

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 8503 of 1991

Shamala Khatoon

.....Petitioner.

-Versus-

Karim Ali and others.

..... Opposite parties.

No one appears

..... For the petitioner.

No one appears

..... For the opposite parties.

Heard on: 29.07.2025 and

Judgment on: 12.08.2025.

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the judgment and order dated 04.06.1985 passed by the learned Subordinate Judge, 1st Court, Cumilla in Miscellaneous Appeal No. 56 of 1977 dismissing the appeal and thereby affirming the judgment and order dated 31.01.1977 passed by the learned Munsif, 3rd Court, Cumilla in Miscellaneous Case No. 23 of 1970 filed under section 96 of the State Acquisition And Tenancy Act, 1950 (shortly, the Act, 1950) allowing the Miscellaneous Case should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Relevant facts for disposal of the Rule are that Karim Ali, predecessor of the present opposite parties No.1(a) to 1(d) as pre-emptor filed the Miscellaneous Case under section 96 of the Act, 1950 in the Court of Munsif, 3rd Court, Cumilla imploding the present petitioner and others as pre-emptees to pre-empt the case land. The

case of the pre-emptor, in short, is that the case land originally belonged to Ashraf Ali. Accordingly, C.S. Khatian, in respect of the case land, was correctly prepared in his name. Ashraf Ali died leaving behind 7 sons, namely, Wahab Ali, Bande Ali, Waes Ali, Karim Ali (pre-emptor), Kala Mia, Abed Ali, and Syed Ali and one daughter, namely Alfater Nessa as his heirs. In this way, the pre-emptor became a co-sharer in the holding with others. Syed Ali, son of Wahab Ali, the full brother of the pre-emptor, sold out the case land by kabala dated 04.07.1969 to his wife Shamala Khatoon, the pre-emptee No.1, a stranger in the holding, without serving any notice upon the pre-emptor. After obtaining the certified copy of the impugned kabala on 17.01.1970, the pre-emptor became certain about the sale and filed the miscellaneous case.

The purchaser, as pre-emptee No. 1, contested the miscellaneous case by filing a written objection denying the material allegations made in the pre-motion application contending, inter alia, that the impugned deed is not a sale deed rather a gift deed. The further case of the purchaser is that Saheb Ali was his husband, who gifted her the case land by the impugned deed, but inadvertently it was shown as a sale deed. The transfer took place within the knowledge of the pre-emptor. After the death of Shaheeb Ali, the pre-emptor filed the time-barred application due to the family grudge; hence, the miscellanea case is liable to be dismissed.

During the trial, both parties adduced both oral and documentary evidence. The documentary evidence adduced by the parties was duly exhibited.

After conclusion of the trial, the then learned Munsif, 3rd Court, Cumilla by the judgment and order dated 31.01.1977 allowed the pre-emption case holding inter alia, that the pre-emptor is the co-share and the pre-emptee No. 1 is a stranger in the holding, the impugned deed is out and out a sale deed and before the sale, no notice was served upon the pre-emptor. Considering the evidence of P.W. 1 and 2, the trial Court also held that the pre-emption application was filed within the stipulated time. Accordingly, the trial Court allowed the pre-emption application.

Against the said judgment and order the present petitioner preferred Miscellaneous Appeal No. 56 of 1977 before the Court of District Judge, Cumilla which was subsequently transferred to the Court of Subordinate Judge, 1st Court, Cumilla who by his judgment and order dated 04.06.1985 dismissed the said miscellaneous appeal and thereby affirmed the judgment and order passed by the trial Court.

Being aggrieved thereby the petitioners filed this civil revision and obtained the Rule and an order of stay of the impugned judgment and decree.

No one appears to contest the Rule.

Perused the revisional application and other materials on record including the impugned judgment and order.

It appears that the petitioner mainly contended that the pre-emptor is the brother-in-law of the purchaser as well as the brother of the vendor and the transfer was held at the active supervision of the pre-emptor and therefore, the pre-emptor had every knowledge about the transfer. Despite that the pre-emptor filed the pre-emption

application out of time. The purchaser as O.P.W. 1 deposed in the line of the said contention, but both the courts below without considering the same, considered the evidence of P.W. 1 and 2 erroneously and thereby erroneously held that the pre-emption application was within time.

As per law, the application for pre-emption has to be filed within four months from the date of service of notice of the sale or within four months from the date of knowledge of the sale, if no such notice is served. The date of the alleged sale was on 04.07.1969, and the pre-emption application was filed on 22.01.1970. To prove the date of knowledge, the pre-emptor in the pre-emption application contended that the pre-emptor came to know about the kabala on 17.01.1970 from one Abdus Sobhan. The pre-emptor Karim Ali himself examined as P.W.1 who deposed that in Pous 7 years back, he for the first time came to know about the sale from Sobhan. Abdus Sobhan was examined as P.W. 2, who deposed that in Poush 7 years back, the purchaser pre-emptee, Shamala Khatoon, disclosed about the impugned sale to him, and thereafter he informed the same to the pre-emptor. Purchaser pre-emptee, Shamala Khatoon, examined herself as O.P.W. 1, who deposed that she did not inform Sobhan about the kabala in question. She also deposed that the pre-emptor was her brother-in-law and he had every knowledge about the impugned transaction.

It is the settled principle of the law that the testimony must be of the person who perceives the fact through the medium of his own senses. Admittedly, Sobhan is not a party to the deed and he did not see anyone to possess the suit land on behalf of the purchaser.

Abdus Sobhan in his examination in chief, stated that in the 1st part of Poush 7 years back, he informed the pre-emptor about the kabala in question. He also deposed that he knew it from Shamala in Aghrayan 7 years back, and nobody was present when Shamala told him about the kabala in question. Samala Khatoon as O.P.W. 1 in her deposition stated that she did not tell anything to Sobhan about the Kabala. Therefore, the evidence of Abdus Sobhan is inadmissible as evidence as per the provision of section 60 of the Evidence Act. But both the courts below, without considering this aspect of the case, passed the impugned judgment and order.

Both the courts below, in passing the impugned judgment and order, though rightly held that the pre-emptor was a co-sharer and the purchaser was a stranger in the holding and the impugned deed was out and out a sale deed and before the impugned transaction no notice upon the pre-emptor was served, but wrongly held that the pre-emption application was filed within time.

Since both the courts below in passing the impugned judgment and order failed to consider that the pre-emption application was time-barred and thereby committed an error of law resulting in an error in the decision occasioning failure of justice and the same is liable to be interfered with.

In the above facts and circumstances, I am inclined to make the Rule absolute.

Accordingly, the Rule is made absolute.

The impugned judgment and order dated 04.06.1985 passed by the learned Subordinate Judge, 1st Court, Cumilla in Miscellaneous Appeal No. 56 of 1977 and thereby affirming the judgment and order

dated 31.01.1977 passed by the learned Munsif, 3rd Court, Cumilla in Miscellaneous Case No. 23 of 1970 are hereby set aside.

The order of stay granted earlier by this Court is hereby recalled and vacated.

The pre-emptor is at liberty to withdraw the deposited money.

Send down the L.C.R. along with a copy of this judgment to the concerned court for information and necessary action.

Kashem, B.O