

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 443 OF 2010

IN THE MATTER OF:

An application under section 115(1) of the
Code of Civil Procedure.

(Against Order)

-And-

IN THE MATTER OF:

Md. Ansar Ali and another

--- Preemptee-Appellant-Petitioners.

-Versus-

Md. Jahir Hossain and another

---Preemptor-Respondent-Opposite Parties.

Mr. Syed Mohammad Javed Parvez,
Advocate

--- For the Preemptee-Petitioners.

Mr. A. S. M. Khalequzzaman, Advocate

---For the Preemptor-Opposite Parties.

Heard on: 30.04.2023 and 03.05.2023.

Judgment on: 16.05.2023.

At the instance of the present preemptee-appellant-petitioners, Md. Ansar Ali and another, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite parties to show cause as to why the judgment and order complained of in the petition moved in Court today should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present preemptor- respondent- opposite parties, Md. Jahir Hossain and another as the applicants-preemptors filed the Miscellaneous Case No. 29 of 2006 in the Court of the learned Assistant Judge, Court No. 2 (Peergacha), District- Rangpur claiming right of preemption under the provision of law. The application for preemption contains that the suit land originally belonged to Gour Chandra Das who died leaving behind his daughter Porosh Moni thereafter transferred the land measuring 33 decimals of land to Aezuddin and also land measuring 33 decimals transferred to Nobin and Nimai. The said Aezuddin's land transferred to his 4 sons, namely, Nurul Islam, Nazrul Islam, Abdul Matin and Shamsul Haque by registering Heba-Bill-Ewaz on 24.06.1978. Nazrul Islam and Shamsul Haque sold 11 decimals of land to Ashma Khatun and Nurul Islam by registering sale deed No. 6722 dated 16.02.1987. Ashma Khatun and Nurul Islam sold 10.75 decimals of land to the preemptors. In the meantime, Nurul Islam son of Aezuddin sold 10.50 decimals of land to one another Nurul Islam son of Golam Uddin. The said Nurul Islam and his wife Ashma Khatun preemptee Nos. 3 and 4 sold 10.75 decimals of land to the

preemptee- petitioner Nos. 1 and 2 by registering deed No. 9871 dated 30.11.2008 without serving any notice to the preemptors. However, the preemptors came to know about itself on 29.08.2006 and after obtaining a certified copy of the said sale deed filed this case.

The preemptee- petitioner Nos. 1 and 2 as the opposite parties contested the suit by filing a written objection stating that the preemptors are entitled to purchase the land at the cost by fixing Tk. 23,500/- (twenty-three thousand and five hundred) but they could not arrange the required money. The preemptees subsequently registered a sale deed thereafter without giving any notice to the preemptors.

The learned Assistant Judge, Court No. 2 (Peergacha), Rangpur heard the case and came to a decision to allow the preemption case in favour of the preemptors. Being aggrieved the present preemptee-petitioners preferred the Miscellaneous Appeal No. 44 of 2009 in the court of the learned District Judge, Rangpur who after hearing the parties dismissed the appeal on 27.08.2009 on the ground of of limitation. This revisional application has been filed under section 115(1) of the Code of

Civil Procedure challenging the legality of the impugned judgment and order and the Rule was issued thereupon.

Mr. Syed Mohammed Javed Parvez, the learned Advocate appearing for the preemptee- appellant- petitioners submits that the learned appellate court below has committed a serious error of law in not considering that the delay of 244 days was explained properly and occasioned a failure of justice.

He further submits that the learned trial court has committed a serious error of law occasioning failure of justice in not considering that the deed in question was registered on 30.11.2004 and the preemption case was filed on 05.09.2006 and this long delay in filing the preemption case was not been explained by the preemptors by adducing evidence both orally as well as documentary.

The Rule has been opposed by the present preemptor-respondent-opposite party Nos. 1 and 2.

Mr. A. S. M. Khalequzzaman, the learned Advocate, appearing on behalf of the preemptor-opposite party Nos. 1 and 2 submits that this preemption case was filed by the opposite parties as the applicants to get a preemption right under section 96 of The State Acquisition and Tenancy Act, 1950 and the

learned trial court in details described the cases of both sides and after hearing the parties allowed the application vide providing preemption right to the opposite parties as there was no formal notice upon the preemptors before the sale in question by the vendor- preemptees, as such, allowed the miscellaneous case in favour of the preemptors but the present petitioners obtained the Rule by misleading the court, thus, this Rule should be discharged.

The learned Advocate further submits that the appeal was heard by the learned District Judge, Rangpur as there was no credible evidence or as to a delay of 244 days in filing the said appeal, thus, dismissed the appeal as being barred by limitation period and affirming the judgment of the learned trial court, as such, both the courts below concurrently found that preemption right has been accrued by preemptor-opposite parties, thus, the Rule should be discharged.

Considering the above submissions made by the learned Advocates appearing on behalf of the respective parties and also considering the revisional application filed by the present preemptee-appellant-petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, particularly,

the concurrent judgment passed by the learned appellate court below and also perusing the relevant and required documents available in the lower courts records, it appears to me that the present preemptors- applicants filed a miscellaneous case claiming right of preemption under section 96 of The State Acquisition and Tenancy Act, 1950. The case of the preemptors is that the suit land was sold on 30.11.2004 by the vendor-preemptees without serving any notice under section 89 of the Act, 1950 and the case was filed within the stipulated period of the law by the preemptors as the co-sharers of the case land. The learned Advocate for the opposite parties contradicted the case of the opposite parties by stating that there was a discussion by the preemptors and the preemptee-purchasers about the sale of the land but upon inability to purchase the case land which is a notice or knowledge but the case was filed beyond limitation period described in the provision of law, as such, the preemption case is not maintainable.

In view of the above conflicting cases, this court has to take a decision as to whether the learned courts below made a lawful decision under the provision of law.

I have carefully examined the evidence and the judgments of the learned courts below. The learned trial court discussed the merit of the cases of the parties and decided that preemptors could successfully prove their case by giving evidence as to the sale of the land under section 96 of The Act, 1950 because, before the sale in question, the preemptees could not prove that there was knowledge about the preemptors as to the said sale of the land, therefore, the learned trial court came to a lawful decision to allow the miscellaneous case on the basis of the following findings:

...“প্রার্থী কর্তৃক আনীত অগ্রক্রয়ের দরখাস্তে ওয়েভার, এ-স্টা-পল ও একুইসেন্স দোষে বারিত না হওয়ায় অত্র মোকদ্দমা বর্তমান আকা-র ও প্রকা-র চলি-ত পা-র এবং প্রার্থী প্রতিকার পাওয়ার হকদার ম-র্ম আদাল-তর নিকট প্রতীয়মান হয় কারণ উক্ত মোকদ্দমার নথি দাখিলী প্রদর্শনী চিহ্নিত কাগজাদি এবং সাক্ষ্য প্রমাণাদি পর্যা-লাচনা ইহা আদাল-তর নিকট প্রতীয়মাণ হয় যে, প্রার্থী পক্ষের অজ্ঞাতে ৩ ও ৪ নং প্রতিপক্ষ ১ ও ২ নং প্রতিপক্ষ বরাবর উক্ত সম্পত্তি হস্তান্তর করেন। প্রার্থীপক্ষ নালিশী তপসিল বর্ণিত সম্পত্তি ক্রয়সূত্রে শরীক প্রজা হওয়ায় তাকে জ্ঞাত করানো ৩ ও ৪ নং প্রতিপ-ক্ষর উচিত ছিল।”...

The learned appellate court below without entering into the factual aspects of the merit of the case declared the suit is barred by a limitation period for a delay of 244 days and the

learned appellate court below considered that there was no proper explanation as to the reason for the delay for such a long period of time of 244 days. The learned appellate court below dismissed the appeal on the basis of the following findings:

...“দরখাস্তকারী ইং ২৪.১০.২০০৮ এবং ১৬.০৭.২০০৯ বহিঃবিভাগে ডাক্তার দেখাইয়াছেন ম-র্ম প্রতীয়মাণ হয়। কিন্তু ২৪৪ দিন তামাদী মামলার আবেদনের ক্ষেত্রে প্রতিদিনের বিল-স্বর ব্যাখ্যা থাকা আবশ্যিক। আপীলকারীর বাম হাতের মধ্যমা আঙ্গুল দুর্ঘটনাজনিত কার-ণ কাটিয়া বিচ্ছিন্ন হওয়ার কার-ণ কোন হাসপাতাল ভর্তি হইয়া চিকিৎসাধীন ছিল এমন কোন দালিলিক প্রমাণ উপস্থাপন করেন নাই। শুধুমাত্র ২৪.১০.২০০৮ ইং এবং ১৬.০৭.২০০৯ ইং তারিখ জাতীয় অ-র্থাপ্যাডিক হাসপাতাল ও পুনর্বাসন প্রতিষ্ঠান শের-ই-বাংলানগর, ঢাকায় বহিঃবিভাগ চিকিৎসাজনিত কার-ণ ২৪৪ দি-নর তামাদী মওকুফ গ্রহণ-যোগ্য না হওয়ায় আবেদন নামঞ্জুরযোগ্য।”...

In view of the above discussions and concurrent findings in favour of the preemptors for acquiring a preemption right under provision 96 of the Act, 1950 as there was no notice served by the vendors before the sale of the land by the vendor-preemptees from the date of knowledge.

In this regard, it is to be mentioned that section 96 was amended on 20 September, 2006 but this case was filed on 18.08.2006. I have carefully examined the concurrent impugned judgment passed by the learned appellate court below and only

considered that the suit was barred by limitation as there was no required documents were submitted by the preemptees as to the physical injuries and the treatment in any appropriate hospital for the purpose of satisfaction of the court, as such, I do not find any illegality or error of law committed by the learned appellate court below. In such an event, I consider that this is not an appropriate case for interference from this court and this Rule does not require any further consideration.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and order dated 27.08.2009 passed by the learned District Judge, Rangpur in the Miscellaneous Appeal No. 44 of 2009 dismissing the appeal and on the ground of limitation and thereby affirming the judgment and order dated 25.09.2008 passed by the learned Assistant Judge, Court No. 2, Rangpur in the Miscellaneous Case No. 29 of 2006 allowing the preemption case is hereby upheld.

The interim order was passed by this court at the time of issuance of the Rule staying the operation of the judgment and order passed by the learned trial court in the Miscellaneous Case No. 29 of 2006 and subsequently the same was extended from

time to time and list the same was extended till disposal of the rule are hereby recalled and vacated.

The concerned section of this court is hereby directed to communicate this judgment and order to the learned courts below immediately.