

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)  
First Miscellaneous Appeal No. 113 of 2014  
with  
(Civil Rule No. 19 (FM) of 2014)  
In the matter of:**

Mrs. Jahanara Begum  
... Appellant-petitioner  
-Versus-  
Uzzal Kumar Roy  
... Respondents-opposite parties

Mr. Monir Hossain, Advocate  
... For the appellant-petitioner

Mr. Sasti Sarker with  
Mr. Laxman Biswas  
... For the respondent-opposite party No. 1

**Heard on 10.06.2024 and 11.06.2024**  
**Judgment on 12.06.2024**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah  
And  
Mr. Justice Md. Bashir Ullah

**Md. Bashir Ullah, J.**

Since the point of law and facts so figured in the appeal and the rule are intertwined, those have heard together and are being disposed of by this common judgment.

At the instance of the opposite party in Miscellaneous Case No. 11 of 2009, this appeal is directed against the judgment and order dated 28.07.2013 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Khulna allowing the case on contest.

At the time of issuance of the rule, the operation of the judgment and order dated 28.07.2013, passed by the learned Joint District Judge,

2<sup>nd</sup> Court, Khulna in Miscellaneous Case No. 11 of 2009, was stayed for a period of 04(four) months, which was lastly extended on 04.11.2015 till disposal of the Rule.

The short facts leading to preferring this appeal are:

The respondent as, pre-emptor filed an application under section 96 of the state Acquisition and Tenancy Act, 1950 for pre-emption of the case land as shown in the schedule to the application. It is stated in the application that, the case land is situated at Mouza, Miksimil under Police Station-Dumuria in S.A Khatian Nos. 882, 1663, 1950, 1341, 1889, 738, 15 and 1760 which was duly recorded in the name of one, Shonnasi Paramanik who died leaving behind his two sons namely, Maniklal and Nimay Raton, as heirs. Maniklal died leaving behind three sons: Uzzal Kumar Roy, the pre-emptor, Narayan Chandra Roy and Subash Chandra Roy, the Opposite Party Nos. 3-4 as heirs.

The respondent-pre-emptor is a co-sharer by inheritance and the pre-emptee-appellant is a stranger-purchaser in the case holding. Subsequently, Nimai Ratan Roy, respondent No. 2 transferred the case land to the appellant through registered sale deed being number 5220 on 12.11.2008 without serving any notice to the pre-emptor. On 28.10.2009, the pre-emptor came to know about the alleged transaction for the first time and procured the certified copy of the sale deed on 03.11.2009. If the pre-emptor had previous knowledge of the transfer, he would have purchased the same at any cost but the transfer was held beyond the knowledge of the pre-emptor. Feeling aggrieved, the pre-emptor then

instituted Miscellaneous Case No. 11 of 2009 before the learned Joint District Judge, Second Court, Khulna.

The pre-emptee-appellant contested the case by filing a written objection denying all the material averments made in the application. Her case is that, the pre-emption application is not maintainable in its present form and is barred by limitation and the principles of estoppels, waiver and acquiescence. On 01.11.2008, Nimai Ratan Roy, respondent No.2 requested the pre-emptor and respondent nos. 3-4 to purchase his land but they refused the said offer for want of money, rather the pre-emptor requested the appellant-pre-emptee to purchase his uncle's land except the homestead land. The appellant-pre-emptee purchased 2.12 acres of land by paying Taka 7,00,000/- (seven lac) through deed number 5220 dated 12.11.2008 from respondent No.2 with full knowledge and consent of the pre-emptor who was present before the Sub registry office during registration of the same. After purchasing the same the appellant- pre-emptee got possession of the suit land. It has further been stated that the application was filed after one year, so it is barred by limitation and taking advantage of low value as shown in the impugned sale deed the pre-emptor out of greed and ill motive filed the pre-emption case after such a long time. It has also been stated that, if the pre-emption is allowed, the pre-emptee will suffer irreparable loss and thus prayed for rejecting the case with cost.

In order to dispose of the case the trial court framed as many as 5(five) different issues.

During trial the pre-emptor examined as many as 3(three) witnesses while the pre-emptee examined 02(two) witnesses. Apart from that both parties adduced documentary evidence to prove their respective cases.

However upon hearing the parties, learned Joint District Judge, Second Court, Khulna by his judgment and order dated 28.7.2013 allowed the pre-emption Miscellaneous Case on contest against the pre-emptee finding that, the case is filed within time, the plea of estoppel, waiver and acquiescence has not been proved whereby the pre-emptor is entitled to get the order of pre-emption.

Being aggrieved by and dissatisfied with the said judgment and order passed by the learned Joint District Judge, Second Court, Khulna in Miscellaneous Case No. 11 of 2009 the pre-emptee-opposite party as appellant preferred the instant appeal.

Mr. Monir Hossain, the learned counsel appearing for the appellant submits that, the case is barred by the principle of waiver and acquiescence as the pre-emptor had full knowledge and consent of the disputed sale as he was present even before the sub-registry office during registration of the same. The pre-emptor filed the Miscellaneous Case after one year of registration and therefore the case is barred by limitation but the trial court has failed to appreciate the said vital aspect of the case.

He next submits that, the impugned judgment is not sustainable in law and the Court below passed the same without applying his judicial mind and as such, it is liable to be set aside.

He further submits that the Court below failed to appreciate the depositions of OPW-1 and OPW-2 as it passed the impugned judgment and order without discussing the depositions of those witnesses. With such submissions, the learned Counsel finally prays to allow the appeal by setting aside the impugned judgment and order.

*Per contra*, Mr. Sasti Sarker, the learned counsel appearing for the respondent No. 1 contends that, there is no error in the impugned judgment and order and the Court below passed the same very rightly and legally where there is no illegality and infirmity in it.

He next submits that, the pre-emptor is a co-sharer by inheritance while the pre-emptee is a stranger-purchaser who purchased the suit land from Nimai Ratan Roy when no prior notice was served upon him and the pre-emptor came to know about the transfer on 28.10.2009 and after procuring the certified copy of this disputed deed on 03.11.2009, he filed the case on 04.11.2009 within the time from the date of knowledge and hence the Court below allowed the pre-emption case very rightly.

He further submits that the pre-emptee has miserably failed to prove her case and there are huge contradictions in the evidence led by OPW 1 and OPW 2 who failed to substantiate the written objection and as such, the appeal is liable to be dismissed and the rule arising out of the appeal be discharged.

We have considered the submission so advanced by the learned counsel for the appellant and respondent No. 1 at length, perused the memorandum of appeal, impugned judgment and evidence and the materials on record.

On examining the evidence adduced by the pre-emptor we find that, the Pre-emptor, Uzzal Kumar Roy, as PW 1 deposed that, opposite party No. 2, Nimai Ratan Roy sold out the case land to opposite party No. 1, Jahanara Begum. Nimai Ratan Roy executed the deed on 12.11.2008 showing over value of the case land. Opposite party No. 2 did not hand over possession of the case land to the opposite party No. 1. Opposite party No. 2 informed Lal Mohon Bhowmik that he sold out the case land to opposite party No. 1 in 2008. Then Lal Mohon disclosed the matter to his friend Hangsha Shuvra Halder alias Dhanu. He knew about the transfer of the case land by Hangsha Shuvra Halder on 28.10.2009. Thereafter, he obtained the certified copy of the case land on 03.11.2009. Then, he filed the pre-emption case. He also denied the suggestion that, he did not know about the bainapatra (agreement for sale) during the cross examination and he was not present at the time of registration.

On the other hand, PW 2, Hangsha Shuvra Halder deposed that, Lal Mohon Bhowmik informed him that Nimai Doctor sold out six Bighas of land to Jahanara Begum on 28.10.2009. He also told about transferring the case land to Uzzal Babu (the pre-emptor).

Likewise, PW3, Abdul Khalek Sardar deposed that, he knew the pre-emptor, Nimai Babu and Jahanra (Pre-emptee). He looked after the case land. He further deposed that, Uzzal Babu (Pre-emptor) informed him that Jahanara purchased the case land, and he filed a case and subsequently, Jahanara took possession of the case land.

In cross-examination, he stated that he did not know the quantum of the case land. He did not know whether a Baina Patra was executed

before sale. He did not know whether a settlement was held and that of the date of taking possession.

On the other hand the pre-emptee, Jahanara Begum as OPW 1 deposed that she purchased 2.07 acres of land under Miksimil Mouza through a deed and a bainapatra was executed earlier on 10.04.2005 before purchase of the case land. The pre-emptor knew about the bainapatra as Uzzal proposed her to purchase the case land except the homestead and accordingly, she bought the case land which is a low land and the pre-emptor purchased the pond and homestead. She further asserted that the pre-emptor was present at the time of measurement of the case land but since the present value of the case land has been increased; the pre-emptor thus filed the Miscellaneous Case.

In cross-examination, she stated that, she purchased 2.07 acres of land, though the deed was written for 2.12 acres. She denied the suggestion that the bainapatra was made after the case.

The OPW 2, Md Arshad Gazi, stated in his chief that Jahanara purchased the case land from Nimai and at first the bainapatra was executed where he put his signature. He proved his signature which was marked as exhibit-Ka(1). He further stated that, Jahanara-the pre-emptee purchased the land at 'Bill' while Uzzal-the pre-emptor took the homestead and pond.

On going through the written objection, we find that the pre-emptee claimed that the pre-emptor was present on 12.11.2008, at the time of registration of sale deed of the case land at Dumuria Sub-Registry Office but in the evidence of OPW1, Jahanara Begum we find

nothing to that effect that is regarding the presence of the pre-emptor at the registry office at the time of registration. Even OPW2, Md. Arshad Gazi has also not disclosed anything about the presence of the pre-emptor at the time of registration. Rather, the pre-emptor, in cross-examination, asserted that, he was not present at the time of registration. So, the plea regarding the presence of the pre-emptor at the time of registration has not been proved at all. In this aspect, we can rely on the decision passed in the case of *Abdus Sobhan Sheikh Vs. Kazi Mulana Jabedullah and others*, reported in 52 DLR(2000) 289, where it was held:

“Right of a pre-emption, which is a statutory right can not be given up or taken away or waived by mere allegation that the pre-emptor was present in the sub-registrar’s office at the time of execution and registration of the deed in question...”

Further, the pre-emptee claimed in her written objection that on 01.11.2008, the pre-emptor and his brothers (the opposite party Nos. 3 and 4) requested her to purchase the case land, expressing their inability to buy the same for want of money and then she became interested in purchasing the case land upon request of the pre-emptor. The pre-emptor even negotiated and fixed the price of the case land. But fact remains that, OPW 1 and OPW 2 did not prove such claim in their examination-in-chief. In her deposition as OPW-1, the pre-emptee stated that, Uzzal (the pre-emptor) told her to have the vacant land registered except the homestead land. But this statement has also not been corroborated by



any other witness. Also, the plea that the case is barred by the principle of estoppel, waiver and acquiescence does not bear any importance and consideration. If strong case thereof is made out then a weak statement and expression to that effect do not constitute a case of acquiescence or waiver. In *Fazar uddin Vs. Maij Uddin*, reported in 44 DLR(AD) (1992) 62, it was held:

“It is true, the right of pre-emption accrues after transfer of the land, and statutory right of pre-emption can not be taken away by mere verbal assurance of the person having such right, unless other facts and circumstances clearly make out a case of acquiescence or waiver. ‘Acquiescence’ arises when a person knowing that he is entitled to enforce some right neglects to do so for such a long time that the other person opposing such right may fairly infer that he has waived or abandoned it. It is failure to object to certain transactions or acts. ‘Waiver’ means simply abandonment of any claim or right.”

The record shows that the pre-emptor-respondent is a co-sharer by inheritance, but the Opposite Party No.1-appellant is a stranger-purchaser in the case holding. It is admitted that, Nimai Ratan Roy, the Opposite Party No.2 transferred the case land to the Opposite Party No.1-appellant through registered Kabala dated 12.11.2008 by deed No. 5220/08 without serving notice to the pre-emptor. On 28.10.2009, the

pre-emptor came to know about the alleged transfer for the first time and procured the certified copy on 03.11.2009 and got definite knowledge and then the application was filed on 04.11.2009 which is within time and the petitioner has the preferential right in the case land.

Given the above facts and circumstances it does not appear that the case is barred by any law.

Regard being hand to the above facts and circumstances, we do not find any iota of illegality in the impugned judgment and order passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Khulna in Miscellaneous Case No. 11 of 2009.

Accordingly, the appeal is dismissed, however without any order as to cost.

The judgment and order dated 28.07.2013 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Khulna in Miscellaneous Case No.11 of 2009 is hereby affirmed.

Since the appeal is dismissed, the connected rule being Civil Rule No. 19 (FM) of 2014 is thus discharged.

The order of stay granted at the time of issuance of the rule shall stands recalled and vacated.

Send down the lower court records along with a copy of this judgment at once to the trial Court forthwith.

**Md. Mozibur Rahman Miah, J.**

I agree.