Present:
Mr. Justice Md. Salim

CIVIL REVISION NO. 3676 OF 2012

Jatindra Nath Howlader
..... *Petitioner*.

-VERSUS-

Bulu Mitra alias Mistri and others
.....*Opposite parties*.
Mr. Md. Tomiz Uddin, Advocate with
Mr. Babul Kumar Biswas, Advocates
.... For the petitioner.
Mr. Swapan Kumar Aich, Advocate
..... For the opposite party

Heard on 04.07.2024 and 07.07.2024
Judgment on 11.07.2024

This Rule was issued on an application under Section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos.1-4 to show cause as to why the judgment and order dated 02.05.2012 passed by the learned Joint District Judge, 1st Court, Pirojpur in Misc. Appeal No. 48 of 2010 dismissing the appeal and affirming the judgment and order dated 25.05.2010 passed by the learned Assistant Judge, Nazirpur, Pirojpur in Misc. Case No.33 of 2006 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.

The case of the petitioner, in short, is that the plaintiff petitioner filed the pre-emption Miscellaneous Case No. 33 of 2006 before the Assistant Judge, Nazirpur, Pirojpur praying for pre-emption regarding the land- in question. The suit land appertained to S.A. Khatian No. 370 corresponding to S.A. Plot No. 1122 within Mouza Sakharikati, Upazila Nazirpur, District-Pirojpur was owned and possessed by pre-emptor Jatindra Nath Mitra and Profullah Kumar in equal share. That father of the pre-emptee no.4 namely Profullah Kumar transferred 69 decimals of land to his son Tapas Kumar who subsequently, on 03.09.2006 sold 20 decimals of land to the pre-emptee no.1 vide registered sale deed no. 1310 dated 03.09.2006 at a consideration of Tk.50,000/- and Tapas Kumar on the same day also sold 32 decimals of land to the pre-emptee nos. 2-3 vide registered sale deed no. 1311 dated 03.09.2006 at a consideration of Tk.74,000/-. That though the pre-emptor is a co-sharer of the case land no notice of sale was served upon him. That pre-emptor is a co-sharer of the land whereas the pre-emptees are strangers. That on 15.10.2006 the pre-emptor came to know the fact of those transfers by Monindra Nath Dhali in the presence of Barun Chandra Biswas and thereafter he filed the instant case depositing consideration money of the deeds along with 10% demurrage thereupon and thus the pre-emptor is entitled to get the case land by way of pre-emption.

The pre-emtee oppositparty Nos. 1-3 contested the case by filing a joint written statement denying all the materials averments made in the

plaint. The definite case of the Pre-emptee opposite party, in short, is that Profullah Kumar inherited 69 decimals of land as of his 8 annas share in S.A. Khatian No. 370 corresponding to S.A. Plot No. 1122 within Mouza Sakharikati, Upazila Nazirpur, District-Pirojpur. Profullah Kumar transferred the same to Preemptee No. 4 vide deed of gift dated 23.06.1986. That pre-emptee No. 4 Tapas Kumar offered the pre-emptees to sell 52 decimals of land and accordingly on 03.09.2006 sale deeds were executed and registered in favor of the Pre-emptees and possession was delivered in favor of the Pre-emptees in the presence of the pre-emptor. The pre-emptees have erected dowelling huts in the suit plot and planted trees thereupon. The pre-emptor case for pre-emption is not maintainable in its present form and forum and the same is liable to be dismissed.

The learned Assistant Judge, Nazirpur, Pirojpur after evaluating the evidence from both the respective parties and considering the materials available on record disallowed Miscellaneous Case No.33 of 2006 by the judgment and order dated 25.05.2010 with a finding that the case land is homestead so the case is not maintainable under section 96(16) of the Estate Acquisition and Tannancy Act, the case is barred by estoppel, acquience and waiver.

Being aggrieved by and dissatisfied with the above Judgment and order the pre-emptor-petitioner preferred Miscellaneous Appeal No.48 of 2010 before the District Judge, Pirojpur. Consequently, the learned Joint District Judge, 1st Court, Pirojpur by the judgment and order dated 02.05.2012 disallowed the appeal and affirmed the judgment and order

passed by the trial Court with a finding that the case land is homestead so the case is not maintainable under section 96(16) of the Estate Acquisition and Tannancy Act.

Being aggrieved by and dissatisfied with the above Judgment the pre-emptor petitioner moved before this Division in Revision and obtained the present Rule.

I have considered the submission of the learned Advocates, perused impugned judgment, the plaint of the case, and other materials on record. It manifests that the appellate court as well as the trial court below dismissed the case on the ground of maintainability. Therefor, to substantiate the law point involved with the instant case may be quoted the relevant law as follows-

Section 96 of the State Acquisition and Tenancy Act, provided that:

> *"96. (1) If a portion or share of a holding of a raiyat is sold to a person who is not a co-sharer tenant in the holding, one or more co-sharer tenants of the holding may, within two months of the service of the notice given under section 89, or, if no notice has been served under section 89, within two months of the date of the knowledge of the sale, apply to the Court for the said portion or share to be sold to himself or themselves:*
>
> *Provided that no application under this section shall lie unless the applicant is-*
>
> > *(a) a co-sharer tenant in the holding by inheritance; and*

(b) a person to whom the sale of the holding or the portion or share thereof, as the case may be, can be made under section 90:

Provided further that no application under this section shall lie after the expiry of three years from the date of registration of the sale deed.

(2) In an application under sub-section (1), all other co-sharer tenants by inheritance of the holding and the purchaser shall be made parties.

(3) An application under sub-section (1) shall be dismissed unless the applicant or applicants, at the time of making it, deposit in the Court-

(a) the amount of the consideration money of the sold holding or portion or share of the holding as stated in the notice under section 89 or in the deed of sale, as the case may be;

(b) compensation at the rate of twenty-five per centum of the amount referred to in clause (a); and

(c) an amount calculated at the rate of eight per centum simple annual interest upon the amount referred to in clause (a) for the period from the date of the execution of the deed of sale to the date of filing of the application for pre-emption.

(4) On receipt of such application accompanied by such deposits, the Court shall give notice to the purchaser and to the other persons made parties thereto under sub-section (2) to appear within such period as it may fix and shall require the purchaser to state what other sums he has paid in respect of rent since the date of sale and what expenses he has incurred in annulling encumbrances on, or for making

any improvement in respect of the holding, portion or share sold.

(5) The Court shall, after giving all the parties an opportunity of being heard after holding an inquiry as to rent paid and the expenses incurred by the purchaser as referred to in subsection (4), direct the applicant or applicants to deposit a further sum, if necessary, within such period as the Court thinks reasonable.

(6) When an application has been made under subsection (1), any of the remaining co-sharer tenants may, within the period referred to in subsection (1) or within two months of the date of the service of the notice of the application under sub-section (4), whichever be earlier, apply to join in the said application; any co-sharer tenant who has not applied either under sub-section (1) or under this subsection, shall not have any further right to purchase under this section.

(7) On the expiry of the period within which an application may be made under sub-section (6), the Court shall determine, in accordance with the provisions of this section, which of the applications filed under sub-section (6) shall be allowed.

(8) If the Court finds that an order allowing the applications made under sub-section (7) is to be made in favour of more than one applicant, the Court shall determine the amount to be paid by each of such applicants and, after apportioning the amount, shall order the applicant or applicants who have joined in the original application under sub-section (6) to deposit in the Court the amounts payable by him or them within such period as it thinks reasonable; and if the deposit is not made by any such applicant within such period, his application shall be dismissed.

(9) On the expiry of the period within which a deposit, if any, is to be made under sub-section (8), the Court shall pass orders-

(a) allowing the application or applications made by the applicant or applicants who are entitled to purchase under, and have complied with the provisions of, this section:

(b) apportioning the holding or the portion or share of the holding among them in such manner as it deems equitable when such orders are passed in favour of more than one applicant under sub-section (8);

(c) refunding money to any one if entitled to such refund of any money from the amount deposited by the applicant or applicants under sub-sections (3) and (5);

(d) directing that the purchaser be paid out of the deposits made under sub-sections (3) and (5);

(e) directing the purchaser to execute and register deed or deeds of sale within sixty days in favour of the person or persons whose application or applications have been allowed; and no tax, duty or fee shall be payable for such registration.

(10) If the purchaser fails to execute and register deed or deeds of sale in pursuance of the directions under clause (e) of sub-section (9), within sixty days in favour of the person or persons whose application or applications have been allowed, the court shall execute and present deed or deeds of sale for registration within sixty days thereafter in favour of such person or persons whose application or applications have been allowed.

(11) From the date of the registration of sale deed or deeds under clause (e) of sub-section (9) or under sub-section (10), the right, title and interest in the holding or portion or share thereof accruing to the purchaser from the sale shall, subject to any orders passed under sub-section (9), be deemed to have vested, free from all encumbrances which have been created after the date of sale, in the co-sharer tenant or tenants whose application or applications to purchase have been allowed under sub-section (9).

(12) The Court on further application of such applicant or applicants may place him or them, as the case may be, in possession of the property vested in him or them.

(13) No apportionment ordered under clause (b) of sub-section (9) shall operate as division of the holding.

(14) An application under this section shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the land in connection with which the application is brought.

(15) An Appeal shall lie to the ordinary Civil Appellate Court from any order of the Court under this section.]

(16) Nothing in this section shall be deemed to apply to homestead land.

(17) Nothing in this section shall take away the right of pre-emption conferred on any person by the Mohammadan Law.

(18) Nothing in this section shall apply to any transfer of any portion or share of a holding of a raiyat or any application under section 96 of this Act, made prior to coming into force of the State Acquisition and Tenancy (Amendment) Act, 2006."

It manifests that the homestead is not at all preemptable as per the provision so enumerated in section 96(16) of the State Acquisition and Tenancy Act.

Similarly, Section 6 of the Land Reformed Ordinance, 1984 runs as follows:

> *"Any land used as a homestead by its owner in the rural area shall be exempted from all including seizure, distress, attachment or sale by any officer, court or any other authority, and, the owner of such land shall not be divested or dispossessed of the land or evicted therefrom by any means.*
> *Provided that nothing in this section shall apply 'to 'the acquisition of such home-stead under any law,"*
> *Sub-section (3) of section 2 of the said Ordinances has defined homestead thus:*
> *"Homestead means a dwelling house with outhouses, tanks, and enclosures immediately connected with it covering an area of not more- than one standard bigha.*
> *Provided that where such areas exceed one standard bigha, the excess land shall not be deemed 'to be homestead."*
>
> *From the above, I have got a clear -view of law as it stands today that homestead in the rural area shall be exempted from all legal process."*

It manifests that homesteads in rural areas shall be exempted from all legal processes as per the provision so enumerated in section 6 of the Land Reform Ordinance, 1984.

In the instant case, it manifests that the Preemptee opposite party No.4 sold his homestead to the Preemptee opposite party nos. 1-3 by registered deeds. The Preemptor petitioner filed the instant case for preemption of the case land under section 96 of the State Acquisition and Tenancy Act. Therefore, we are of the view that since the case land is homestead the instant case is not at all maintainable in the present form as per the provision so enumerated in section 96(16) of the State Acquisition and Tenancy Act.

In view of the legal position, we have no other option but to hold that the appellate court below perfectly and justifiedly disallowing the appeal and affirming the Judgment of the Assistant Judge, Nazirpur, Jhalakathi. Therefore, we do not find any reason to interfere therewith.

In view of the above facts and circumstances of the case, we do not find any merit in this Rule.

Resultantly, the Rule is discharged with costs. The impugned judgment and order dated 02.05.2012 passed by the learned Joint District Judge, 1st Court, Pirojpur in Miscellaneous Appeal No.48 of 2010 is hereby affirmed.

Communicate the judgment and send down the LCR at once.

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(Md. Salim, J).

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