

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

Present:

Mr. Justice S.M. Masud Hossain Dolon

Civil Revision No. 20 of 2003.

Md. Ibrahim Mondal.

.....Pre-emptee-petitioner

-Versus-

Md. Jamal Uddin Fakir and others

... Pre-emptor-opposite party.

No one appears

Heard & Judgment on: 09.02.2023.

This Rule was issued calling upon the opposite party No. 1 to show cause as to why judgment and order dated 09.09.2002, passed by learned Joint District Judge, 2nd Court, Dinajpur in Miscellaneous Appeal No. 35 of 2000 allowing the appeal and setting aside judgment and order dated 29.05.2000 passed by learned Assistant Judge, Birampur, Dinajpur in Miscellaneous Case No. 17 of 1996 should not be set-aside.

Short facts for disposal of this Rule are that opposite party No. 1 as pre-emptor filed Miscellaneous Case No. 17 of 1996 under section 96 of the State Acquisition and Tenancy Act before the Court of Assistant Judge, Birampur, Dinajpur for pre-emption of the case land.

The learned Trial Court after scrutinizing oral and documentary evidences adduced by the parties in support of their respective claims dismissed the pre-emption case. Against which the pre-emptor as appellant filed Miscellaneous Appeal No. 35 of 2000 before learned District Judge, Dinajpur who transferred the same to court of learned Joint District Judge, Dinajpur for hearing and disposal. The learned Joint District Judge allowed the appeal and set-aside the judgment and order passed by learned Assistant Judge, Birampur, Dinajpur against which the pre-emptee-petitioner has filed the instant Revisional application and obtained Rule.

No one appeared though the case was repeatedly posted to the daily cause list of this Court with the name of the learned Advocates.

In view of the above situation, I have perused the judgment and order of the courts below and all other relevant papers appended thereto. It appears that learned Assistant Judge refused to allow the pre-emption case on the ground that long before the suit land was re-conveyed to the vendor opposite party No. 2. Learned Joint District Judge after hearing both the parties allowed the appeal and set-aside judgment and order passed by learned Assistant Judge, Birampur, Dinajpur upon disbelieving the un-registered Ekrarnama

deed on the ground that witness of the sale deed and Ekrarnama deed was signed by one Ismail Hossain as witness but he was not testified though the deed writer was testified in the present case and also disbelieved the un-registered Ekrarnama deed on the ground that the kabala deed was executed on 06.07.1996 and the present suit was filed on 27.08.1996 and notice was served upon the opposite party on 19.10.1996 and the re-conveyance deed was executed on 02.11.1996 and thereafter the opposite parties filed the written objection on 13.02.1997. The learned appellate court believed that the alleged deed is out and out a sale deed and allowed the pre-emption. The learned Joint District Judge failed to consider that P.W.1, Jamal Uddin Fakir pre-emptor deposed that pre-emptee-opposite party No.1 was not possessing the suit land. P.W. 3 Yeasin Ali also deposed that pre-emptee opposite party No. 1 did never get possession of the suit land and the learned Trial Court found that the alleged sale was not executed and Appellate Court failed to consider that the possession was not handed over to the pre-emptee opposite party No.1. The father of the pre-emptor purchased the 20 decimals out of 63 decimals of land and the rest of 43 decimals of land was purchased by opposite party No. 2 along with 31 others on 23.04.1979. The father of the pre-emptor

purchased the land on 23.04.1979, as such the pre-emptor opposite party is not a co-sharer of the suit land.

On careful examination of the evidence and other relevant documents I am of the opinion that the trial court below after considering both oral and documentary evidences adduced and produced by both parties to the original suit rightly rejected the pre-emption application. After scrutinizing the evidences and other materials on record I do not find any illegality in the impugned judgment and order of the trial court below and as such it is tenable in law. The Court of appeal by non-consideration of evidence and misconception of law illegally set-aside the Judgment of the trial Court and as such interference is called for by this Court.

In that view of the matter I find merit in this Rule.

Accordingly, the Rule is made absolute. The judgment and order dated 09.09.2002 passed by the learned Joint District Judge, 2nd Court, Dinajpur in Miscellaneous Appeal No. 35 of 2000 are hereby set-aside.

Send down the L.C.R along with a copy of this judgment to the concerned Court for information and necessary action.