

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.917 of 2013

Mst. Asratun Nessa.

.....Petitioner.

-Versus-

Faruk Ahmed and others

.....Opposite parties.

Mrs. Umme Kulchum, Advocate with

Mrs. Mariam Begum, advocate

.....For the petitioner.

Mr. Mridul Datta, Advocate

.....For the Opposite parties.

Heard and Judgment on 13.03.2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the Opposite Party Nos. 1-2 to show cause as to why the judgment and order dated 10.02.2013 passed by the Joint District Judge, Third Court, Sylhet, in Miscellaneous Appeal No. 10 of 2009 reversing those dated 26.11.2008 passed by the Assistant Judge, Bianibazar, Sylhet in Miscellaneous Case No. 22 of 2004 rejecting the pre-emption case should not be set aside.

Opposite Party Nos. 1-2 as pre-emptor instituted pre-emption Case No. 22 of 2004 before the Court of Assistant Judge, Bianibazar, Sylhet against the petitioner for pre-emption under section 96 of the State Acquisition and Tenancy Act (S.A. & T. Act).

Pre-emptor case in short inter alia is that the pre-emptors have land adjacent to the eastern and western side of the case land. Pre-emptor Nos. 1 and 2 first learnt that opposite party nos. 2 and 3 sold out the case land to the pre-emptee no. 1 on 17.02.1999. After getting the secret information from the family friend, collecting certified copy of the sale deed from the concern sub-registry office they completely learnt it. The sale deed was registered on 16.03.1999, the petitioner did not get any notice under section 89 of the Registration Act, they did not know about the sale before registration, since the pre-emptor is a co-sharer by way of contiguity, so he prays for getting the case land transferred to him on the basis of right to pre-emption, hence the case.

Petitioner as a pre-emptee no. 1 contested the said pre-emption case by filing written statement alleging inter alia that the pre-emptee no. 1 repeatedly told the pre-emptor for purchasing the

land in question before registration but they refused to purchase it, later on the instant opposite party no. 1 purchased the case land to the pro-forma opposite party nos. 2 and 3 and soon after purchase, the case land has been recorded under Mutation Case No. 158/99-100. Opposite party no. 1 is the wife of opposite party no. 6, who has adjacent land to the case land all around, the pre-emptee no.1 spent almost Tk. 01(one) lac for development purpose, because of increasing market value of the case land, as such the pre-emptor filed the case to get the land illegally, for which the case of the pre-emptor is false, fraudulent and baseless, so that the pre-emptee no. 1 prays for dismissal of the case with cost.

By the judgment and order dated 26.11.2008, the trial court disallowed the pre-emption case.

Challenging the said judgment and order pre-emptor preferred Miscellaneous Appeal No. 10 of 2009 before the Court of District Judge, Sylhet, which was heard on transfer by the Joint District Judge, Third court, Sylhet, who by the impugned judgment and Order dated 10.02.2013 allowed the appeal and after setting aside the judgment of the trial court allowed the pre-emption case.

Challenging the said judgment and order pre-emptee-petitioner obtained the instant rule.

Mrs. Mariam Begum, the learned advocate appearing for the petitioner drawing my attention to the lower court's record together with the impugned judgment submits that although pre-emption case was opposed by the pre-emptee and in support of his contention, she adduced a number of evidences to prove that petitioner has waived out of his right of pre-emption and as well as suit is not maintainable in it's present form and bad for defect of parties and the trial court dismissed the suit on different points but the Appellate Court only upon accepting the contention that there is no bad for defect of parties in the suit, reversed the findings of the trial court and allowed the pre-emption case most arbitrarily. The impugned judgment of the Appellate Court arrived from a non-speaking order, which is liable to be set aside.

Mr. Mridul Datta, the learned advocate appearing for the pre-emptor-opposite parties submits that from the plaint it will appear that plaintiff has already made a party to Abdul Gafur as defendant and noticed was served upon him but he did not contest the pre-emption case subsequently for non substitution of his legal

heirs would not operate the suit as a bad for defect of parties and cannot be turned down. Moreover, under Order 1 Rule 9 of the Code of Civil Procedure no suit can fail by reasons of misjoinder or non-joinder of parties. The Appellate Court being the last court of fact has rightly consider this aspect of the case and reversed the findings of the trial court. In support of his contention he has cited a decision namely in the case of Safaruddin and others Vs. Fazlul Huq and others reported in 49DLR(AD)1997, page 151.

Heard the learned Advocate of both the sides and perused the impugned judgment and the L.C. Records.

This is a pre-emption case filed by pre-emptor under section 96 of the State Acquisition and Tenancy Act (S.A. & T. Act) wherein a number of issues although been framed including the defect of parties. Trial court tried to touch each and every issues which were framed and dismissed the pre-emption case and which was challenged in appeal by the pre-emptor. From the impugned judgment of the Appellate court, it appears that the learned Judge mainly reversed the findings of the trial court only on bad for defect of parties and he found that since the Abdul Gafur had made parties in the suit as defendants and non impleading his

legal heirs in not operate as a bar to continue the pre-emption case and accordingly he allowed the pre-emption case. In the said judgment, it appears that he has gone through the evidence adduced by party concern and decided the issues, which was settled by the trial court after framing proper issue in case of pre-emption. The appellate court is being the last court of fact. In order to allow the appeal he needs to reversed all the findings of the trial court as per Order 41 Rule 31 of the Code of Civil Procedure. But it has not been done in the case. Accordingly the impugned judgment is not a proper judgment of reversal under law.

Regard being had to the above law, facts and circumstances of the case, I am of the opinion that it would be a fit case to send back on remand to the Appellate Court to decide the case on merits upon discussing the evidences already on records and if he like to reverse the judgment of the trial court he need to assess and discuss each and every points, which has been decided by the trial court while dismissing the suit. I thus find merit in this rule.

Accordingly the rule is made absolute and the judgment and order passed by the Appellate Court is hereby set aside and the

suit is sent back on remand to the Appellate Court and Appellate Court is hereby directed to disposed of the appeal expeditiously as early as possible within a period of 06(six) months after receiving of the judgment.

Let the order of stay granted earlier by this court is hereby recalled and vacated.

Send down the L.C.Records and communicate the judgment to the court below at once.