

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

**Present:**

**Mr. Justice Md. Bashir Ullah**

**Civil Revision No. 3775 of 2006**

In the matter of:

An application under Section 115(1) of the Code of Civil  
Procedure, 1908

And

In the matter of:

Fazilatunnessa

... Plaintiff- Appellant -Petitioner.

-Versus-

Julekha Khatoon and another

... Defendants- Respondents -Opposite parties.

None appears

... For the Petitioner.

Mr. Abul Kalam Chowdhury, with

Mr. Iqbal Kalam Chowdhury, Advocates

... For the Opposite parties.

**Heard on: 05.03.2024**

**Judgment on: 06.03.2024**

At the instance of the Plaintiff in the Other Class Suit No. 86 of 2002 this Rule was issued on 17.07.2006, calling upon the opposite party Nos. 1 and 2 to show cause as to why the judgment and order dated 14.02.2006 passed by the Additional District Judge, Second Court, Noakhali, in Title Appeal No. 215 of 2003 dismissing the appeal thereby affirming the judgment and decree dated 21.07.2003 passed by the Assistant Judge, Senbag Court, Noakhali in Other

Class Suit No. 86 of 2002 should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

Facts, relevant for disposal of the Rule, in short, are that the plaintiff-petitioner and defendant No. 1-opposite party No. 1 are the co-sharers by inheritance in the land of Deara khatian 159, Mouza North Sreepur, P.S. Sadar, District Noakhali. They have been enjoying their respective shares through mutual possession. There was no partition by metes and bounds. Defendant No. 2-Opposite party No. 2 is a stranger. Defendant No. 1-Opposite party No. 1 intended to sell her entire share in all the holdings. The plaintiff-petitioner offered to purchase the same. The opposite party No. 2 conspired to purchase the properties and managed to convince opposite party No. 1. The opposite parties created a transfer deed for 67 decimals of land and tried to handover the possession to opposite party No. 2. The opposite parties further conspired to create a deed of exchange instead of a sale deed to block the pre-emption. Hence, the petitioner instituted Other Class Suit No. 59 of 2000 in the Court of the Senior Assistant Judge, Sadar, Noakhali, praying for permanent injunction restraining the opposite parties from transferring the suit land. The suit was transferred to the Assistant Judge, Senbag Court, Noakhali and was renumbered as Other Class Suit No. 86 of 2002. The opposite parties contested the suit by filing a joint written statement stating *inter alia* that the suit is not maintainable as the plaintiff has no legal right to seek restriction from transferring one's own land to any other. Defendant No. 1 transferred suit land to defendant No. 2 by exchange deed No. 2240 dated 01.03.2000. Thereafter, Defendant No. 2 built a tin shed room in the suit property and shifted his family therein. After that the Court fixed the suit for hearing. Upon hearing the parties, the Senior Assistant

Judge, Senbag, Noakhali dismissed the suit on contest on 21.07.2003 holding that the suit is not maintainable.

Challenging the judgment and decree dated 21.07.2003, the plaintiff-as appellant preferred Title Appeal No. 215 of 2003 in the Court of District Judge, Noakhali. The appeal was transferred to the Court of Additional District Judge, Second Court, Noakhali. Upon hearing the parties, the Additional District Judge, Second Court, Noakhali dismissed the appeal on 14.02.2006 with cost affirming the judgment and decree dated 21.07.2003 passed by the Senior Assistant Judge, Senbag Court, Noakhali.

Being aggrieved, the plaintiff-appellant as petitioner preferred the instant civil revision and obtained the Rule. Leave was also granted by this Court and lower Court records was called for.

In the meantime, 17 years have elapsed but unfortunately, no one appears on behalf of the petitioner to support the Rule.

Mr. Abul Kalam Chowdhury with Mr. Iqbal Kalam Chowdhury, learned Advocates appearing on behalf of opposite party No. 2 submits that the suit land was transferred before receiving the summons of the Other Class Suit No. 59 of 2000. The plaintiff-appellant-petitioner prayed for a decree of permanent injunction restraining from transferring the suit land which is illegal.

He further submits that during pendency of other class suit the plaintiff filed pre-emption case against Deed No. 2240 dated 01.03.2000 and got the order of pre-emption. Hence, the suit was not maintainable. The Senior Assistant Judge, Senbag Court, Noakhali rightly and legally dismissed the suit on the grounds of maintainability of the same and the Additional District Judge, Second

Court, Noakhali dismissed the appeal affirming the dismissal order passed by the Assistant Judge very rightly. Finally he prays for discharging the Rule.

Heard the learned Advocate appearing for the opposite party No. 2 and perused the revisional application and all the documents so appended therewith including the impugned judgment and order.

Learned Senior Assistant Judge, Senbag Court, Noakhali while dismissing the suit opined that the learned Advocate for plaintiff frankly admitted that the plaintiff filed a pre-emption case against the deed No. 2240 dated 01.03.2000 and got the order of pre-emption and as such the purpose of the suit has been frustrated with the transfer of the suit land on the day of filing the suit.

It appears from the record that the suit was filed on 28.02.2000 and the opposite party No. 1 transferred the suit land to opposite party No. 2 by exchange deed on 29.02.2000 and the same was registered on 01.03.2000 before receiving the summons of Other Class Suit No. 59 of 2000. Hence, the purpose of the suit was frustrated with the transfer of the suit land on the day of filing the suit. Moreover, it is admitted that the plaintiff-appellant-petitioner filed a pre-emption case against the exchange deed No. 2240 dated 01.03.2000 and obtained the order of preemption in her favour.

The right to transfer the land is the unfettered right and no suit can be entertained to stop or limit such right. The suit is not maintainable to stop such legitimate right conferred by law.

This Court finds no illegality and infirmity in the impugned judgment and decree passed by the Courts below.

In view of the facts and circumstances, I find no substance in the Rule.

In the result, the Rule is discharged.

There is no order as to costs.

Communicate this order at once and send down the lower court records to the concerned Court.

(Justice Md. Bashir Ullah)

Md. Ariful Islam Khan  
Bench Officer