

District-Khulna.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)****Present:****Mr. Justice Md. Toufiq Inam****Civil Revision No. 667 of 2024.**

Md. Soaib Mollah and others.

---- Preemptee-Appellant-Petitioners.

-Versus-

Safayet Hossain and others.

---- Preemptor-Respondent-Opposite Parties.

Mr. Md. Raju Sen, Advocate

---- For the Preemptee-Appellant-Petitioners.

Mr. Md. Shamim Hossain, Advocate

----For the Preemptor-Respondent-Opposite Party No.1.

Heard On: 01.03.2026, 04.03.2026.And**Judgment Delivered On: 08.03.2026.****Md. Toufiq Inam, J:**

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the judgment and order dated 26.11.2018 passed by the learned Joint District Judge. 2nd Court, Khulna in Miscellaneous Appeal No.32 of 2015, affirming the judgment and order of the learned Assistant Judge, Dakop, Khulna in Miscellaneous Case No.323 of 2008 allowing the pre-emption case, should not be set aside and/or such other or further order passed as to this Court may seem fit and proper.

The pre-emptor instituted the case under section 96(1)(a) of the State Acquisition and Tenancy Act, 1950, contending that by Kabala Deed No. 579 dated 09.04.2008, pre-emptee transferred 88 decimals of land appertaining to S.A. Khatian Nos. 138 and 32 in favour of pre-emptee Nos. 1–3. The pre-emptor claimed that he is a co-sharer by inheritance in the holding and, being a preferential co-sharer, is entitled to pre-empt the said transfer. The case was filed on 29.05.2008, within two months from the date of registration of the deed.

Pre-emptee Nos.1–3-petitioners resisted the case contending, inter alia, that they had already become co-sharers by purchase through Kabala Deed No. 1922 dated 26.10.1994 and that the pre-emptor, though aware of the proposed sale, refused to purchase the land when it was offered to him. It was further alleged that the case suffered from defect of parties and was barred by waiver, estoppel and acquiescence.

The learned trial court framed necessary issues and, upon consideration of oral and documentary evidence, allowed the case, directing execution and registration of the deed in favour of the pre-emptor. The appellate court, upon reappraisal of the evidence, dismissed the appeal and affirmed the judgment of the trial court. Against which the pre-emptee obtained the present Rule.

Mr. Raju Sen, learned counsel for Pre-emptees-Petitioners Nos. 1–3 argued that being co-sharers by purchase, no pre-emption suit can lie against them. They contended that the statutory right of pre-emption is intended to protect co-sharers by inheritance, not co-sharers by purchase. He argues that the pre-emptor had prior knowledge of the proposed sale and had refused to purchase the land due to financial inability. They argued that this amounted to waiver, estoppel, and acquiescence, barring the pre-emption claim. Reliance was placed on the testimony of P.W.2 Momtaz Begum regarding the alleged offer made to the pre-emptor.

The pre-emptees raised a plea of defect of parties, contending that all persons having an interest in the jote were not impleaded and that this omission rendered the suit defective. It was submitted that allowing pre-emption would cause irreparable loss to the pre-emptees, who had already acquired possession of the land and paid the consideration.

Mr. Md. Shamim Hossain, learned counsel for the pre-emptor-opposite party submitted that the petitioner is a co-sharer by inheritance in the jote and, therefore, entitled to the statutory right of pre-emption under section 96(1)(a) of the State Acquisition and Tenancy Act, 1950. It was emphasized that they filed the case on 29.05.2008, within two months of obtaining knowledge of the

registered deed, as required under the Act. Therefore, the plea of limitation raised by the opposite parties is unfounded.

He contends that mere oral offers made prior to the sale, or refusal to purchase due to financial inability, do not amount to waiver or estoppel of the statutory pre-emption right. Reliance was placed on 44 DLR (AD) 62, which held that a statutory pre-emption right cannot be extinguished by oral statements; any waiver must be clear, conscious, and unequivocal. He adds that all necessary parties were impleaded in the case and that the pre-emptees failed to identify any omitted essential party.

In the present revisional proceeding, the principal questions that call for determination are:

1. Whether a pre-emption case lies against co-sharers by purchase when the applicant is a co-sharer by inheritance.
2. Whether the alleged prior refusal to purchase constitutes waiver, estoppel or acquiescence.
3. Whether the judgments of the courts below suffer from any misreading of evidence or non-consideration of material facts warranting interference in revision.

On the Right of a Co-sharer by Inheritance

Section 96(1)(a) of the State Acquisition and Tenancy Act, 1950 clearly provides that where a portion of a holding is transferred, a co-sharer tenant by inheritance shall have the preferential right to pre-empt the transfer. The legislative intent is explicit: among competing co-sharers, a co-sharer by inheritance stands on a superior footing than a co-sharer by purchase.

In the present case, it is not disputed that the pre-emptor is a co-sharer by inheritance in the holding. The pre-emptee Nos. 1–3 claimed co-sharership by virtue of an earlier purchase. Even if such purchase is accepted, their status remains that of co-sharers by purchase. The statute accords preference to a co-sharer by inheritance over a co-sharer by purchase. Therefore, the mere fact that the purchasers were already co-sharers by purchase does not defeat the statutory claim of the pre-emptor. Both the courts below have correctly appreciated this legal position and found that the pre-emption case is maintainable.

On the Plea of Defect of Parties

Although the plea of defect of parties was raised in the written objection, neither in evidence nor in the memorandum of appeal was any specific necessary party identified as having been omitted. A vague plea without substantiation cannot be accepted. The courts below rightly rejected this contention.

On Waiver, Estoppel and Acquiescence

The purchasers relied heavily on the evidence of P.W.2, who stated that the land had been offered to the pre-emptor before the sale and that he declined to purchase due to financial inability. On this basis, it was argued that the pre-emptor waived his right and is estopped from filing the case.

The learned trial court, referring to the decision reported in 44 DLR (AD) 62, rejected this contention. In that case, our apex court held that the right of pre-emption is a statutory right which accrues only upon completion of a transfer by a registered instrument. Prior to such completed transfer, no enforceable cause of action arises. Their Lordships further held that a mere oral offer and refusal prior to the sale does not amount to relinquishment of the statutory right.

The ratio laid down therein is that waiver of a statutory right must be clear, conscious and unequivocal. A casual or informal statement, or inability to purchase at a particular time, cannot be construed as abandonment of a legal right which accrues subsequently by operation of law. Estoppel cannot override an express statutory provision unless there is clear evidence of deliberate surrender.

Applying the aforesaid principle, it appears that the alleged offer to the pre-emptor was purely oral and did not culminate in any

concluded contract. There is no evidence of any written agreement or binding arrangement. The pre-emptor's alleged inability to purchase at that time does not constitute waiver. The right of pre-emption accrued only after registration of the impugned Kabala on 09.04.2008. The case having been filed within the statutory period of two months, the requirement of limitation has been strictly complied with. Therefore, the plea of waiver, estoppel or acquiescence is devoid of merit.

Scope of Revisional Jurisdiction

This Court, exercising jurisdiction under section 115 of the Code of Civil Procedure, does not sit as a court of appeal. Interference is warranted only where there is an error of law resulting in failure of justice, misreading of evidence, or non-consideration of material facts.

In the instant case, both the trial court and the appellate court have concurrently found that:

1. The pre-emptor is a co-sharer by inheritance;
2. The transfer was made in favour of co-sharers by purchase;
3. The application was filed within limitation;
4. There is no legal bar arising from waiver or estoppel.

These findings are based on proper appreciation of evidence and correct interpretation of law. No jurisdictional error, illegality or material irregularity has been shown.

Decision

In view of the foregoing discussion, this Court finds no substance in the Rule. The concurrent findings of the courts below are well-reasoned and supported by evidence and settled principles of law.

Accordingly, the Rule is discharged without any order as to costs.

The judgment and order passed by the learned appellate court in Miscellaneous Appeal No.32 of 2015 affirming those of the learned trial court are hereby upheld.

The order of *status-quo* passed earlier is hereby recalled and vacated.

Send down the lower court's records at once together with this judgment.

(Justice Md. Toufiq Inam)