

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

Civil Revision No. 3059 of 2006

In the matter of:

Mohammad Abu Taher.

-Vs-

Md. Ekramul Haue being dead his legal heirs:

(1)(a) Kawsar Begum and others.

...Opposite parties.

Mr. Mehedi Hasan Chowdhury, Adv.

...For the petitioner.

Present
Mr. Justice Mamnoon Rahman

None appears.

...For the opposite parties.

Heard on: 30.08.2023

And Judgment on: The 17th October, 2023

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 24.05.2006 passed by the learned Additional District Judge, 1st Court, Cumilla in Miscellaneous Appeal No. 90 of 2005 allowing the appeal and thereby setting aside the judgment and order dated 10.11.2005 passed by the learned senior Assistant Judge, Langalcot court, Cumilla in Pre-emption Case No. 4 of 2004, should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The short facts relevant for the disposal of the instant rule, is that, the petitioner as pre-emptor filed Pre-emption Case No. 4 of 2004 in the court of Senior Assistant Judge, Langolcot, Cumilla impleading the opposite party for pre-emption of the land prescribed

in the schedule. The case of the pre-emptor petitioner in short, is that, the disputed land belonged to Kalitara who transferred the same to Rangu Mia who died leaving behind wife 5 sons and 3 daughters. By amicably partition son Siddiquir Rahman got the land who gifted the same to his wife Hasina Begum who sold out the same to the Opposite party No. 1 without giving any notice the petitioner. The petitioner became the owner of $4\frac{3}{4}$ decimals land in the same dag by purchase and he is also the owner of contiguous land by purchase. He is in possession in the case land by way of mortgage from Siddiquir Rahman. As such being the owner of the land of same dag and contiguous land the petitioner is entitled to get the land by way of pre-emption. Hence, the case.

The opposite party-pre-emptee contested the case by filing written objection denying all the material allegations made in the plaint. The case of the opposite party-pre-emptee in short, is that, Rangu Mia was owner of the land and he as a son of Rangu Mia got the case land in his saham. The petitioner is the owner of the rests land of the case dag. Siddiquir Rahman never got the suit land but he collusively created a gift deed in the name of his wife from whom the opposite party by way of mutual understanding got a kabala which was not in fact a sale deed. The petitioner being aggrieved dispossessed the opposite party from the land on 01.04.2004. This opposite party has filed a suit under section 9 of SR Act. This

opposite party is the co-sharer in the jote by dint of deed dated 08.06.1981. The petitioner is the stronger in the disputed jote's land. The petitioner has filed this false suit with false statement which is liable to be rejected with costs.

The trial court framed as many as four Issues and proceeded with the trial. During trial both the parties adduced evidence both oral and documentary. The trial court after hearing the parties and considering the facts and circumstances vide impugned judgment and order dated 10.11.2005 allowed the miscellaneous case for pre-emption. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the trial court allowing pre-emption the opposite party-pre-emptee moved before the learned District Judge, Cumilla being Miscellaneous Appeal No. 90 of 2005. The same was heard and disposed of by the learned Additional District Judge, 1st Court, Cumilla who vide the impugned judgment and order dated 24.05.2006 allowed the appeal and thereby rejected the miscellaneous case for pre-emption. Being aggrieved by and dissatisfied with the judgment and order passed by the lower appellate court the petitioner moved before this court and obtained the present rule.

No one appears on behalf of the opposite parties to opposes the rule.

Mr. Mehedi Hasan Chowdhury, the learned Advocate for the petitioner submits that the lower appellate court below being highest

court of fact and law committed an error in rejecting the miscellaneous case which requires interference by this court. He submits that the appellate court came to a wrong conclusion that the petitioner's prayer for pre-emption as co-sharer by purchase in Khatian No. 160 and as such the impugned judgment and order passed by the court below is liable to be set aside for ends of justice. He further submits that the lower appellate court below failed to appreciate the evidence regarding the parties side by side and came to an erroneous finding and ought to have considered and accepted that the petitioner is a co-sharer of the suit land by way of purchase. He further submits that admittedly as per the submission of the opposite party the petitioner is in possession of the suit Dag and is also contiguous owner and as such the appellate court ought to have dismissed the appeal. The learned Advocate further submits that though the lower appellate court came to a conclusion that since the petitioner did not file the pre-emption case as contiguous land owner but it is very much in the application that the petitioner is the co-sharer of the suit Dag by purchase and owner of the contiguous land of the suit Dag and as such the impugned judgment and order passed by the appellate court below is liable to be set aside.

I have heard the learned Advocate for the petitioner. I have perused the impugned judgment and order passed by the lower appellate court, judgment and order passed by the trial court, revisional application, grounds taken thereon, necessary papers and

documents annexed herewith, provisions of law, as well as Lower Court's Record.

On perusal of the same, it transpires that the petitioner-applicant preferred miscellaneous case for pre-emption as co-sharer and owner of the contiguous land by purchase. The further claim of the petitioner, is that, he is in possession of the case land by way of mortgage from Siddiquir Rahman and as the owner of the land of the same dag and contiguous land the petitioner is entitled to get the order of pre-emption. It further transpires that there is no denial regarding the chain of ownership of the parties in the case land. It is also admitted by the opposite party that the petitioner is the owner of a portion of the suit dag and contiguous land holder of the same which is being decided by the trial court. While deciding the case in hand the trial court came to a conclusion which runs as follows;

“On perusal of Exhibit No. 1 it appears that Kalitara was the owner of 12 decimals land in RS Khatian No. 160. Both O.P. No. 1 and Siddiquir Rahman were the co-sharer in the land as ejmali property but Siddiquir Rahman gifted the land to his wife.

It is admitted that heirs of Kalitara partitioned their property plot by plot. In the event of executing gift deed the ownership and co-sharership of the O.P. No. 1 and Siddiquir Rahman extinguished i.e. transferred to Hasina Begum.

On perusal of Ext. 06 (disputed deed) it appears that O.P. No. 1 purchased the land admitted the right title and interest of Hasina Begum who got the same by way of gift from Siddiquir Rahman. It is cleared from the contents of the deed that it is a sale deed.

It appears from Ext. 3 & 4 that the petitioner is the owner of a portion of dag No. 75 and it appears from the Map of the deed that the petitioner is in the owner of the land situated to the West and North of the disputed land”.

So, it transpires that the trial court *vividly* considered the factual aspects regarding the ownership, title and the transfer in question and came to a conclusion that the petitioner is entitled to get an order of pre-emption in the suit land. It further transpires that though the case of the opposite party, is that, since the opposite party got the land back from Hasina Begum the disputed deed is not a sale deed but the same was also answered by the trial court in an appropriate manner. On perusal of the judgment and order passed by the lower appellate court, it transpires that the court below raises the question regarding Khatian numbers and came to a conclusion that the petitioner purchased the land under Khatian No. 159 but filed the pre-emption case for Khatian No. 160. It further transpires that the lower appellate court came to a conclusion that the petitioner is a co-sharer by purchase in Khatian No. 159 and not Khatian No. 160

which is not at all correct proposition as because the case plot No. 75 was recorded in two khatians, namely Khatian Nos. 159 and 160 and the petitioner being a co-sharer in Khatian No. 159 can claim the property land in Khatian No. 160 as co-sharer as plot No. 75 was recorded in two khatians in equal shares and also the deed lend support to the above contention.

Considering the facts and circumstances, I am of the view that the lower appellate court below committed an error which requires interference by this court. Accordingly, the instant rule is made absolute. The impugned judgment and order passed by the lower appellate court is hereby set aside and the judgment and order passed by the trial court is hereby affirmed.

Send down the Lower Court's Record to the concerned court below with a copy of the judgment at once.

However, there shall be no order as to cost.

(Mamnoon Rahman,J:)

Emdad. B.O.