

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

Civil Revision No. 919 of 2014

Md. Kofiluddin and another

.....petitioner

-Versus-

Md. Jahir Uddin and others

..... Opposite parties

None appears

..... For the petitioner

Mr. A.H.M. Mushfiqur Rahman, Advocate

..... For the Opposite Parties

Heard on: 30.07.2023, 13.08.2023,
14.08.2023 and

Judgment on 22.08.2023

Rule was issued calling upon the opposite parties No. 1-2 to show cause as to why the impugned Judgment and order dated 18.09.2023 passed by the learned District Judge, Thakurgaon in Miscellaneous Appeal No. 29 of 2010 affirming the judgment and order dated 15.06.2020 passed by the Assistant Judge, Haripur, Thakurgaon in Misc. (pre-emption) Case No. 15 of 2006 disallowing the preemption should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The instant opposite party as preemptor filed Miscellaneous Case No. 15 of 2006 in the court of Assistant Judge, Haripur, Thakurgaon impleading the instant petitioner as preemptee and others in the preemption case. The trial court upon hearing the preemption case allowed the preemption case

by its judgment and order dated 15.06.2020. Being aggrieved by the judgment and order of the trial court the preemptee as appellant filed Miscellaneous Appeal No. 29 of 2010 which was heard by the learned District Judge, Thakurgaon. Upon hearing, the appellate court however dismissed the appeal by its judgment and order dated 18.09.2013 and thereby affirmed the judgment and order of the trial court passed earlier. Being aggrieved by the judgment and order of the courts below the preemptee as petitioners filed the instant civil revisional application which is presently before this court for disposal.

The plaint case inter alia is that the land originally belonged to one Md. Darmin Ali recorded in the C.S. Khatian No. 199 and S.A. Khatian No. 185 respectively. That the preemptors purchased 0.1050 acres of land from the case plot No. 4197. That after purchase the preemptors possessed the case land and thus they have become co-shares by purchase. That the opposite party No. 3 Md. Ansarul Haque knowing that the preemptors are co-sharers by purchase and possessed the case land, secretly sold the case land to the opposite parties No. 1-2 without informing the preemptors vide kabala deed dated 04.12.2004, who purchased the same secretly to destroy their possession in the case land. That the opposite parties No. 1-2 are strangers in the case land. That the petitioners are farmers and that they are in need of the case land. That after knowing of the sale, they obtained the certified copy of the deed on 19.12.2004 and promptly filed the case.

That the preemptee-petitioners contested the case by filing written statement denying all the material allegations in the plaint, contending inter alia that the allegations of the preemptors is false and malafide, bad for defect of parties and the case is barred by the principle of waiver, estoppels and acquiescence. That one Zobed Ali sold 0.1050 acres of land to the petitioners vide kabala deed dated 20.08.2000. That one Hazrat Ali sold 0.0350 acres of land to the brother of the answering opposite party Alam vide Kabala deed dated 01.05.2001. But the petitioners did not file any case for that land. That before the disputed sale, the vendors proposed to sell the land to the preemptors but the preemptors for want of money refused to purchase the same. That the opposite party No. 1 along with one Monirul Islam also went to the house of the preemptors to offer them to purchase the case land. That the preemptor again declined to purchase the case land. Under such circumstances the opposite parties No. 1-2 purchased the case land within the knowledge and consent of the preemptors. That thereafter the opposite parties No. 1-2 have been possession in the suit land by raising dwelling houses thereon, upon filling the low lands within the knowledge of the preemptors. That before registration of the deed the opposite party No. 1 also informed the preemptors about the registration. That even before registration the opposite parties made dwelling houses in the case land after completion of transfer and are in possession of the case land within their knowledge. That the preemptors filed this false case

on false allegations as the price of the land increased suddenly. Hence the case is liable to be disallowed.

Although the matter appeared in the cause list for several days but none appeared for the preemptee-petitioner. While learned Advocate Mr. A.H.M Musfiqur Rahman represented the preemptor opposite party.

The learned Advocate Mr. A.H.M. Musfiqur Rahman for the opposite party opposes the Rule. He submits that both courts below correctly came upon their judgment and therefore those judgments need no interference with in revision. He submits that admittedly the preemptors are co-sharer in the case land. He draws upon the material and contends that the primary plea taken by the preemptee petitioner is one the grounds of waiver, estoppels and acquiescence etc. He submits that such waiver, estoppels and acquiescence could not be proved by the preemptee petitioner. He contends that therefore the courts below upon correct finding of fact and law came upon their decisions and those needs no interference with in revision and the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides, also perused the application and materials. Admittedly the preemptors are co-shares in the case land. It also appears from the materials that the primary plea taken by the preemptees are that of waiver, estoppels and acquiescence. However they could not prove their allegations. From finding of facts of the courts below and from

the materials it is clear that the preemptees could not prove their contention by cogent evidences. Moreover it is also a settled principle that in a case for preemption except for proof of direct participation and mediation in the sale, knowledge, acquiescence etc are not cogent grounds to establish the preemptee's case. It is also a settled principle settled by several decisions inter alia of our Apex Court that right of preemption arises only after the sale and not before. Therefore in this case since the preemptors are admittedly co-sharers and since there is no evidence of any active participation and mediation in the process of sale, therefore I am of the considered view that the courts below correctly allowed the preemption case.

Under the facts and circumstances, I am of the considered view that the judgment of the courts below need not be interfered with. I find no merits in this Rule.

In the result, the Rule is discharged without any order as to costs.

Order of status-quo granted earlier by this court is hereby recalled and vacated.

Send down the lower courts records at once.

Communicate the judgment at once.

Shokat (B.O)