

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

Single Bench:

Mr Justice Abdur Rahman

Civil Revision No. 1467 of 2025

In the matter of:

Md. Joynal Abedin

.....*Pre-emptor-Respondent*

Petitioner

-Versus-

Md. Amzed Hossain Biswas, being dead,
his heirs: 1(a) Md. Mostafa Kamal and
others

...*Pre-emptees - Appellants*

Opposite parties

Mr Md. Jahangir Alam, with

Mr Md. Kamal Parvez, Advocate

.....*For the Petitioner*

Mr Md. Kamruzzaman Mia, Advocate

...*For the opposite parties*

Date of Hearing: 16.7.2026, 19.7.2026,

23.7.2026, 27.7.2026, and 30.07.2026

Date of Judgment: 03.09.2026 A.D. Thursday

১৯ ভাদ্র, ১৪৩৩ খ্রিস্টাব্দ।

JUDGMENT:

Abdur Rahman, J:

This revisional application, at the instance of the petitioner, has been filed under section 115(1) of the Code of Civil Procedure, 1908. At the time of issuance of the Rule, the following order was passed:

"Let a Rule be issued calling upon the opposite party Nos. 1(a) to 1(f) to show cause as to why the impugned judgment and order dated 27.04.2025 passed by the learned Additional District Judge, Fifth Court, Jashore in Miscellaneous Appeal No. 57 of 2022 allowing the appeal and reversing the judgment and order dated 31.10.2022 passed by the learned Assistant Judge, Chowgachha, Jashore and thereby dismissing the Pre-emption Miscellaneous Case No. 36 of 1996 filed by the petitioner should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper."

Concomitantly, this Court, by way of an ad-interim order, stayed the operation of the impugned judgment and order dated 27.4.2025 passed by the learned Additional District Judge, 5th Court, Jeshore in Miscellaneous Appeal No. 57 of 2022 for a period of 6 (six) months from date, and also directed both parties to maintain **the *status quo*** with respect to possession of the suit land. The said order was subsequently extended from time to time.

The **material facts**, shorn of unnecessary details, are that the Pre-emptor along with the predecessor of the opposite party No.37 to 42, filed Pre-Emption Misc. Case No.36 of 1996, impleading opposite party No.1 as the pre-emptee No.1 and other necessary parties, seeking pre-emption of the suit land. Originally, the suit land is situated at Mouza-Chowgachha, S. A. Khatian No.560, S. A. Dag No.32, with a total land area of 2.1/3 decimals out of 07 (seven) decimals, while the grant total land of the plot is 23 decimals. Original owners of the case land and

non-suited land were Laxmikanta Sardar alias Dhor, Bolai and Batul Sardar. The pre-emptor and predecessor of the opposite party No.37 to 42 and the vendor opposite party No.3 are full brothers and the petitioner and predecessor of the opposite party No.37 to 42 vide deeds dated 25.05.1977 bought 05 (five) decimals of land and the vendor defendant No.2 another full brother of the petitioner vide deed dated 27.06.1977 bought 02 (two) decimals of land from plot No.32 and had been possessing the same. In 1977, the petitioner and two other full brothers of the petitioner erected an Arat in the suit land and had been possessing the same as ejmali possession, and paid rent to Ali Box, and thereafter to his brother Modhu alias Aminul, at the rate of 500 (five hundred) taka per month. There, a hotel was erected on the South side of the land, and rent was given to one Ashraf on the condition that eviction be made on a monthly basis. On 05.11.1996 the petitioner went to the tenant for monthly rent and then the tenant informed him that the pre-

emtee No.1 has informed the tenant that 1/3 rent of the total rent of October will be given to the pre-emtee No.1 and the pre-emtee has informed it about 2/3 days back and also informed that the pre-emtee has bought the lands from the vendor-opposite party No.2. After knowing the matter, the petitioner got the certified copy of the said deed on 11.11.1996 and came to learn about transaction. The pre-emtee No.1 and the vendor-defendant-opposite party No. 2, without giving any notice to the pre-emptor, in secret, effected the transaction on 17.02.1987. The deed has been entered in the volume on 04.04.1987. The pre-emtee is a stranger to the suit land, and the pre-emptors are co-sharers in the suit land, and they have no agricultural lands exceeding 8/9 Bighas; hence, he filed this case for pre-emption.

The predecessors of the opposite party No. 1, being pre-emtee No. 1, contested the case by filing a written objection denying all material allegations as made by the pre-emptor-petitioner and predecessor of the opposite

party No.37 to 42, contending *inter alia* that the case is barred by defect of parties, barred by limitation and estoppel, waiver and acquiescence. The pre-emptee in the written statement stated that the suit lands were originally bought from Laxmikanto by the pre-emptor and vendor on 25.05.1977 and 27.06.1977, measuring 07 (seven) decimals on the North side. The pre-emptor and vendors had been possessing $2\frac{1}{3}$ decimals of land each vide mutual partition amongst them. The vendor-defendant No. 2, by erecting a shop on his land, rented the same to Md. Tofayel Hossain and had been possessing the same and requested the pre-emptors to buy the same from him, but the pre-emptors showed their incapability to buy the same, and on their knowledge the pre-emptee bought the same on 17.02.1987 and from Tofayel Hossain and thereafter from Babul Akter and Aziz Miah taking rents and possessing the suit land and in 1996 erected house there and keeping goods in the case land. The pre-emptee's land has been recorded in R. S. Khatian No.687,

and the pre-emptor's land has been recorded in R. S. Khatian No.310. The pre-emptors are no longer co-sharers of the suit land, and the suit is liable to be dismissed.

Thereafter, the learned trial Court, after completing all legal formalities, concluded the trial and allowed the pre-emption vide its judgment and order dated 31.10.2022. Thereafter, the Pre-emptee No. 1, being aggrieved by and dissatisfied with the said decision of the learned trial Court, preferred a Miscellaneous Appeal No. 57 of 2022 before the learned District Judge, Jashore, who subsequently transferred the said appeal to the learned Additional District Judge, 5th Court, Jashore for hearing and disposal of the said appeal.

Thereafter, the Additional District Judge, after hearing the appeal on contest, allowed the appeal vide its judgment and order dated 27.04.2025, by setting aside the judgment and order of the learned trial Court

Thereafter, the Pre-emptor being aggrieved by and dissatisfied with the said decision of the learned Appellate Court, preferred the present revisional application.

Mr Jahangir Alam, learned Advocate appearing on behalf of the petitioner, submitted that the learned Appellate Court, being in error, misconceived and misread the law and, without controverting the decision of the learned trial Court, allowed the appeal, thereby causing a serious miscarriage of justice.

Learned Advocate has further submitted that the petitioner, as preemptor, filed a case for pre-emption in respect of the suit land claiming that he and his two other brothers have possessed the 07 decimals suit land jointly by building a shop thereon, which shop was rented to different tenants, and collecting rent from the shopkeepers and allocated it among three brothers but on 05.11.1996 the pre-emptor came to know from their tenants that Amzed, the purchaser, told that he will get rent one third out of the entire rent, and after collecting a

certified copy of the said deed No. 1732 dated 17.02.1987 on 11.01.1996 filed the pre-emption case on 20.11.1996 within the stipulated time of limitation.

Learned Advocate has further submitted that the pre-emptor adduced 04 witnesses to prove the case and the defendant examined as many as 04 witnesses in their support and the learned Judge of the Trial Court, after hearing both the parties, allowed the pre-emption and thereafter the pre-emptee No.1 preferred Appeal No. 57 of 2022 after hearing the learned Judge of the Appeal Court allowed the Appeal and dismissed the case stating that the case is barred by limitation.

The learned Advocate has further submitted that the Opposite Party wrongly demanded that the pre-emptor had created the cause of action in this case, but the pre-emptor in his plaint specifically stated that he came to know about the fraudulent transfer on 05.11.1996 from his tenant which is confirmed by adducing deposition of all P.Ws, even the P.W-03 Tofayel who is tenant of

defendant No.2 named Abu Siddique also stated that the pre-emptor came to the date of transfer on 05.11.1996, thereby, the petitioner rightly filed the case in time when he came to know as to the impugned transfer, and accordingly, the finding of the learned Appellate Court based on misconception of law.

He further argued that the trial Court decided that the cause of action starts from 05.11.1996, though the appellate Court differed with the matter relying upon the deposition of P.W-3 Tofayel, who said the matter to the pre-emptor on 06.11.1996, which never debarred the pre-emptor from filing the case because it was within 4 months from the date of his knowledge. In this context, he referred to the decision cited in 15 MLR (HCD) 2010 page 207, 46 DLR (AD) 1994 187, 56 DLR 2004 page 155, 9 MLR (HC) 2004 page 217, 5 MLR (AD) 2000 page 24.

Learned Advocate for the petitioner also submitted that the Opposite Party demanded how the Pre-emptor would identify the deed number within one day, though

every year a huge number of deeds are executed. The Pre-emptor, on 05.11.1996, when he came to know that his full brother sold the case land to the Opposite Party No.1 named Md. Amzed. The Pre-emptor, when asked about the matter by his brother, said that you may search to find the deed that proved that the pre-emptor's brother also concealed the transfer.

He further argued that the Opposite Party in the written submission stated that the P.W-1 in his deposition disclosed that the R.S. record prepared in the year 1990 was a wrong conception because he stated that the R.S. record starts from 1990 and, in the presence of his brother, it was prepared. The proportionate land was not recorded in the name of Abu Siddique; it came to light when the R.S. record was published in 2013, because the opposite party or the concerned office did not serve notice upon the pre-emptor. R.S. operation started in the concerned area in 1990, and the proceedings continued till 2013, whereas the present pre-emption case was filed

in 1996. Prior to filing of the case, i.e before the cause of action as alleged in the pre-emption application, the pre-emptor had no knowledge as to the impugned transfer. Though O.P.W-2 Asaduzzaman in cross examination says that "চৌগাছা থানার জরিপ রেকর্ড হয় ২০০১ সালে জরিপ রেকর্ডের সময় আমি উপস্থিত ছিলাম। আমার মামা আমজাদ কম চৌরার কারনে উপস্থিত ছিলাম (পাতা-৬৫ সাল্লিমেন্টারি)। ১৯৯০ সালে চৌগাছা মৌজার জরিপ রেকর্ড হয়নি। (পাতা ৬৬ সাল্লিমেন্টারি)" Both Courts below never discussed the point of waiver, acquiescence and estoppel, so the said issue cannot be raised for the first time before the High Court Division. It is evident that the R.S. record published in the 2013 (Exhibited) and the Opposite Party No. 1, Amzed, mutated the land mentioned in S.A. Khatian, not R.S. Khatian, without serving any notice, which they admitted to as separation of Khatian without serving notice upon the Opposite Party in view of section 117 of the SA&T Act, 1950 is not a proper separation in the eye of law. The petitioner relied upon the decision cited in 10 MLR (HC) 2005 page-01, 53 DLR 2000 page 223, 33 DLR (AD) 1981 page-323.

Learned Advocate for the petitioner further submitted that the Opposite Party could not prove that Amzed possessed the suit land or that the original vendor handed over possession to Amzed, and the Opposite Party No. 1 Amzed could not show that he has collected rent from any tenant, though OPW-1 deposited a rent receipt which was not exhibited, so it has no evidentiary value, and more so, all the O.P.Ws in their depositions said that Pre-emptor possessed the suit land.

Learned Advocate has earnestly submitted that the pre-emptor in the plain specifically mentioned the date of knowledge of the alleged transfer on 05.11.1996 from his tenant and thereafter he collected a certified copy of the deed No. 1732 dated 17.02.187 on 11.11.1996 and filed the pre-emption Case on 20.11.1996, and all the P.Ws by their concurrent depositions proved that the pre-emptor came to know the date of alleged transfer of land on 05.11.1996 and he also in possession and even the P.W-3 who is tenant of the Opposite Party as per written

statement said that pre-emptor came to know the alleged transfer on 05.11.1996. Thus, the learned Appeal Court, in its judgment, stated that, "P.W-3 Tofayel said he informed the pre-emptor of the matter of demanding rent for 1/3 of the land on 6.11.1996, so the date of the cause of action is questionable." Whereas, the pre-emptor has filed the pre-emption case within 1(one) month from the date of knowledge, so the case was filed in time. Accordingly, the judgment and order of the learned Appellate Court is liable to be set aside.

Conversely, **Mr Md. Kamruzzaman** Miah, the learned Advocate appearing on behalf of the opposite parties, has submitted that the learned trial Court, being misconceived on facts and law, allowed the pre-emption, but the learned Appellate Court, independently assessing the evidence on record and duly controverting the reasons stated by the learned Trial Court, rightly allowed the appeal.

Learned Advocate has further submitted that the pre-emptee No.1 purchased the case land within the knowledge of the pre-emptor and thereafter mutation and the subsequent survey also concluded; thus, the learned trial Court, without considering this vital aspect, allowed the pre-emption and thereby caused miscarriage of justice.

Learned Advocate has further submitted that the learned Appellate Court, considering the facts and evidence, allowed the appeal vide its judgment and order dated 27.05.2025, and no reason is available to interfere within the revisional jurisdiction.

Learned Advocate further submitted that the cause of action of the case is an imaginary story told by the tenant; the cause of action date is 05.11.1996, whereas, the pre-emptee No.1 purchased the case land on 17.02.1987, and the case was filed after a long lapse of time (9 years 09 Months 04 days & volume entry 8 years 07 Months 17 days), and this lapse of time has not been

proved by the evidence, accordingly, the pre-emption case is barred by limitation.

He further argued that the petitioner has described in the plaint about their tenant (Ali Box has gone, then after Modhu alias Aminul Islam, Asraf and Asfaq. But they were not produced as witnesses. Moreover, Pw-2, Pw-3, and Pw-4, interested and hearsay witnesses, have given deposition in this case, and it is mentionable that the R.S. Record was prepared in the year 1990; at that time, the petitioner and his brother were present at that place, and PW1 stated that he did not know the reason that the name of Amzad Hossain was published in the R.S. Record, and PW2 corroborated that R.S Record has been prepared in the year of 1990 and PW4 stated that R.S Record has been prepared in the year of 1992, and all the R.S. D.P Khatian and R.S. Final Khatian & Map has exhibited by opposite party, whereas, the learned Trial Court failed to get notice of the said documents, and thereby caused serious miscarriage of justice.

Learned Advocate further submitted that Abu Bakar has transferred his portion of land to Amzad Hossain on 17.02.87, and Amzad Hossain has got possession of the case land, and R.S. Record has prepared Khatian no. 687 in the year 1990; the name of Amzad Hossain was also mutated by the mutation Misc. Case No. 146 dated 11.7.1996: when the mutation case was filed before the Assistant Commissioner (Land), notice was served on the previous owner of the land, and the local Assistant Commissioner (Land) was also informed to prepare a survey report; thereafter, the mutation case was finalised, and then the pre-emptor-petitioner was silent, and no legal steps have been taken against the said mutation case.

Learned Advocate further posited that the pre-emptor- respondent -petitioner has known of the transfer to the said land and also knows about the R.S. record and mutation from the very beginning, and the petitioner filed

the pre-emption Misc. petition falsely. Consequently, the instant Rule is liable to be discharged with costs.

On perusal of the judgment of the learned trial Court, it is found that it was observed as under:

“তর্কিত হস্তান্তরের িষয়ে নালিশী খতিয়ানের অপর সহ-শরীকপক্ষকে The State Acquisition and Tenancy Act, 1950 sec.89 িধান মোতাবেক কোন নোটিশ দেয়া হইয়াছে এমন কোন িটি ১ নং প্রতিপক্ষের লিখিত আপত্তিতে পরিলক্ষিত হয় না কিংবা দরখাস্তকারী পক্ষের সাক্ষীগণকে জেরা করার সময় এ িষয়ে প্রতিপক্ষ কর্তৃক কোন ইঙ্গিত প্রদান করা হইয়াছে মর্মেও পরিলক্ষিত হয় না। উপরন্ত ১৭৩২/১৯৮৭ (প্রদর্শনী-৪) তর্কিত দলিল পর্যালোচনায় দেখা যায় উক্ত দলিলের কোথাও নালিশী জোতের সহ শরীক প্রজাগণের উপর নোটিশ প্রদান করা হইয়াছে মর্মে কোন িষয় লিপিবদ্ধ নেই। The State Acquisition and Tenancy Act, 1950 sec.95(1) এর িধান মোতাবেক ৮৯ ধারার অধীন নোটিশ জারীর তারিখ হইতে ৬ মাসের মধ্যে অথবা নোটিশ জারী না হইলে হস্তান্তর সম্পর্কে অগত হওয়ার তারিখ হইতে ৪ মাসের মধ্যে অগ্রক্রয়ের অধিকারের উদ্ভূ হইবে। যেহেতু তর্কিত হস্তান্তরের িষয়ে উপযুক্ত মতে কোন নোটিশ প্রদান করা হয়নি, সেহেতু নোটিশ জারীর তারিখ হইতে তামাদির মেয়াদ গণনার কোন প্রশ্নই উঠেনা। সুতরাং তামাদির প্রশ্নে সিদ্ধান্ত নেয়ার ক্ষেত্রে িচ্যে িষয় হচ্ছে প্রার্থী তর্কিত হস্তান্তর সম্পর্কে অগত হওয়ার তারিখ হইতে ৪ মাসের মধ্যে অত্র মোকদমাটি দায়ের করিয়াছে

কিনা। ছায়েলপক্ষ দাখী করিয়াছেন ০৫/১১/১৯৯৬ তারিখে ভাড়াটিয়াদের নিকট হইতে তর্কিত হস্তান্তরের বিষয়ে জানিতে পারিয়া ঐগত ১১/১১/১৯৯৬ তারিখে নালিশী দলিলের জায়েদা নকল উত্তোলন পূর্বক তর্কিত হস্তান্তরের বিষয়ে আনুষ্ঠানিকভাবে অগত হয়েন। দরখাস্তকারী পক্ষের সকল সাক্ষী ০৫/১১/১৯৯৬ তারিখে ভাড়াটিয়াদের নিকট হইতে তর্কিত হস্তান্তরের বিষয়ে অগত হওয়ার বিষয়ে এক এং অভিন্ন সাক্ষ্য প্রদান করিয়াছেন প্রতিপক্ষ হইতে জের করিয়াও ভিন্ন রূপ কোন প্রত্য অথবা দরখাস্তকারী পক্ষের সাক্ষীদের সাক্ষ্য অপ্রস্থাস করার মতো কোন বক্তব্য প্রাহির করিতে পারেন নাই।”

Learned trial Court further observed that:

“ও.পি.ডব্লিউ-০২ জেরায় এলিয়াছেন "চৌগাছা থানায় জরীপ রেকর্ড হয় ২০০১ সালে"। দরখাস্তকারী পক্ষের প্রিজ্ঞ কৌশলী যুক্তিতর্ক শুনানীকালে দাখি করিয়াছেন, প্র্তমান আর, এস রেকর্ড এ ১/২ নং দরখাস্তকারী ও ১ নং প্রতিপক্ষের নামে পৃথক খতিয়ান হইলেও অত্র অগ্রক্রয়ের দরখাস্ত The Transfer of Property Act, 1882, sec.52 এর িধান মোতাবেক doctrine of lis-pendence দ্বারা পরিচালিত হইে। সার্চিক সাক্ষ্য প্রমাণ পর্যালোচনায় দেখা যায় অত্র মোকদ্দমা ২০.১১.১৯৯৬ সালে যখন দাখিল হয়, তখন দরখাস্তকারী পক্ষ নালিশী খতিয়ানের সহ-শরীক প্রজা ছিলেন। অতএর মোকদ্দমার কারণ (cause of action) উদ্ভের সময় া মোকদ্দমী দাখিলের সময় পক্ষদ্বয়ের যে অস্থান (status) ছিল সেটাই িপ্রোচিত হইে।

সুতরাং, দরখাস্তকারীপক্ষ নালিশী জোতের সহ-শরীক প্রজা মর্মে সিদ্ধান্ত গৃহীত হইল।”

On perusal of the judgment of the learned Appellate Court it is found that it was observed in the following way:

“পি.ডব্লিউ-১ এর সাক্ষ্য পর্যালোচনায় দেখা যায় যে তিনি তার জ্ঞানানুসারে বলেছেন, ইং ৫/১১/৯৬ তারিখে ১ নং তরফছানী ভাড়াটিয়াদের বলে যে ২ ভাগ ভাড়া তাদের দিবে আর ১ ভাগ আমাদের জন্য থাকবে। ৫/১১/৯৬ তারিখে ভাড়া নিয়ে আসতে গেলে দুই ভাগ দেওয়ায় আমরা না নিয়ে ফেরত আসি। তিনি আরো বলেন যে অংশের ভাড়া দিতে না চাইলে তাদের কাছে বলে যে ১ নং তরফছানী নাকি ২ নং তরফছানীর নিকট থেকে নালিশী জমি খরিদ করেছে। ফলে দেখা যায় পি.ডব্লিউ-১ এর সাক্ষ্য দ্বারা দরখাস্তে বর্ণিত আলী বক্ক কিংবা আমিনুল এর কাছে ১ নং তরফছানী কর্তৃক ভাড়া চাওয়ার কথা বলা হয়নি এবং তারাও কেউ ঘটনার তারিখে ছায়েলকে ১ নং তরফছানী কর্তৃক ভাড়া চাওয়ার কথা জানিয়েছিল এমন প্রমাণ প্রদান করা হয়নি।”

Learned Appellate Court further observed that:

“মহামান্য আপীল বিভাগ Abdul Mazid Howlader & another Vs. Lahajuddin Howlader & others মামলায় অভিযুক্ত পোষন করেছেন যে, "In this case admittedly the application for pre-emption was filed after 7 years of transfer and a heavy

burden lies on the pre-emptor to discharge the onus of proof that he filed the case within four months from the date of his knowledge. The pre-emptor having failed to discharge the initial onus by adducing cogent and reliable evidence the learned Single Judge ought to have held that the application for pre-emption is barred by limitation." [1 MLR (AD) page 302 para-13]

সুতরাং মহামান্য উচ্চ আদালতের উপর্যুক্ত নজিরের আলোকে সিদ্ধান্তে আসা যায় যে, ছায়েলপক্ষ মোকদমাটির cause of action প্রমান করতে পারেনি তাই দীর্ঘ ৮ বছর ৭ মাস ১৭ দিন পরে মামলা করায় মোকদমাটি তামাদি প্রারিত হও যা প্রিজ্ঞ প্রচারিক আদালত অনুধাওন করতে পারেননি। যেহেতু মামলাটি তামাদি প্রারিত "সেহেতু অত্রাকারে মামলাটি চলতে পারে না এওং ছায়েলপক্ষ প্রার্থীত মতে প্রতিকার পেতে পারে না। সুতরাং প্রিজ্ঞ প্রচারিক আদালত ভ্রমাত্মকভাবে ১, ৩ ও ৬ নং প্রিচার্য প্রিষয় ৩টি ছায়েল পক্ষের অনুকূলে নিষ্পত্তি করেছেন।”

Considering the above observations of the learned Subordinate Courts, it is clearly demonstrated that the learned Appellate Court, without controverting the reasons stated by the learned trial Court, and without

independently assessing the evidence on record and misconstruing the proposition of law, passed the impugned judgment and order. Moreover, the learned Appellate Court relied upon the aforesaid judgment of the Hon'ble Apex Court, which concerned facts that are quite distinguishable from the instant facts of the case. Thus, the ratio of the said judgment regarding the pre-emptor's initial onus or burden to prove the case by adducing cogent and reliable evidence is very important in this case, and the records reveal that the pre-emptor successfully discharged his initial burden by adducing cogent and reliable evidence.

However, the opposite parties sought to establish that the Joma-Khatian has been separated and that the case is seriously barred by limitation, thereby leaving the pre-emptor with no scope to exercise the pre-emption. Upon perusal of record it is found that O.P.W-2 Asaduzzaman in cross examination stated that "চৌগাছা থানার জরিপ রেকর্ড হয় ২০০১ সালে জরিপ রেকর্ডের সময় আমি উপস্থিত ছিলাম।

আমার মামা আমজাদ কম প্রোবার কারনে উপস্থিত ছিলাম। ১৯৯০ সালে চৌগাছা মৌজার জরিপ রেকর্ড হয়নি।" It is evident that the R.S. record published on 04.06.2013 [Ext. 8 & 8(Ka)] and the Opposite Party No. 1, Amzed, mutated the land mentioned in S.A. Khatian, not R.S. Khatian, in 1996 without serving any notice, which they admitted to as separation of Khatian without serving notice upon the Opposite Party in view of section 117 of the SA&T Act, 1950 is not a proper separation in the eye of law. Moreover, the opposite parties claimed that the R.S. Record has prepared Khatian no. 687 in the year 1990; the name of Amzad Hossain was also mutated by the Mutation Misc. Case No. 146 dated 11.7.1996: when the mutation case was filed before the Assistant Commissioner (Land), notice was served on the previous owner of the land, and the local Assistant Commissioner (Land) was also informed to prepare a survey report. In this context, it is presumable that if the R.S. record was prepared in the year 1990, in the name of pre-emptee No.1, then why was it necessary to mutate his name

through Mutation Misc. Case No. 146 dated 11.7.1996. This type of footing of the pre-emptee No.1 is contrary to law and doubtful in assessing the evidence as a whole, and these matters have been strenuously discussed and considered by the learned Trial Court; thus, the learned Appellate Court manifestly misconstrued the evidence on the face of the record.

However, the learned Advocate for the opposite parties referred to a decision reported in 2 BLC (HCD)539, wherein the case of Keshor Bibi Vs Sekander Ali Sarder and others, the Court was pleased to hold that-

"State Acquisition and Tenancy Act (XXVIII of 1951):

Section 96-

Limitation-As the pre-emptor in the pre-emption case did not mention of any particular date of knowledge and there was no averment from whom and from which source he became aware of the transfer in question and the witness regarding knowledge of the transfer also could not state the exact date when the alleged informant informed the kabala matter to the

pre-emptor for the first time when the pre-emptee, by way of written objection and also by adducing evidence, challenged the date of knowledge of the pre-emptor and asserted that pre-emptor had earlier knowledge of the kabala matter from the time of execution and registration of the kabala, the decision arrived at by the trial Court has not been properly reversed by the appellate Court as the pre-emptor failed to prove his alleged date of knowledge through uncontroverted legal evidences. --- (13, 15 & 17)"

Conversely, the learned Advocate for the petitioner referred to a decision reported in 15 MLR (HCD) 207, wherein the case of Md. Emarat Hossain Vs Md. Nurul Haque and others, the Court was pleased to hold that-

"11. Regarding the question of limitation it can be said that for the purpose of filing a pre-emption case where no notice has been served under Section 89 of the State Acquisition and Tenancy Act, generally the pre-emptor files the case showing that he came to know about the disputed transfer from co villagers/from some definite persons, then he applies for getting certified copy of the disputed deed and on

receipt of the certified copy of the disputed deed, the pre-emptor becomes confirmed about the disputed transfer and files the pre-emption case. So it can be said that in such case knowledge is of 2 kinds one is an initial knowledge which is derived from some person or some individual person specifically named in the pre-emption application and another knowledge is the confirmed knowledge as derived from getting the certified copy of the disputed deed."

From the aforesaid decisions, it is crystal clear that the pre-emptor-respondent-petitioner has been able to overcome all the barriers as to limitation and so far as the cause of action. Accordingly, the aforesaid two decisions have implications in the instant case and also aid the case of the petitioner, rather than the opposite parties.

Considering the above facts and circumstances, it is found that the learned trial Court, in deciding on the point of limitation, specifically observed that if the purchaser provided notice under section 89 of the State Acquisition and Tenancy Act to the pre-emptor, he would get only 6

months to file the pre-emption case and, on the reverse the pre-emptor would get unlimited time that is the cause of action will arise at the time of knowledge accrued thereon and the trial Court also found pre-emptor rightly file the case of pre-emption as per the stipulated period of limitation.

On the contrary, the learned Appellate Court, without controverting the legal aspect stated by the learned trial Court, held that the suit was filed 8 years after the date of registration of the alleged deed in question. The appellate Court also failed to independently re-appraise the evidence on record. It specifically found that the petitioner is the co-sharer and the opposite parties are strangers to the case land. The appellate Court further failed to find that the application for pre-emption was instituted within the available period prescribed under section 96 of the State Acquisition and Tenancy Act. Accordingly, it affirmed the findings of the trial Court on all material issues.

So far as the existence of the R.S. record in the name of the opposite party, I am of the view that the R.S. record prepared and published in the opposite party's name while a pre-emption case is pending does not, if that case ends unsuccessfully, confer legal entitlement on that party.

However, it is well settled that this Court, while exercising revisional jurisdiction under section 115(1) of the Code of Civil Procedure, 1908, does not function as a Court of appeal to reappraise the evidence merely because another view is possible. In the case, reverse findings of fact are shown to have been arrived at by misreading the evidence, non-consideration of material evidence, coram non judice, or by committing an error of law occasioning failure of justice; interference in revision is wholly warranted.

In the instant case, the petitioner's case has demonstrated that the learned Appellate Court misread the evidence or ignored material evidence. On the

contrary, the learned trial Court has meticulously examined the pleadings, oral testimony and documentary evidence before arriving at its findings of fact. Those findings are based upon evidence on record and are neither perverse nor contrary to law.

Accordingly, I find illegality, impropriety, errors and misconstruction of law in the impugned judgment and order passed by the learned Appellate Court, thereby warranting interference by this Court in the exercise of its revisional jurisdiction.

As a result, I find merit in the Rule, and accordingly, the Rule is hereby made absolute.

There shall, however, be no order as to costs.

However, the impugned judgment and order dated 27.04.2025 passed by the learned Additional District Judge, Fifth Court, Jashore in Miscellaneous Appeal No. 57 of 2022 allowing the appeal is hereby set aside, and the

judgment and order dated 31.10.2022 passed by the learned Assistant Judge, Chowgachha, Jashore allowing the Pre-emption Miscellaneous Case No. 36 of 1996 filed by the petitioner is hereby upheld.

The learned Assistant Judge, Chowgachha, Jashore, is directed to implement the judgment and order dated 31.10.2022 as early as possible upon receipt of this judgment, in accordance with law, if the petitioner seek appropriate legal remedies.

The order of stay and *status quo* granted earlier by this Court is hereby recalled and vacated.

Let the Subordinate Courts' Records (SCR) be transmitted forthwith to the Courts concerned, together with a copy of this judgment.

Order accordingly.

(Abdur Rahman, J)