Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 3650 of 2003
Abul Bashar Patwary and another....Petitioners
-Versus-
On the death of op No. 1, her heirs are already on record:
Sirajul Islam and others....Opposite parties
Mr. Muhammad Moshiul Alam (Sayem), Advocate
....For the petitioners
Mr. Abdul Baten, Advocate with
Mr. Syed Al Asafur Ali, Advocate
...For the opposite party Nos. 2 to 8, 9(e), 9(g), 10 to 12

Heard on 23.07.2026, 29.07.2026, 30.07.2026, 06.08.2026, 11.08.2026 and 12.08.2026
Judgment delivered on 13.08.2026

On 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 29.03.2003 passed by the Joint District Judge, Court No. 1, Lakshmipur in Miscellaneous Appeal No. 56 of 1978 affirming the judgment and order dated 28.02.1978 passed by the Assistant Judge, Court No. 2, Lakshmipur in Miscellaneous Case No. 6 of 1991 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The relevant facts stated in the application under section 96 of the State Acquisition and Tenancy Act, 1950, are that the petitioners and the opposite party No. 7, Ashura Begum alias Ashura Khatun, are the co-sharers of Khatian No. 778, Dag Nos. 3704, 3616, 3716, 3834, 133, 142, 167 and 171 of Mouza No. 15 Charpata by purchase and gift from Manikjan Banu. The defendant No. 7 sold the suit land by deed dated 21st Baishakh 1379 at a price of Tk. 2000 to defendant No. 1 Motiur Rahman and defendant No. 2 Halima Khatun. No notice was served upon the pre-emptors before the sale. The house of the defendant No. 7 is situated at village Shukdi, Cumilla, about 17 to 18 miles away from the suit land. The defendant No. 7 inherited the property from her father. After the death of the father of the defendant No. 7, she used to cultivate the land through different people. The defendant Nos. 1 and 2 have been cultivating the suit land as bargadar of the defendant No. 7 since 4/5 years before the impugned sale. In the middle of Baishakh, 1381 B.S., the defendant Nos. 1 and 2 were digging soil in the suit land and at that time, the pre-emptors wanted to know about the reason of digging the soil and the defendant Nos. 1 and 2 informed that they purchased the land from the defendant No. 7. After query in the office of the sub-registrar on 13.05.1974, they collected the certified copy of the said sale deed and before that, the

petitioners were not aware of the disputed sale. Thereafter, filed the suit on 15.05.1974.

The opposite party Nos. 1 and 2 filed written objection denying the assertion made in the application under Section 96 of the State Acquisition and Tenancy Act, 1950, stating that the applicants Lal Miah and Ana Miah are the uncles of the defendant No. 7 and before selling the suit land, the defendant No. 7 had given a proposal to the co-sharer applicants through the husband of defendant No. 7, but they refused to purchase the land due to financial inability. After that, considering the request and mediation of the applicants, the opposite party Nos. 1 and 2 agreed to purchase the land, and they also settled the value of the land, and after purchase, in the presence of the applicants, possession of the land was handed over to opposite party Nos. 1 and 2, and from the date of purchase, the applicants were aware of the possession of the opposite party Nos. 1 and 2. After selling the suit land, the opposite party No. 7 went to Chandpur. After purchasing the land, the opposite party Nos. 1 and 2 took possession, measuring the land through a local Amin. After purchase, the opposite party No. 7, in connivance with the opposite party No. 9, filed an application to the Union Board and to the Office of the Freedom Fighter. The applicant No. 1 made a statement in favour of the opposite party No. 9 and against the opposite party Nos. 1 and 2, and the local Chairman rejected the claim of the applicant. The applicants were aware of the deed from the date of its execution.

During trial, the applicants examined 3 witnesses and the opposite party Nos. 1 and 2 examined 2 D.Ws. After concluding the trial, the trial Court, by judgment and order dated 28.02.1978, disallowed the miscellaneous case on contest against the opposite party Nos. 1 and 2 and ex parte against the other opposite parties, against which the applicants filed Miscellaneous (Pre-emption) Appeal No. 56 of 1978 in the Court of District Judge, Lakshmipur. The Joint District Judge, Court No. 1, Lakshmipur heard the appeal and, by impugned judgment and order, dismissed the appeal, affirming the judgment and order passed by the trial Court. Thereafter, the petitioners obtained the Rule.

Learned Advocate Mr. Muhammad Moshiul Alam (Sayem), appearing on behalf of the petitioners, submits that both the Courts below misread and non-read the material evidence of the parties as to the cause of action of the suit and arrived at a wrong decision holding that the application for pre-emption was not filed within 4 months from the date of registration of the sale deed. He further submits that the purchaser-opposite party Nos. 1 and 2 were the bargadars of the seller Ashura Begum alias Ashura Khatun and, they have been cultivating the land as the bargadar of the seller Ashura Begum alias Ashura Khatun, since 4/5 years

before impugned sale and no notice was served upon pre-emptor co-sharers of the suit land. During trial, the petitioners proved the cause of action of filing the suit on 13.05.1974 within 4 months from the date of knowledge of the registration of the disputed deed but both the Courts below arrived at a wrong decision that the applicants were aware of the deed from the date of purchase and filed the application under section 96 of the State Acquisition and Tenancy Act, 1950 beyond 4 months from the date of registration of the disputed deed and thereby committed an error of law resulting in an error in the decision in rejecting the application for pre-emption occasioning failure of justice. He prayed for setting aside the impugned judgment and order passed by the Courts below. In support of his submission, the learned Advocate relied on the decisions made in the case of Raushan Akhter @ Moharaji Bibi Vs. Khandaker Mosharraf Hossain & Ors reported in 14 BLT (AD) 269, Abdul Kashem Vs. Amirun Nahar being dead, her heirs: A. N. M. Azizur Rahman and others reported in 11 MLR (AD) 267, Harunur Rashid and others vs. Afruza Khanam and others reported in 70 DLR (AD) 180, Md. Habibur Rahman vs. Abdul Wadud & ors. reported in 21 DLR 382, Rokeya Begum vs Md Abu Zaher and others reported in 5 BLC (AD) 97, and Abul Bakar Siddique (Md) vs. Additional Deputy Commissioner Kurigram and others reported in 48 DLR (AD) 154.

Learned Advocate Mr. Abdul Baten appearing along with the learned Advocate Mr. Syed Al Asafur Ali on behalf of the opposite party Nos. 2 to 8, 9(e), 9(g), 10 to 12 submits that both the Courts below considering the evidence of both the parties arrived at a concurrent finding of fact that the petitioners were aware of the disputed deed from the date of its execution and exercising revisional jurisdiction under section 115(1) of the Code of Civil Procedure this Court should not interfere with concurrent finding of fact arrived at by the Courts below. He further submits that after purchase, the pre-emptors mutated the suit land in another khatian. Therefore, they are not the co-sharers of the disputed khatian and are not entitled to file an application under section 96 of the State Acquisition and Tenancy Act, 1950, and all the co-sharers of the disputed khatian were not made party to the application under section 96 of the State Acquisition and Tenancy Act, 1950. Therefore, the application is not maintainable in law. In support of his submission, the learned Advocate relied on the decisions made in the case of Mofizullah Bhuiyan and others Vs. Sree Narayan Chandra Roy and others reported in 4MLR (AD) 127, Additional Deputy Commissioner (Revenue) and Assistant Custodian, Vested Property, Bagerhat Vs Md. Shahajahan Ali and others reported in 19 BLD (AD) 25, Moslem Fakir and others Vs. Md. Maniruddin Khandaker and others reported in 11 MLR 92, Jahanara Begum Vs.

Md. Aminul Islam Chowdhury & others reported in 2 MLR (AD) 215, Cinmoy Chowdhury and another vs Mridul Chowdhury and others reported in 55 DLR (AD) 115, Fatema Bibi vs. Sree Manik Lal Somaddar & others reported in 50 DLR (AD) 97 and Abdul Hai and another Vs. Chan Banu Bibi reported in 13 MLR (AD) 140. He prayed for discharging the Rule.

I have considered the submissions of the learned Advocate Mr. Muhammad Moshiul Alam (Sayem), who appeared on behalf of the petitioners, and learned Advocate Mr. Abdul Baten, who appeared along with the learned Advocate Mr. Syed Al Asafur Ali on behalf of the opposite party Nos. 2 to 8, 9(e), 9(g), 10 to 12, and perused the evidence adduced by both the parties, impugned judgments and orders passed by the Courts below, and the records.

On perusal of the impugned judgments and orders passed by the Courts below, it is revealed that the trial Court rejected the application for pre-emption, holding that the applicants were aware of the disputed sale deed from the date of its execution, and the appellate Court affirmed the judgment and order passed by the trial Court, holding that the applicants and the opposite party No. 7 Ashura Begum alias Ashura Khatun are uncle and niece. It is difficult to believe that the applicants were not aware of the disputed transfer at the time of its execution and registration.

In the written statement, it has been asserted that the husband of opposite party No. 7 had given a proposal to Lal Miah and Ana Miah, who are the uncles of the opposite party No. 7, to purchase the land, but due to their inability, they did not purchase the land and subsequently, the applicants requested the opposite party Nos. 1 and 2 to purchase the land, and they settled the value of the land, and accordingly the land was sold. On perusal of the evidence, it reveals that neither opposite party No. 7 nor her husband is examined in the case to prove that before selling the suit land, opposite party No. 7 requested pre-emptors Lal Miah and Ana Miah through her husband to purchase the suit land. No witnesses of the settlement were examined by the opposite party Nos. 1 and 2 to prove that they purchased the land on the request of the applicants and sale value of the suit land was settled through the pre-emptors.

It is a settled proposition that the plaintiff shall prove the case by adducing evidence, and if any fact is asserted in the written statement, the defendants shall prove said fact. The purchasers failed to prove the assertion that the opposite party No. 7 had given a proposal to the applicants to purchase the land and the disputed deed was executed on the request of the pre-emptors and they settled the price of the suit land.

Now another question has arisen as to whether the pre-emptor proved the cause of action for filing the application under section 96 of the State Acquisition and Tenancy Act, 1950.

In the plaint, it has been asserted that the opposite party Nos. 1 and 2 have been cultivating the suit land as the bargader of the opposite party No. 7 before 4/5 years of the impugned sale, which has been denied by the opposite party Nos. 1 and 2 in their written statement. Admittedly, no notice under section 89 of the State Acquisition and Tenancy Act, 1950 was sent to the pre-emptors. P.W. 1 Lal Miah stated that he came to know about the transfer in the middle of Baishakh 1381 from the opposite party Nos. 1 and 2, who disclosed about the disputed kabala at the time of digging the soil from the disputed land. The opposite party No. 7 resides 15 miles away from the suit land. The opposite party No. 7 used to possess the suit land through the opposite party Nos. 1 and 2 before the impugned sale. By cross-examining P.W. 1, the defence affirmed that P.W. 1 came to know about the transfer in the middle of Baishakh 1381, when they were digging the suit land. The defence also affirmed that the opposite party Nos. 1 and 2 were the bargadars of Ashura Begum alias Ashura Khatun, who were cultivating the land for the last 8/9 years. P.W. 1 was examined on 10.02.1978, and the disputed deed was registered on 05.09.1972, which proved that before registration of the deed on 05.09.1972, the opposite party Nos. 1 and 2 were the bargadars of Ashura Begum alias Ashura Khatun. By cross-examining P.W. 2 Shamsul Islam Patwari, the defence affirmed that opposite party Nos. 1 and 2 have been possessing the suit land for the last 8/9 years, and before that Ashura Khatun cultivated the land through his brother.

P.W. 3 Abul Bashir, son of Ana Miah, stated that neither his father nor they were aware of the disputed transfer, and his father came to know about the disputed kabala on 11.06.1974 after receipt of notice from the Court, and no notice of transfer was served upon his father. During cross-examination, he affirmed that he came to know about the transfer when his father disclosed to him about the disputed deed and that Asura Khatun is his paternal cousin. He denied the suggestion that his father was aware of the transfer from the very beginning. By cross-examining P.W. 3, the defence affirmed that the opposite party Nos. 1 and 2 possessed the suit land as bargadar of Ashura Khatun for the last 8/9 years.

From the evidence discussed hereinabove, it is found that admittedly the notice under section 89 of the State Acquisition and Tenancy Act, 1950 was not served upon the pre-emptor Lal Miah and Ana Miah and the opposite party Nos. 1 and 2 were the bargader of vendor Ashura Begum alias Ashura Khatun before the impugned sale and the pre-emptors were not aware of the impugned deed before

they came to know about the disputed sale in the middle of Baishakh 1381 and after getting the certified copy on 13.05.1974, the application under section 96 of the State Acquisition and Tenancy Act, 1950 was filed on 15.05.1974 within 4 months from the date of knowledge of the disputed sale. Therefore, the suit is not barred by limitation.

It is a settled proposition that the pre-emptor shall file an application under section 96 of the State Acquisition and Tenancy Act, 1950 for pre-emption within 4 months from the date of knowledge about the registration of the deed, not within 4 months from the date of registration of the deed. Admittedly no notice under section 89 of the State Acquisition and Tenancy Act was sent to the pre-emptors and the purchasers failed to prove that the pre-emptors were aware of the impugned sale at the time of registration of the disputed deed.

The above view of this Court is supported by the decision made in the case of Raushan Akhter @ Moharaji Bibi Vs. Khandaker Mosharraf Hossain & Ors reported in 14 BLT (AD) 269, in which it has been held that;

> "In the instant case, admittedly, the respondent No.1 being a co-sharer by purchase was entitled to pre-empt the transferred land by either filing an application under section 96(1) of the State Acquisition and Tenancy Act within 4 months of the service of the notice given under section 89 of the State Acquisition and Tenancy Act or if no notice has been served as aforesaid, within 4 months of the date of knowledge of the transfer."

In the plaint, it has been asserted that the pre-emtpors Lal Miah, Ana Miah and the opposite party No. 7 Asura Khatun are the co-sharers of the suit khatian. By filing a written statement, the opposite party Nos. 1 and 2 admitted that the applicants Lal Miah, Ana Miah and the opposite party No. 7 Asura Khatun are the co-sharers of the disputed khatian. Therefore, it is an admitted fact that both the pre-emptors and the seller, Asura Khatun, are the co-sharers of the suit land. The appellate Court found that the applicants Lal Miah and Ana Miah were the co-sharers of the suit land. No question was raised before the Courts below that the pre-emptors Lal Miah and Ana Miah are not the co-sharers of the suit land. Therefore, now the purchasers Motiur Rahman and Halima Khatun cannot raise the dispute that Lal Miah and Ana Miah are not the co-sharers of the suit land.

The trial Court held that the pre-emptors could not prove the cause of action for filing the suit beyond doubt either by reliable oral evidence or by documentary evidence, and that Asura Khatun used to come to the house of the pre-emptors. Since no notice was served upon the pre-emptors, the cause of action

for filing the application under section 96 of the State Acquisition and Tenancy Act cannot be proved by documentary evidence. It is not disputed that the pre-emptor obtained the certified copy of the disputed deed on 13.05.1974. The trial Court also held that oral evidence of the applicants does not inspire confidence. On the other hand, the evidence adduced by the opposite party fits with the facts and circumstances of the case, but no reason has been assigned by the trial Court regarding the above finding. I am of the view that the above finding of facts arrived at by the trial Court is based on no evidence.

No evidence was adduced by the opposite parties that the suit land was partitioned, and separate khatian was prepared in the name of Lal Miah, Ana Miah and defendant No. 7 Asura Begum alias Ashura Khatun following the provision made in section 117(1)(c) of the State Acquisition and Tenancy Act or by partition, I am of the view that the applicants Lal Miah and Ana Miah are the co-sharer of the suit land and they are entitled to purchase the land exercising right of pre-emption under section 96 of the State Acquisition and Tenancy Act, 1950 and the impugned judgments and orders passed by the Courts below suffers from misreading and non-reading of the material evidence adduced by the parties.

At this stage it is relevant here to rely on the decision made in the case of Harunur Rashid and others vs Afruza Khanam and others reported in 70 DLR (AD) 180, in which it has been held that;

> “Moreover, the High Court Division elaborately discussed the provisions of section 117(1)(c) of the Act and observed that the Dhaka Municipal Corporation has not been given any authority under the said Act to effect mutation and that the authority under the said provision lies with the Revenue Officer. It was further observed that "separate holding number given by a Municipal Corporation cannot replace order an under section 117(1)(c) of the Act. So the heirs of Golam Mortuza Khan must be still enjoying the joint tenancy left by him. Similarly no amicable partition among the co-sharers even if reached in writing, nor even a decree passed in a partition suit allotting different shares to cosharers can substitute the order as mentioned in section 117(1)(c) of the Act. The High Court Division agreed with the appellate Court that the joint tenancy was never divided and that thereby the pre-emptor did not cease to be a cosharer in the joint tenancy left by Golam Mortuza Khan.”

In the case of Alfazuddin Ahmed vs Abdur Rahman and others reported 55 DLR (AD) 108, it has been held that;

> "As seen from the materials on record, the pre-emptors, after their purchase from Hannan's heirs land measuring 335 aurjuthansa filed application seeking separation of jama and thereupon Miscellaneous Case No. 198 (u) P-1/81-82 was started and that the Revenue Officer allowed separation of jama by the order dated August 13, 1981 and thereupon separate khatian No. 3232/1/1 (Exhibit A) has been opened in the name of the pre-emptors. So, it is evidenced that khatian (Exhibit A) has been opened in the name of the pre-emptors on their application filed under section 117(1)(c) of the State Acquisition and Tenancy Act. It is seen from the judgment of this Division reported in 35 DLR (AD) 230 and the case reported in 52 DLR (AD) 41 that upon partition of the non-agricultural land by metes and bounds by a decree in a partition suit there occurs ceasing of co-sharership among the separate specific saham holders. From the respondent's side we have not been referred to any case to take a view different from the ratio of the cases reported in 35 DLR (AD) 230 and 52 DLR (AD) 41 that in case of partition of non-agricultural land in pursuant to a decree in a partition suit co-sharership among the specific saham holders ceases."

It is a settled proposition that the concurrent finding of fact arrived at by the Courts below should not be interfered with by the revisional Court under section 115(1) of the Code of Civil Procedure, 1908 unless the concurrent finding of fact arrived at is the consequence of the misreading and non-reading of the material evidence occasioning failure of justice.

It is found that both the Courts below misread the evidence of the P.Ws and failed to assess the evidence of both the parties in juxtaposition and thereby arrived at a wrong finding that the pre-emptors failed to prove the cause of action for filing the suit within 4 months from the date of registration of the disputed deed and that they were aware of the disputed sale from the date of transfer. The impugned judgments and orders passed by the Courts below suffer from misreading and non-reading of material evidence, and both the Courts below arrived at a superficial finding as to the cause of action for filing the suit and thereby committed an error of law resulting in an error in the decision occasioning

failure of justice. Therefore, the findings of the Courts below regarding the cause of action of the suit are hereby set aside.

With the above findings, observations and the proposition, the Rule is made absolute.

The impugned judgments and orders passed by the Courts below are hereby set aside.

The miscellaneous case filed by the pre-emptors Lal Miah and Ana Miah is allowed. Since Lal Miah did not file an appeal and Ana Miah died, the heirs of Ana Miah are entitled to purchase the suit land exercising their right of pre-emption.

The pre-emptee Motiur Rahman and the heirs of pre-emptee Halima Khatun are entitled to get the statutory deposits made by the pre-emptor Ana Miah.

The concerned Sub-Registrar is directed to do the needful.

Send down the lower Court’s records at once.