Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 1799 of 2013
Mokbul Hossain (Minor) and another
.....petitioners
-Versus-
Kajal Miah being dead his legal heirs:
1(a) Shibbir Ahmed and others
.....opposite parties

Mr. Md. Yousuf Ali, Advocate
.....for the petitioners

Mr. Surajit Bhattacharjee with
Mr. Monishankar Sarkar, Advocates
.....for opposite parties

Heard on: 25.06.2026, 30.06.2026 and 08.07.2026

Judgment on: 14.07.2026

In the instant revision Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 19.03.2013 passed by the Joint District Judge, 2nd Court, Sunamgonj in Miscellaneous Appeal Number 17 of 2005 reversing the judgment and order dated 28.03.2005 passed by the Senior Assistant Judge (in charge), Bissomborpur Assistant Judge Court, Sunamgonj in Miscellaneous Case Number 06 of 2003 dismissing the case should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The opposite party 1 as the pre-emptor filed Miscellaneous (Pre-emption) Case Number 6 of 2003 on 24.06.2003 seeking pre-emption under Section 96 of the State Acquisition and Tenancy Act.

The case of the pre-emptor in brief is that opposite parties 5 and 6 namely Motaleb and Jalil were the recorded owners in possession of 3.58 acres of land comprised in SA Khatian Number 351 under Plot Numbers 11, 12 and 15. By registered deed Number 978 dated 16.01.1969 they sold 1.20 acres of land to Omar Ali the predecessor-in-interest of the petitioner and opposite parties 7-13. Thereafter out of the said purchased land Omar Ali transferred 15 decimals by registered deed Number 2079 dated 31.01.1989 and 15 decimals by registered deed Number 1017 dated 14.04.1990 and 11.25 decimals by registered deed Number 2334 dated 16.09.1990 totalling 41.25 decimals in favour of opposite parties 16 and 17 namely Hadis Miah and Abdul Malek. Earlier out of the same purchased land Omar Ali also transferred certain portions to opposite parties 3 and 4 by registered deeds Number 865 dated 06.03.1986 and 2974 dated 29.10.1987.

The pre-emptor further states that by another registered deed being Number 979 dated 16.01.1969 Motaleb and Jalil

sold 60 decimals of land of SA Khatian Number 351 to Hazrat Ali. Subsequently Hazrat Ali transferred the said land to his wife Meherunnessa by registered deed Number 16664 dated 10.09.1975 and thereafter Meherunnessa transferred the same to opposite parties 3 and 4 by registered deed Number 3995 dated 20.12.1979.

It is further alleged that the original recorded owners previously transferred 1.50 acres of land out of the three plots of SA Khatian Number 351 to opposite party 14 Komor Ali and another 30 decimals to opposite party 15 Hasen Ali thereby divesting themselves of their entire interest in the holding.

According to the pre-emptor while opposite parties 3 and 4 together with Hadis Miah and Abdul Malek were possessing the land as successive purchasers they transferred 56.25 decimals of land to petitioner Kajol Mia by registered deed Number 1429 dated 06.06.2001. By virtue of the said purchase the petitioner claims to have become a co-sharer in the holding by purchase and also by inheritance. It is further asserted that although the aforesaid deeds mention SA Khatian Number 280 against Plot Numbers 11, 12 and 15 the reference to SA

Khatian Number 280 is merely a clerical mistake and the land in fact appertains to SA Khatian 351.

The pre-emptor further alleges that during the first week of Jaishtha, 1410 B.S. he came to learn that opposite parties 3 and 4 sold the disputed land to opposite parties 1 and 2 by registered deed Numbers 2032 and 2033 dated 09.10.2002. Thereafter upon obtaining certified copies of the impugned deeds on 28.05.2003 he came to know of the transfers for the first time with certainty and within the statutory period filed the present case claiming pre-emption.

Opposite parties 1 and 2 the purchaser-pre-emptees contested the case by filing a written objection. Their case in substance is that the recorded owners Abdul Motaleb and Abdul Jalil transferred 60 decimals of land under Plot Numbers 11, 12 and 15 of SA Khatian Number 351 to Hazrat Ali by registered deed Number 979 dated 16.01.1969. Thereafter Hazrat Ali transferred the said land to opposite parties 3 and 4 the vendors by registered deed Number 29296 dated 20.12.1979. Subsequently opposite parties 3 and 4 transferred the said 60 decimals to opposite party 2 by registered deed Number 2033 dated 09.10.2002. They further transferred another 15 decimals under Plot Numbers 12 and 15

to opposite party 1 by registered deed Number 2032 dated 09.10.2002. Since opposite party 1 was a minor possession was delivered to and accepted on his behalf by opposite party 2.

The purchaser-opposite parties further contend that after their purchase they excavated earth, raised embankments and converted about 75 decimals of fallow land into cultivable land at an expenditure of approximately taka 15,000/- (fifteen thousand). They assert that the actual market value of the disputed property was about taka 1,00,000 (one lac) although a lesser consideration was intentionally shown in the sale deeds. According to them the pre-emption case has been filed merely out of greed.

It is further contended that Omar Ali the father of the pre-emptor already alienated all the land purchased by him and relinquished both title and possession. Neither the pre-emptor nor his predecessor ever purchased any land of SA Khatian Number 351 rather they purchased land appertaining to SA Khatian Number 280. The pre-emptor never expressed any willingness to purchase the disputed land before the impugned transfers. It is also pleaded that as the two impugned deeds namely Deed Numbers 2032 of 2002 and

2033 of 2002 relate to different purchasers and different parcels of land a single application accompanied by one consolidated deposit is not maintainable in law.

On the basis of the pleadings of the parties the trial Court framed as many as seven issues including the issue as to whether the pre-emptor is a co-sharer in Holding Number 351.

During the trial the pre-emptor examined two witnesses while opposite parties 1 and 2 examined three witnesses in support of their defence.

Upon consideration of the pleadings along with the oral and documentary evidence on record and after hearing the parties the trial Court by judgment and order dated 28.03.2005 dismissed the pre-emption case.

Being aggrieved thereby the pre-emptor preferred Miscellaneous Appeal Number 17 of 2005 before the District Judge, Sunamganj. Upon transfer the appeal was heard by the Joint District Judge, 2nd Court, Sunamganj who by judgment and order dated 19.03.2013 allowed the appeal and granted pre-emption.

Being dissatisfied with the judgment and order of the appellate Court the purchaser-pre-emptees preferred the

instant Civil Revision in which Rule was issued on 27.06.2013.

Mr. Md. Yousuf Ali, the learned Advocate appearing on behalf of the petitioner-purchaser-pre-emptees submits that the appellate Court committed error of law resulting in a failure of justice by allowing the pre-emption upon complete misreading of the evidence and misinterpretation of the relevant documents and disregard of the settled principles governing pre-emption. He contends that the appellate Court erroneously and abruptly held that the pre-emptor is a co-sharer in the holding although such finding is wholly unsupported by the evidence on record.

Referring particularly to the registered deed dated 06.06.2001 the learned Advocate submits that the appellate Court's finding that the holding number mentioned in the said deed corresponds with the holding described in the schedule of the case is patently misconceived, perverse and contrary to the record. According to him the order allowing pre-emption being founded upon such an erroneous finding is liable to be set aside.

He further submits that there is no scope for the pre-emptor to set up a new case in revision claiming pre-emption

as a contiguous landholder since no such case was pleaded either before the trial Court or before the appellate Court. In support of his submissions he has referred to the decisions in the case of Idris Miah vs. Sushil Ranjan reported in 36 DLR 206, Akhtarun Nessa vs. Habibullah reported in 31 DLR (AD) 88 and Fatema Bibi Case reported in 16 BLD(AD) 129.

On the other hand learned Advocate Mr. Surojit Bhattacharjee appearing on behalf of the opposite party-pre-emptor submits that the appellate Court correctly appreciated the deed dated 06.06.2001 and rightly concluded that the pre-emptor is a co-sharer in the holding. According to him the said finding is based upon proper appreciation of the evidence on record and therefore calls for no interference in revisional jurisdiction.

He further submits that the pre-emptor is also a contiguous landholder which is evident from the boundaries described in the impugned sale deeds and is therefore independently entitled to claim pre-emption on that ground.

He also contends that since SA Khatian Number 280 admittedly does not contain Plot Numbers 11, 12 and 15 it may reasonably be inferred that the reference to SA Khatian 280 in the relevant deeds was merely a clerical error and the

transfers actually relate to SA Khatian Number 351 which alone contains those plot numbers. Thus according to him the pre-emptor has rightly been held to be a co-sharer in the holding.

Finally he submits that if this Court finds any ambiguity in the evidence the ends of justice would be best served by remanding the case to the trial Court so that the parties may adduce further evidence to establish conclusively whether the pre-emptor is a co-sharer in the holding or alternatively a contiguous landholder.

I have heard the learned Advocates appearing for both sides and have carefully perused the judgments of the Courts below together with the pleadings and evidence and the other materials on record.

The admitted facts are that opposite parties 3 and 4 as vendors transferred 15 decimals of land comprised in Plot Numbers 12 and 15 of S.A. Holding Number 351 by registered deed Number 2032 dated 09.10.2002 in favour of opposite parties 1 and 2. By another registered deed being Number 2033 of the same date they transferred further 60 decimals of land comprised in Plot Numbers 11, 12 and 15 of the same holding in favour of the same purchasers. These two

deeds are the subject matter of the present pre-emption proceeding.

The pre-emptor claimed that he is a co-sharer in S.A. Holding Number 351 by inheritance as well as by purchase. In support of his claim by inheritance he relied upon the S.A. record marked as Exhibit-1. He further asserted that opposite party 16 Hadis Mia, opposite party 17 Abdul Malek and opposite party 3 Abdul Halim transferred $56\frac{1}{4}$ decimals of land comprised in Plot Numbers 15, 10 and 12 to him by registered deed Number 1429 dated 06.06.2001. According to him he thereby became a purchaser co-sharer in the suit holding.

The contention is wholly inconsistent with the documentary evidence. Deed Number 1429 dated 06.06.2001 clearly shows that the land transferred thereunder appertains to S.A. Holding Number 280 as evidenced by Exhibit-3 and not to S.A. Holding Number 351.

Both the Courts below concurrently held that since Exhibit-3 does not mention Plot Numbers 11, 12 and 15 those plots must belong to S.A. Holding Number 351. It was further held that although deed Number 978 dated 16.01.1969 marked

as Exhibit-2 mentions Holding Number 280 the pre-emptor's father Omar Ali in fact purchased land of Holding Number 351.

The above finding cannot be sustained. Exhibits 1, 2 and 3 are admitted documentary evidence. In the face of those admitted documents it is difficult to comprehend how the trial Court reached such a conclusion. It is equally incomprehensible how the appellate Court reproduced the same finding almost verbatim without any independent discussion or judicial analysis. A finding of fact cannot override the plain recital contained in admitted registered instruments.

The consequence of such a finding is equally disturbing. If deed Number 978 marked as Exhibit-2 is treated as relating to Holding Number 351 instead of Holding Number 280 all subsequent transfers originating therefrom including those dated 06.03.1986, 19.10.1987, 31.01.1989, 14.04.1990 and 16.09.1990 become vulnerable to challenge. Such a conclusion is capable of creating unnecessary disputes among vendors, purchasers and co-sharers of S.A. Holding Number 280 in future. Neither Court below addressed this important legal consequence. More importantly none of those

subsequent deeds was even produced by the pre-emptor before the trial Court.

Accordingly the pre-emptor utterly failed to establish his alleged co-sharership by inheritance and the trial Court rightly rejected that claim.

The pre-emptor also claimed purchaser co-sharership on the basis of deed Number 1429 dated 06.06.2001. Since the deed was not produced before the trial Court the trial Court rightly held that the pre-emptor failed to establish purchaser co-sharership.

The order Number 54 dated 12.08.2012 passed by the appellate Court shows that the said deed was admitted as additional evidence and was again repeatedly marked as Exhibit-1. Upon consideration of that deed the appellate Court held that the land described therein and the case land belong to the same holding and plots and on that basis concluded that the pre-emptor became a purchaser co-sharer.

The finding is founded upon a manifest misreading of the document itself. Deed Number 1429 dated 06.06.2001 unmistakably records S.A. Holding Number 280 and not 5.A. Holding Number 351. Therefore the appellate Court committed patent error of law in treating the pre-emptor as a

purchaser co-sharer in the suit holding. The finding is wholly unacceptable and is liable to be set aside.

The learned Advocate Mr. Bhattacharjee for the opposite parties next contended that the eastern boundaries of deed Numbers 2032 and 2033 mention "Kajol Gong". He therefore argued that the pre-emptor is a contiguous landholder and is independently entitled to pre-emption.

The contention has no substance. The expression "Kajol Gong" simply means "Kajol and others". From such description alone it cannot be ascertained whether Kajol himself owned the contiguous land or whether it belonged to any of the unnamed persons included within the expression "others". No issue was framed on this question before the trial Court. No reliable evidence was adduced to establish contiguity. No substantial argument was advanced before the appellate Court either. Since the pre-emptor failed to prove that he possessed contiguous land and no such case was made out before either of the Courts below there is no scope to examine the issue for the first time in revisional jurisdiction.

The oral evidence also negatives the case of the pre-emptor. P.W. 1 admitted in cross-examination that his father purchased the land by deed Number 978 in which Holding

Number 280 was recorded. He further admitted that neither any deed of rectification nor any suit for correction of the holding number had ever been filed. He also admitted that although deed Numbers 2032 and 2033 mention Holding Number 351 no proceeding was ever instituted for rectification of those deeds. P.W. 2 namely vendor Jalil also admitted in cross-examination that deed Number 978 contains Holding Number 280 and he transferred the land described in that deed.

The right of pre-emption is a predatory right. It enables the pre-emptor to substitute himself in place of the purchaser and thereby deprive the purchaser of property lawfully acquired. Being an exceptional statutory right every condition prescribed by law must therefore be strictly complied with before such right can be exercised.

In the present case the pre-emptor sought to ignore the express recital of Holding Number 280 without first obtaining rectification of the instrument. Under Section 31 of the Specific Relief Act a written instrument may be rectified only where fraud or mutual mistake is clearly established before the Court. Such rectification is discretionary and cannot prejudice the rights of a bona fide third party. No suit for rectification

was filed. No decree was obtained. No factual foundation was laid for invoking Section 31 of the Act. Consequently the pre-emptor cannot avoid the legal consequence flowing from the admitted contents of the registered deed.

Furthermore Section 96(1) of the State Acquisition and Tenancy Act requires that the applicant must be a tenant of the holding in respect of which pre-emption is claimed. This is a mandatory statutory precondition. The word "holding" is synonymous with the tenancy recorded in the relevant khatian. A person who claims co-sharership under another holding cannot invoke Section 96(1) merely because some plots may overlap. This principle has long been settled by the Appellate Division in Fatema Bibi case reported in 16 BLD (AD) 129.

The learned Advocate for the opposite parties finally prayed for remand of the case for fresh consideration.

The submission is devoid of substance. An order of remand is not to be granted as a matter of course. It is an exceptional course to be adopted only where the ends of justice so require and where the defect cannot otherwise be cured.

In the instant case the entire controversy turns upon the admitted contents of the registered deeds already on record.

The pre-emptor's failure stems from his inability to establish co-sharership in S.A. Holding Number 351 and from his omission to seek rectification of the relevant instrument under Section 31 of the Specific Relief Act. Even if the case is remanded no rectification of deed Number 978 dated 16.01.1969 or deed Number 1429 dated 06.06.2001 would automatically follow. Unless those deeds are lawfully rectified by a competent Court the statutory defect in the pre-emptor's claim remains incurable. Consequently no useful purpose would be served by remanding the case.

The prayer for remand is therefore rejected.

Upon an overall consideration of the evidence on record and the applicable law I find that the pre-emptor has failed to establish co-sharership either by inheritance or by purchase.

He has equally failed to establish any right as a contiguous landholder. The appellate Court misread the documentary evidence and arrived at an erroneous decision.

Accordingly the Rule is made absolute.

The judgment and order passed by the appellate Court are hereby set aside and those passed by the trial Court are restored.

Let a copy of this judgment be communicated to the Courts below at once.

The order of stay passed by this Court stands vacated.

Let a copy of this judgment be communicated to the Courts below forthwith.

Md. Ali Reza, J:

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