

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2680 OF 2011

In the matter of:

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

And

Md. Idris Ali Mondal

... Petitioner

-Versus-

Md. Naimuddin Mondol and others

... Opposite parties

No one appears

... For the petitioner.

Mr. S. M. Bazlur Rashid with

Mr. M.A. Kader Mollah, Advocates

... For the opposite party No.1.

Heard and Judgment on 26.02.2026

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and order dated 28.03.2011 passed by the learned Joint District Judge, 2nd Court, Naogaon in Miscellaneous Appeal No.14 of 2010 allowing the appeal and reversing the judgment and order dated 22.1.2000 passed by the learned Assistant Judge, Mohadevpur, Naogaon in Miscellaneous Suit No.8 of 2001 (Pre-emption) allowing the pre-emption case should not be set aside and/or

pas such order or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as petitioner filed above case for pre-emption of 7.50 decimal land under Section 96 of State Acquisition and Tenancy Act, 1950 alleging that he is a co-sharer by inheritance and by purchase in above khatian but opposite party No.1 is a stranger. Opposite party No.2 transferred above 7.50 decimal land to opposite party No.1 by registered deed of exchange dated 23.12.2000 (Exhibit No."Kha") which is in fact a deed of sale. To defeat the right of pre-emption of the petitioner opposite party No.1 has collusively designated above sale deed as a deed of exchange.

Opposite party No.1 contested above case by filing a written objection alleging that he did not purchase disputed 7.50 decimal land but he exchanged his 7.50 decimal land of Mouza Naopara with disputed 7.50 decimal by registered deed of exchange dated 13.12.2000 (Exhiit No."Kha"). Above deed of exchange was not a deed of sale as has been claimed by the petitioner and above case is not tenable in law.

At trial petitioner examined three witnesses and opposite party examined four. Documents of the petitioner were marked as Exhibit Nos.1-3 and those of the opposite party were marked as Exhibit Nos."Ka" - "Ga".

On consideration of facts and circumstances of the case and materials on record the learned Joint District Judge allowed above case.

Being aggrieved by and dissatisfied with above judgment and order of the trial Court opposite party No.1 as appellant preferred Miscellaneous Appeal No.14 of 2010 to the District Judge, Naogaon which was heard by the learned Joint District Judge, 2nd Court who allowed above appeal, set aside the judgment and order of the trial Court and dismissed above case.

Being aggrieved by and dissatisfied with above judgment and order of the Court of Appeal below above respondent as petitioner moved to this Court with the Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

No one appears on behalf of the petitioner at the time of hearing of this Rule although this matter appeared in the list for hearing in the daily cause list.

Mr. S. M. Bazlur Rashid, learned Advocate for opposite party No.1 submits that the impugned registered deed dated 13.12.2000 is a deed of exchange and opposite party No.1 acquired disputed 7.50 decimal land from opposite party No.2 in exchange of his 7.50 decimal land situated in Noapara-Mouza. The consideration of above deed was land not money. Opposite party claimed that above deed was in fact a

deed of sale but they could not prove above claim by legal evidence. On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge rightly allowed above Miscellaneous Appeal and set aside the erroneous judgment and order of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocate for opposite party No.1 and carefully examined all materials on record.

The petitioner as petitioner filed above case for pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950 for pre-alleging that opposite party No.1 a stranger to the disputed khatian purchased above disputed by registered deed dated 13.12.2000 (Exhibit No."Ka") from opposite party No.2.

While giving evidence as OPW1 opposite party No.1 Naimuddin Mondal stated that for mutual convenience he transferred disputed 7.50 decimal land to opposite party No.2 and opposite party No.2 transferred to him his 7.50 decimal land by registered deed of exchange dated 13.12.2000 and they handed over possession of their respective above land and above exchange was made effective. He produced original deed of exchange dated 13.12.2000 which was marked as Exhibit No."Kha". Opposite party No.2 Abdul Karim gave evidence as OPW2 and corroborated above evidence of opposite party No.1 and

stated that he exchanged his 7.50 decimal land of Noapara Mouza with disputed 7.50 decimal land of opposite party No.1. Above two opposite party witnesses were extensively cross examined by the petitioner but their above evidence remained consistent and supported by a registered deed of exchange dated 13.12.2000 (Exhibit-“Kha”).

Section 96(10(b) of the State Acquisition and Tenancy Act, 1980 expressly excludes a deed of exchange from pre-emption under above Act. Exhibit No.”Kha” has been written, designed, executed and registered as a deed of exchange containing two schedules of land. The petitioner has claimed that above deed was in fact a deed of sale but created as a deed of exchange to defate his right of pre-emption. But the petitioner could not prove by legal evidence that opposite party No.2 did not have any right, title or possession in “Kha” schedule land of above deed of exchange or above “Kha” schedule was in fact fictitious land or opposite party No.1 a received money as consideration of dispute 7.50 decimal land.

The learned Judge of Court of Appeal below on a detailed analysis of oral evidence adduced by the petitioner rightly held that the petitioner could not prove by legal evidence that above registered deed of exchange was in fact a deed of sale and on correct appreciation of

materials on record rightly allowed above appeal which calls for no interference.

In above view of the facts and circumstances of the case and materials on record I hold that the impugned judgment and order of the Court of Appeal below does not suffer from any illegality and irregularity justifying interference of this Court and this Civil Revisional application under Section 115(1) of the Code of Civil Procedure is devoid of any substance and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER