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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 549 of 1998

In the matter of:

Md. Anwarul Huq

Pre-emptee-petitioner

-Versus-

Md. Nuruzzaman Master being dead his legal heirs Jahanara Begum and others

Pre-emptors-opposite parties

None

...For the petitioner

Mr. Sk. Md. Morshed, Senior Advocate

... For the opposite party Nos. 1 and 3

Heard on: 03.12.2024 and 11.02.2025
Judgment on: 13.02.2025

Learned Assistant Judge, Chatkhil, Noakhali, vide judgment and order dated 30.08.1994 passed in Miscellaneous Case No. 19 of 1985 rejected the pre-emption case on contest filed under the former Section 96 of the State Acquisition and Tenancy Act. Learned Sub-Judge, 1st Court, Noakhali allowed the Miscellaneous Appeal No. 46 of 1994 on 31.07.1997. Challenging the same, the pre-emptee filed the instant revision and obtained Rule on 22.02.1998.

None appeared for the petitioner (pre-emptee) when the Rule was taken up for hearing.

Opposite party Nos. 1 and 3 (pre-emptors) have entered appearance in the Rule.

The trial Court rejected the pre-emption case on two grounds, firstly, the case was barred by limitation, and secondly, the pre-emptors prayed for partial pre-emption of the land and did not pray for pre-emption of the entire portion of the land which was transferred by the impugned kabala. The trial Court held that partial pre-emption is not permissible in law.

The appellate Court below allowed the pre-emption case upon setting aside the judgment and order of the trial Court holding that the pre-emption case was not barred by limitation. The appellate Court further held that partial pre-emption is allowed in law.

The co-sharership of the pre-emptor in the case jote by inheritance is admitted. The pre-emptee purchaser is a 3rd party stranger. By the impugned kabala No. 7116 which was executed and initially registered on 27.02.1978, the co-sharer seller sold total 36½ decimals of land recorded in khatian No. 183 plot No. 259 (33½ decimals) and khatian No. 87 plot No. 252 (3 decimals) to the pre-emptee. The pre-emptors prayed for pre-emption of 33½ decimals of land under khatian No. 183 plot No. 259, they did not pray for pre-

emption of 3 decimals of land in plot No. 252 of khatian No. 87 for the reason that pre-emptors are neither co-sharer nor holder of contiguous land of the said 3 decimals of land. Mr. Sk. Md. Morshed, learned Senior Counsel appearing for the pre-emptor submits that such pre-emption is not hit by the doctrine of partial pre-emption. Mr. Morshed refers to the cases of ***Karimunnessa Begum Chowdhurani and others vs. Niranjan Chowdhury and another***, 43 DLR (AD) 108 and ***Muntachir and others vs. Ruposhi Begum and others***, 75 DLR (AD) 265.

In *Karimunnessa Begum Chowdhurani*, the Appellate Division held (per Shahabuddin Ahmed, CJ):

> "Here in this case, five holdings were transferred by a single kabala and consideration money of each of the holdings was shown separately in the kabala. The petitioner deposited the consideration money for the four holdings he prayed for by way of pre-emption; there was no difficulty in allowing his prayer for pre-emption of the four holdings as pre-emption is preferable holding-wise. This pre-emption is not hit by the doctrine of partial pre-emption. Section 96 gives right to a co-sharer-tenant, like the respondent-pre-emptor to purchase the "portion or share of a holding transferred." By the pre-emption in question he is entitled to get those portions or shares so that he could keep intact the original holding or holdings."

Karimunnessa Begum Chowdhurani was followed and applied in *Muntachir* wherein the Apex Court further observed:

"In the case of *Aktarunnessa vs Habib-ullah*, reported in 31 DLR (AD) 88 pre-emption was allowed to a contiguous land holder in respect of two out of three plots comprising the land transferred. In the cases of *Haji Tajamal Ali being dead his heirs: Kamarunnessa and others vs. Abdus Sattar and others* reported in 34 DLR (AD) 217, it has been observed as follows:

> *'This rule (partial pre-emption) is applicable to a case where pre-emption is sought by a co-sharer tenant who is required to pre-empt the entire (wrongly typed as enslre) land transferred, but is not applicable in a case where a contiguous land holder seeks pre-emption and 'contiguity' being the only basis for his claim, he may pre-empt only that part of the land transferred to which his land is contiguous unless the land transferred is a compact block of area.'*

If we consider the above propositions of law coupled with the attending facts and circumstances of the present case, in particular the pre-emptor Arif Miah is a co-sharer in holding No. 459, we are of the view that the High Court Division did not commit any error in allowing the partial pre-emption as the same is permissible in law."

So far as knowledge and limitation to file the pre-emption case under the S A & T Act is concerned, it was held in In ***Md. Emarat Hossain vs. Md. Nurul Haque and others***, 15 MLR 207 that in a case where notice under Section 89 was not served, the period of limitation for filing a pre-emption case will be counted not from the initial knowledge, but from the confirmed knowledge as is obtained only on

getting certified copy of the disputed deed. The view taken in 15 MLR 207 is based on the decisions reported in Bangladesh Supreme Court Digest (1986-87) 278 and 42 DLR 24. The reasons assigned in the reported cases as to why all kinds of information received from gossip or otherwise do not constitute knowledge under Section 96 are that on obtaining the certified copy of the transfer deed in question the applicant comes to know the names of the vendees, the number of the plot of the land and the quantum of land sold by the vendor and only then the applicant can decide whether he is a qualified person under Section 96 to file a proper petition. The initial knowledge that the plot in question is sold would not help him at all in a bid to file a pre-emption case.

As noted earlier, the kabala in question was registered on 27.02.1978. The pre-emptor's initial date of knowledge through words of mouth is 25.04.1979. He obtained the certified copies of the kabala on 07.05.1979. The case was filed on 31.05.1979. The kabala was entered in the volume under Section 60 of the Registration Act, 1908 on 15.07.1981. Mr. Morshed appearing for the pre-emptor submits that registration is not completed unless an entry of the kabala is made in the relevant volume under Section 60 of the Registration Act. The learned Advocate submits that the question of limitation in the instant case has to be considered in light of entry in the volume of the impugned kabala under Section 60. In support of the argument, Mr.

Morshed referst to the case of ***Lebu Mia vs. Ganesh Chandra Nath***, 34 DLR (AD) 220.

In *Lebu Mia*, the petition for pre-emption was filed on 22nd April, 1974 and the pre-emption proceeding was allowed on 31st May, 1975 and the document in question was registered on 21st June, 1976, so the petition was premature and in that view of the matter the trial Court dismissed the pre-emption case.

The Appellate Division held (per K. Hossain, CJ):

> "It is true that on the date the trial Court was hearing the pre-emption case there ought to have been a registered kabala, which was sought to be pre-empted, but it appears that this pre-maturity question was not mooted before the trial Court and so the case was disposed of on merits. The pre-maturity can be cured if, at the time of the trial, the kabala was registered, otherwise the prematurity would remain. But in this particular case, because of the facts aforesaid, it is to be governed by its own facts, in that, the question of pre-maturity was raised at the appellate stage, but by then the document had been registered and so the pre-maturity could be said to have been cured, but then appeal on merit required consideration which was not done."

In my view, it cannot be said that the instant case was barred by limitation, rather the case was filed premature which was cured during pendency of the case. Therefore, the trial Court was wrong in

rejecting the pre-emption case and the appellate Court below rightly allowed the pre-emption case. Hence, the Rule fails.

In the result, the Rule is discharged. The judgment and order passed by the appellate Court below is affirmed.

Send down the L.C.R

Arif, ABO