No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own.

From plain reading of the Article it is clear that as per Article 41 of the Constitution every person has the right to profess, practice or propagate any religion and every religious community or denomination has the right to establish, maintain and manage its religious institutions but that does not mean that every person can claim his right under his personal law when it is conflicting with another person’s personal law.

Be that as it may, it is to be noted that as per Article 111 of our Constitution not all the decisions/judgments are binding but the law declared by either division of the Supreme Court is binding upon all courts subordinate to it. The decision/judgment of any court established by law is binding upon the parties. So, the Constitution, the supreme law of the

land, recognizes that the Supreme Court can declare law. Conversely, other than the Supreme Court (both divisions), no Court is entitled to declare law. However, in the present case, since the point raised by the learned advocate for the pre-emptor petitioner is already settled, I do not find any new reason to interfere with the judgment and decree passed by the courts below. The points raised by the learned advocate for the petitioner has no legs to stand.

Before we part with the instant case, one pertinent point should be mentioned here. It is noticed that in many books, article and even in judgments the word ‘Mohammadan’ is used instead of ‘Muslim’. It was alright before independence of Bangladesh. After the independence of Bangladesh by enacting the Bangladesh Laws (Revision and Declaration) Act, 1973 the legislature has replaced the word ‘Mohammadan’ by the word ‘Muslim’ at least in 18 enactments, so far I found. During British rule the non Muslim particularly the British ruler used to call the Muslim as Mohammadan which was no doubt incorrect. The Muslims are not the Mohammadans like the Christians who follow the Jesus Christ. The Muslims follow Islam, the command of Allah. Before 1937 in all the laws relating to Muslims the word Mohammadan was used. However, since 1937 the word Mohammadan has been replaced by the word Muslim for long time in all laws. Even the British in 1937 enacted The Muslim Personal law (Shariat) application Act, 1937 and in 1939 The Dissolution of Muslim Marraiges Act, 1939. After that period of time, the legislature never used the word Mohammadan rather Muslim. Hence we should avoid calling the Muslim as Mohammadan and their law as

Mohammadan law except quoting from a book or a judgment where the term has been used as it is.

In the facts and circumstances as discussed above and the position of law, I am constrained to hold that the instant Rule being devoid of merit destined to fail, hence liable to be discharged.

In the result the **Rule is discharged**. However, there will be no order as to cost.

Send down the lower court records along with a copy of this judgment at once.

Ziaul Karim
Bench Officer