

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

Present:

Mr. Justice Md. Mansur Alam

CIVIL REVISION NO. 2814 of 2023

Md.Jasim Uddin
Pre-emptor-appellant-petitioner

Versus

Kazi Amir Uddin being dead his
heirs are:-1.Kalan Begum and others
Pre-emptee-respondents-opposite parties

No one appear
for the petitioner

Mr. Mohammad Jaynal Abedeen Bhuiyan,
Advocate
for the opposite party

Heard on:12.01.2026 & 18.02.2026

Judgment on: 04.03.2026.

1.This Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the impugned judgment and order dated 07.02.2023 passed by the learned Additional District Judge, 2nd Court, Brahmanbaria in Miscellaneous Appeal No.16 of 2017 dismissing the appeal and thereby affirming the judgment and order dated 28.02.2017 passed by the learned

Senior Assistant Judge, Nasirnagor, Brahmanbaria in Miscellaneous Pre-emption Suit No.06 of 2008 should not be set aside, and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

2.The short facts of the case of the pre-emptor-appellant-petitioner is that 56 decimals of land including the suit land was recorded in the BS khatian No.689 in Md. Hakim Uddin, the predecessor of the plaintiff and opposite party Nos.2-6. After the death Md. Hakim Uddin by way of mutual family settlement of the plaintiff-petitioner was in possession of the portion of land and the opposite party Nos.2 and 3 without letting anything to know to the plaintiff-petitioner transferred 56 decimals of land from plot no.470 and 471 to opposite party No.1. This sale was beyond the knowledge of the plaintiff-petitioner, thereafter the plaintiff-petitioner came to know about

the sale on 25.11.2007 and being confirmed about the sale on 26.11.2007 after obtaining the certified copy of the sale deed. The plaintiff-petitioner thereafter filed the pre-emption suit.

3. On the other hand plaintiff-respondent-opposite party entering appearance of the suit and by filling written objection contending inter alia that opposite party Nos.2 and 3 after inheritance the suit land obtaining mutation khatian No.729 transferred the suit land to the opposite party No.1. The suit land measuring .15 decimals of plot No.471 was recorded in B.S. khatian No.379 in the name of Zohora Khatun the plaintiff-petitioner was not tenant in the disputed jote (khatian). The pre-emption petition is barred by limitation and defect of parties.

4. On trial the learned Senior Assistant Judge, after hearing both the parties dismissed the pre-emption suit No.06 of 2008 dated 28.02.2017 and thereafter the

pre-emptor-petitioner preferred appeal before the appellate Court and the appellate Court disallowed the appeal on 07.02.2023.

5. Being aggrieved by and dissatisfied with the impugned judgment of the appellate Court the pre-emptor-petitioner moved this revision petition.

6. No one appear for the petitioner. Learned Advocate for the pre-emptor-petitioner did not come before this division as the time of hearing.

7. On the other hand Learned Advocate appearing for the respondent-opposite party takes me in course of argument through the plaint, written statement, the judgment of the trial Court and that of the appellate Court and the evidence and materials on record and then submits that the pre-emptor-petitioner has failed to prove that the petition was filed within the period of statutory period of limitation, learned appellate Court as well as trial Court on scrutiny

of the evidence and on appreciation of the materials on record rightly found that the pre-emptor-petitioner was quite aware about the transaction of the deed and about the possession of the opposite party No.1. So, the learned Court below rightly disallowed the pre-emption petition.

8.Having heard the learned Advocate appearing for the pre-emptee-respondent-opposite party and having considered the evidence and material on record.

9.It appears to be proved that the opposite party no 1, purchaser of the pre-emption deed is a stranger in the alleged holding. On the other hand the pre-emptor Jasimuddin is a co-sharer of the alleged suit jot. Learned trial court and Learned Appellate court are concurrently found that the pre-emption suit is barred by limitation. Both the Court found no other defects in the pre-emption suit.

10. Now it is to be determined whether the suit is instituted within the statutory period of time or the same is instituted on expiry of that period.

11. The suit was transferred to the opposite no.1 on 12.11.2007 by way of kabala deed no.5580. The-emptor came to know about the alleged sale on 25.11.2007 and became confirmed about that sale on 26.11.2007 on obtaining the certified copy of the sale deed. Thereafter he filed the present pre-emption case on 21.01.2008.

12. This contention of the pre-emptor is strongly opposed by the opposite party. The opposite party's specific case in this context is that the pre-emptor was aware of the alleged deed, delivery of possession and the transaction thereof from the date of the sale. The pre-emptor himself admitted in his testimony that the pre-emptee went in possession in the suit land from the date of purchase. The pre-emptee-opposite party

claimed that he erected a dwelling house on the suit land by cutting soil. Two witnesses were testified in supporting the possession of the opposite party in the aforesaid manner. Advocate Commissioner also found the dwelling house of the opposite party built by cutting soil in the suit land. The pre-emptor admitted that the opposite party went in possession in the suit land immediately after the purchase. So it is proved that the opposite party was in possession from 12.11.2007. In this circumstances where the manner of the possession is very much manifest, so the pre-emptor as well as all other neighbour are very much aware regarding the sale and possession of the suit land from its inception.

13.Learned Appellate Court and the trial Court on appreciation of the evidences concurrently found that the pre-emptor has failed to prove his contention that he came to know first on 25.11.2007 and

thereafter on 26.11.2007 obtaining the certified copy of the alleged pre-emption deed. Both the Court below concurrently found that the pre-emptor had knowledge about the alleged sale from the date of purchase i.e. from 12.11.2007. The pre-emptor is to file the pre-emption case within two months from 12.11.2007 which in calculation stands till the date of 11.01.2008. But the pre-emptor filed the present suit on 21.01.2008 expiring the statutory period of limitation of 10 days. The right of pre-emption though a statutory right of pre-emptor, at the same time it must be sought within the prescribed time of limitation. The pre-emptor lost his pre-emption right since he failed to substantiate his right within the statutory period of time.

14. In this aspect some principles with regards to the pre-emption limitation is considered to be discussed here:-

1. Pre-emption suits must be filed within the specified period of two months from the date of knowledge or registration.
2. If a pre-emptor claims a later date of knowledge to bypass limitation, the courts will examine evidence to determine if the claim is valid or a fabrication.
3. The Appellate Division often uphold lower court findings that a pre-emption case is time-barred when both lower courts have specifically observed that the sale was within the pre-emptors knowledge.
4. If it is proved that notice under the relevant Act was not served or was a subsequent, fraudulent creation, the limitation period may not begin until actual knowledge is established.
5. A pre-emptor who waives their right or fails to act promptly may lose their case, as seen in decisions affirming

that long delay or acquiescence can defeat the right of pre-emption.

On analyzing the above principles it can be concluded that Court is to strictly follow the limitation matters and beyond the period of limitation, no pre-emption would allow when the sale is made within the knowledge of the pre-emptor.

15. It is a settled principle of law that the findings of fact arrived at by the lower Appellate Court which is the final court of fact is binding on the High Court Division as revisional Court except in certain well-defined exceptional circumstances, such as non-consideration or misreading of the material evidence affecting the merit of the case. But in this case it appears that Learned Appellate Court carefully considered all the material facts and circumstances of the case and evidence on record in arriving at its findings. More so the Learned Advocate for the

petitioner did not turn up before the Court to substantiate his contention in this regard. As such in revisional jurisdiction there is no scope to interfere with the judgment and decree of the appellate Court. This principle is well discussed in the case of Hazari Bala Sana Vs. Niron reported in 17 BLD (AD) 1997 at page 294.

16. In view of the discussion made as above, this division finds that learned both the Court below was quite justified in dismissing the pre-emption petition. This division find no misreading, misinterpreting or non consideration of evidence by the Appellate Court. In this facts and circumstances the impugned judgment of learned Appellate Court warrants no interference.

17. In the result the Rule is discharged without any order as to costs.

18. The impugned judgment and order dated 07.02.2023 passed by the learned Additional District Judge, 2nd Court,

Brahmanbaria in Miscellaneous Appeal No.16 of 2017 dismissing the appeal and thereby affirming the judgment and order dated 28.02.2017 passed by the learned Senior Assistant Judge, Nasirnagor, Brahmanbaria in Miscellaneous Pre-emption Suit No.06 of 2008 dismissing the suit is hereby upheld and confirmed.

19. Send down the lower Courts' record with a copy of this Judgment to the Courts' below at once.