

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 4548 of 2011

IN THE MATTER OF :

An application under section 115(1) of the Code of Civil Procedure

-And-

In the Matter of:

Nurunnahar Begum and others

... Preemptee-Petitioners

Versus

Sahid Ullah and others

... Preemptor-Opposite Parties

Mr. Mohammad Abdul Kader Bhuiyan, Advocate

... For the petitioners

Mr. Md. Mubarak Hossain, Advocate

... For the Opposite Party No. 1

Judgment on: 10.06.2026.

Md. Riaz Uddin Khan, J:

At the instance of the successors of pre-emptee No.14 Rule was issued asking the pre-emptor opposite party No.1 to show cause as to why the judgment and order dated 22.06.2011 passed by the Additional District Judge, Chandpur in Miscellaneous Appeal No. 02 of 2006 affirming the judgment and order dated 24.11.2005 passed by the Joint District Judge, 1st Court, Chandpur in Miscellaneous Case No. 28 of 1987 suffer from error of law resulting in an erroneous decision occasioning failure of justice should not be reversed or set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and proper.

At the time of issuance of Rule both parties were directed to maintain status-quo in respect of possession and position of the suit land.

The present opposite party No. 1 as pre-emptor on 09.03.1981 filed pre-emption case No. 22 of 1981 in the Court of 3rd Sub-Judge, Comilla against the Vendor, purchaser and other opposite parties for pre-emption of the scheduled land under section 96 of the State Acquisition and Tenancy Act, 1950. The aforesaid Pre-emption Case subsequently transferred to the Court of 1st Sub-Judge, Chandpur for trial and renumbered as Miscellaneous (Pre-emption) Case No. 28 of 1987. The Preemptor's Case in a nutshell is that the original owner of the C.S Khatian No.177 of Nahara Mouza was Nanda Kumar Sarker and Gopal Sarker. Nanda Kumar died leaving behind two sons Jogendra Kumar Sarker and Sachindra Kumar Sarker. Sachindra died leaving behind a wife Labonya Prova, preemptee no.3. Jogendra died leaving behind his wife Vendor, preemptee No. 2, Beena Pani Sarker. Beena Pani sold 27 decimal of land of case Plot No. 98 to Abdul Latif who sold said 27 decimals to the preemptor Md. Shahid Ullah and others vide a deed dated 27.01.1971. Beside that the father of the Preemptor purchased 27 decimal of land of the case Jama vide deed No. 1110 dated 09.06.1969 from Shila Rani, preemptee no.1. The father of the preemptor died leaving behind 3 sons and a wife including the preemptor and opposite party Nos. 7 & 8. In this way the Preemptor became co-sharer and possessor of case Jama by purchase and inheritance; Gopal Sarker died leaving behind a son Basanta Sarker who died leaving behind his son opposite party No.4 Kanti Ranjan Sarker.

Preemptee No.1 who is a stranger to the case jama purchased the suit land measuring 99 decimals from the preemptee No.2. Knowing the said news the preemptor collected the certified copy of the deed on 17.01.1981 and filed the preemption case on 09.03.1981.

That initially the predecessor-in-interest of the present petitioners was not a party to the Preemption Case who subsequently entered into the case as preemptee No. 14 on 31.12.1981 and contested the pre-emption case by submitting a written objection stating inter alia that Nanda Kumar Sarker was the owner of 2/3 portion of the land of C.S Khatian No.177 and Gopal Chandra Sarker was the owner of rest of the land. Nanda Kumar died leaving behind two sons Jogendra Kumar Sarker and Sachindra Kumar Sarker. Sachindra died leaving behind a wife Labonya Prova and a daughter preemptee No.1 Shila Rani. Gopal Chandra died leaving behind a son Basanta Sarker who died leaving behind his son opposite Party No.4 Kanti Ranjan Sarker and daughter Gowri Rani. The added preemptee No.14 married Gowri Rani by converted her to Islam changing her name as Nurun Nahar Begum. Shila Rani got the suit land measuring 99 decimals through decree in Title Suit No. 102 of 1978 and sold 54 decimals land to added preemptee No. 14 within the knowledge of the preemptor vide deed dated 18.04.1980 and transferred possession of the land. Thereafter, he developed the said land by earth filling and planting different types of trees thereon. Then he filed Title execution Case no.09 of 1980 through Shila Rani who got deed no.11573 dated 03.09.1980 through court. But the preemptor filed the case with *malafide* intention against Shila Rani who

already sold 54 decimals land out of 99 decimals to the preemptee no.14 without making him as party of the preemption case. Shila Rani being a co-sharer of the case land by inheritance, the preemption case is not maintainable which is therefore liable to be dismissed.

The aforesaid pre-emption case was tried by the learned Joint District Judge, 1st Court, Chandpur and at the time of trial, in support of their respective cases, the pre-emptor examined 2(two) witnesses including the preemptor while added preemptee No.14 examined 3(three) witnesses including himself and both parties produced some documents which are marked as exhibits. After hearing both the parties and on perusal of the materials on record the trial court was pleased to allow the Preemption Case by its Judgment and order dated 24.11.2005.

Against the aforesaid judgment and order dated 24.11.2005 passed by the Joint District Judge 1st Court, Chandpur the added preemptee no.14 as appellant preferred Miscellaneous Appeal No. 02 of 2006 before the learned District Judge, Chandpur which was ultimately heard by the Additional District Judge, Chandpur who dismissed the appeal by impugned judgment and order dated 22.06.2011 affirming the judgment and order passed by the trial court.

Being aggrieved by and dissatisfied with the aforesaid judgment and order dated 22.06.2011 the present petitioners as successors of original preemptee no.14 filed the instant civil revision before this Court and obtained the Rule and status-quo as stated at the very outset.

Mr. Md. Abdul Kader Bhuiyan, the learned advocate appearing for the petitioners submits that admittedly preemptee No.02 Beena Pani Sarker as wife of Jogendra Sarker made an agreement to sale the case land measuring 99 decimals with preemptee No.1 Shila Rani Majumder, who is a daughter of Sachindra Kumar Sarker, a son of C.S tenant Nanda Kumar, but Beena Pani Sarker did not give registration, therefore Shila Rani Majumder filed Title Suit No. 102 of 1978 for Specific performance of contract and obtained decree vide Judgment dated 29.02.1980 and decree dated 10.03.1980. After obtaining the aforesaid judgment and decree the Preemptee Shila Rani Majumder sold 54 decimals of Plot No.382 of the case land and handed over the same to the present petitioners' predecessor, preemptee no.14 vide Deed No.5720 dated 18.04.1980. Thereafter, the petitioners' predecessor developed the said land and started living there by erecting dwelling house spending his own money. Meanwhile, Shila Rani got the case land through Deed No.11573 dated 03.09.1980 in Title Execution case no.09 of 1980. Seeing the developed land by suppressing the aforesaid facts the preemptor filed the instant Preemption case against the purchase deed of Shila Rani Mojumder. Since Shila Rani Mojumder is the daughter of Sachindra Kumar Sarker, she is a co-sharer of the case jama by way of inheritance, therefore the instant Preemption case is not maintainable in the eye of law under section 96(10)(a) of the State Acquisition and Tenancy Act.

The learned advocate next submits that Shila Rani Majumder is the daughter of Sachindra Kumar, who is the brother of Jogendra, the husband of vendor Beena

Pani as such they are members of same family and same religion, but the preemptor is a stranger and Muslim, therefore the instant Preemption case is not Maintainable. The learned advocate strenuously submits that admittedly the preemptor's father purchased land from Shila Rani Majumder in the year 1969, which proves Shila Rani Majumder is a co-sharer of the case jama by inheritance from long before of Preemptor, therefore the preemptor is not entitled to get preemption. Mr. Bhuiyan then submits that present petitioners' predecessor had been living in the suit land by erecting building and after his death the petitioners having been living there the case land is out and out homestead, therefore the preemption case is not maintainable. The learned advocate finally submits that Pt.W-2 Sontosh Kumar who negotiated the transfer of 54 decimals of case land by his wife Shila Rani Majumder of Deed No.5720 dated 18.04.1980 and was a witness of that deed before filing of the instant preemption case, therefore after said transfer they (Shila Rani and her husband) lost their interest in the case land and did not contest the preemption case and withdrew the deposited money from court; taking this advantage the preemptor managed said Sontosh Kumar to depose in his favour as Pt.W-2 and subsequently with the design and help of preemptor said Sontosh Kumar withdrew the deposited money to defeat the pre-emptee No. 14 which is also a colorable transaction of Preemptor and Sontosh Kumar, therefore the preemptor cannot get any favour for withdrawing the deposited money.

Per contra Mr. Mubarak Hossain, the learned advocate appearing for the pre-emptor opposite party

submits that admittedly two brothers namely Nanda Kumer Sarker and Gopal Sarker were owners of the land of C.S khatian No.177. Nanda Kumer died leaving behind two sons namely Jogendra Kumar and Sachindra Kumar Sarker. Thereafter, Sachindra died leaving behind one wife Labonya Prava (preemptee No.3) and one daughter Shila Rani (preemptee No.1) but Labonya Prava as widow acquired life interest in the Sachindra's properties and as such the claim of the petitioners that Shila Rani became owner of the property as daughter of Sachindra Kumar by inheritance and becoming 1st class co-sharer in the case jote was not tenable in law. Moreover, the S.A khatian No. 165 was prepared in the names of Jogendra Kumar, Gopal Sarker and Labonya Prava which also proved that Shila Rani had no title over the land of Sachindra Kumar and her name was not recorded in the S.A khatian.

The learned advocate next submits that the pre-emptor is a co-sharer in the case jama by way of purchase by registered deed No. 228 dated 24.01.1971 from one Abdul Latif who purchased the same by deed No. 1999 dated 28.03.1970 from the pre-emptee opposite party No.3, recorded tenant of S.A khatian No.165 and as such the pre-emptor is entitled to get the case land by pre-emption as 2nd class co-sharer and not as 1st class co-sharer.

The learned advocate then submits that the pre-emptee No.1 filed Title Suit No. 102 of 1978 against the pre-emptee No.2 for getting kabala which was decreed and got registered kabala through court on 03.09.80 by filing Execution Case No. 09 of 1980 and filed the instant case for pre-emption against the said

kabala dated 03.09.1980 but the pre-emptee No.14, the present petitioners' predecessor claimed that he purchased 54 decimals land from the pre-emptee No.1 by deed dated 18.04.1980 before registration of the kabala i.e before acquiring title of his vendor and as such the pre-emptee No.14 or the petitioners acquired no title over the said land on the basis of such deed.

Mr. Hossain lastly submits that the instant case was allowed ex parte on 18.05.1982 and the pre-emptee No.1, Shila Rani withdrew the deposited money from the court. Subsequently, the ex parte judgment was set aside but the purchaser pre-emptee No.1, Shila Rani did not turn up to contest the case and as such the added pre-emptee No.14, the present petitioners' predecessor being title less stranger in the case jama has no *locus standi* to contest the case or challenge the impugned judgment and order and as such the Rule is liable to be discharged.

I have heard the learned advocates for both the parties, perused the revisional application along with annexure. I have also examined the petition of pre-emption case and written objection, the depositions of both the parties and the exhibited documents. I have also examined the judgment of the trial court as well as the court of appeal below.

The trial court framed 04(four) issues: (1) whether the pre-emptor is co-sharer in the case holding (2) whether the case is barred by defect of parties (3) whether the case is barred by limitation and (4) whether the pre-emptor is entitled to get relief as prayed for. The trial court after considering the depositions and exhibited documents come to the

conclusion that the pre-emptor is a co-sharer in the case holding by inheritance and also by purchase and further held that the pre-emptee No.14 is a stranger to the case holding and ultimately allowed the pre-emption. On appeal though the appellant raised a question that the trial court framed 04(four) issues but did not frame vital issue to the effect that whether the pre-emptee No.1, Shila Rani was also a co-sharer in the case holding but the court of appeal below did not discuss on this point. However, the court of appeal below concurred with the findings of the trial court and dismissed the appeal.

In the present case the preemptor instituted the preemption case against the transfer of property by Beena Pani, preemptee no.2 to Shila Rani, preemptee no.1 and not the transfer to the preemptee no.14 by the preemptee no.1. In that view whether preemptee Shila Rani was a co-sharer of the case holding is very important, for the reason that according to section 96(10)(a) of the State Acquisition and Tenancy Act, 1950 preemption against a co-sharer by inheritance is not maintainable which runs as under:

96(10) Nothing in this section shall apply to-

(a) a transfer to a co-sharer in the tenancy whose interest has accrued otherwise than by purchase;

From plain reading of the above provision it is clear that preemption against a transfer to a co-sharer who is a co-sharer other than by purchase, meaning thereby inheritance, is not maintainable.

From the pleadings and the depositions it appears that at the time of institution of the

Miscellaneous Case the pre-emptor made Shila Rani, the purchaser of the impugned transfer, as preempttee No.1 and the vendor Beena Pani, wife of Jogendra Kumar as preempttee No.2 and Labonya Prova, wife of Shachindra Kumar as preempttee no.3. It further appears from the pleading of the pre-emptor that he claimed himself as the co-sharer of the case holding in 2(two) capacities: (i) by inheritance and (ii) by purchase. He is co-sharer by inheritance as his father Golam Rahman purchased 27 decimals land from Shila Rani vide deed No. 11010 dated 09.06.1969 from case holding admitting Shila Rani as the owner of the case holding by inheritance. On the other hand he is a co-sharer by purchase as he along with his two brothers purchased 27 decimals land from case holding by deed No. 228 dated 26.01.1971 from one Abdul Latif who purchased the land by deed No. 1999 dated 28.03.1970 from Beena Pani, the pre-emptee no.2 (present opposite party No.3), a recorded tenant of S.A khatian No.165 and by that way the pre-emptor claimed himself as co-sharer by purchase and inheritance. Though in the courts below the pre-emptor's witnesses in their depositions admitted that Shila Rani was co-sharer by inheritance as life interest in the land of Sachindra Kumar Sarker as his daughter. But the legal question before this Court is raised whether Shila Rani as daughter can inherit the property of Sachindra Kumar Sarker who admittedly died leaving behind his widow Labonya Prova and daughter Shila Rani.

According to Bengal School of Hindu Law applicable in our country, except Sylhet district, the widow become the owner of the homestead property only

of her late husband as life interest which is called widow's/woman's estate but she is entitled to get maintenance from the agricultural land and there is no scope for the daughter to get that property as life interest during the life time of her mother or any widow of her father. Further according to the Hindu law, after the death of the widow the widow's property will revert back to her husband's nearest heirs called reversioners but not to her successors. In default of the widow the daughter succeeds as an heir of her father and so daughter cannot inherit until all the widows are dead. In other words, during life time of any widow of her father a daughter cannot inherit. However, an unmarried daughter or a daughter having son inherits her father's property but the daughters who are sonless or not likely to have son are excluded from inheritance of father's property. The daughter takes limited interest i.e life interest in the estate of her father. Under no circumstances daughters who are either widow without male issue or mother of a daughter inherit the property.

In the present case the preemptor made Labonya Prova, the widow of Sachindra Kumar Sarker as preemptee no.3 who is also made opposite party no.4 in the present civil revision. Nowhere in the written objection, memorandum of miscellaneous appeal or even in the present civil revision either pre-emptee Shila Rani, or the preemptee no.14 and his successors claimed that Labonya Prova, the widow of Sachindra Kumar Sarker died and thereafter Shila Rani, the daughter of Sachindra Kumar Sarker become the owner of the land as life interest, as she had any male issue i.e son. The

pre-emptor admitted in the deposition that his father Golam Rahman purchased land in the case holding by deed no.1110 dated 09.06.1969 (exhibit-5) from Shila Rani who got the property by inheritance. On perusal of the deed (exhibit-5) it appears that Shila Rani claimed the property as her ancestral property from her father. Be that as it may, other than this piece of evidence there is no evidence that Shila Rani inherited the property in case holding. All other evidence shows including the S.A record that Labonya Prova got the property of her husband Shacindra as life interest. There is no evidence on record that Labonya Prova died before the disputed transfer or even today as she is made opposite party no.4 in this civil revision and has not been substituted or noted that she has died. In such view of the matter as per Bengal School of Hindu Law Shila Rani did not inherit her father, Shachindra Kumar's property during the life time of her mother Labonya Prova. Consequently she was not a co-sharer of case holding by inheritance during her disputed purchase of the case land. A legal position cannot be changed by admission of any party. Though the preemtor admitted Shila Rani got property by inheritance but as per law she cannot get it during life time of Labonya Prova. In that view the claim of the preemtor as 1st class co-sharer or co-sharer by inheritance has no substance. The preemtor also claimed himself as co-sharer by purchase or 2nd class co-sharer and by adducing evidence he proved the claim. The trial court as well as court of appeal below is wrong in holding the preemtor as co-sharer by inheritance but correct in holding that the preemtor is a co-sharer by purchase and the preemptee

no.14 is a stranger to the case holding. The courts below committed wrong in not framing the most vital issue whether the purchaser Shila Rani was a co-sharer in the case holding. If that issue was framed then the parties could adduce more and clear evince on that matter. Be that as it may, the ultimate conclusion of allowing preemption by the courts below is correct. The predecessor of the present petitioners, preemptee no.14 being a stranger to the case holding had no right to resist the preemption of the preemptor who is a co-sharer of the case holding. In the given facts and circumstances I am not inclined to interfere with the impugned judgments and orders passed by the courts below. In such view of the matter, as discussed above, Shila Rani being a stranger of the case holding purchased the case land hence the pre-emptor being the 2nd class co-sharer in the suit property is entitled to get preemption under section 96 of the State Acquisition and Tenancy Act, before amendment, as it was applicable in the year of 1981 when the pre-emption case was filed.

Before part with the case, another fact is to be dealt with. It is on record that Shila Rani vide deed no.5720 dated 18.04.1980 sold 54 decimals land out of 99 decimals of case land to added preemptee no.14, Abu Naser and did not contest the preemption case and withdrew the deposited money by the preemptor to the court. Moreover, her husband Sontosh Kumar supported the case of the preemptor as Pt.W-2. The claim of the learned advocate for the petitioners that the conduct of the preemptee Shila Rani and her husband is unclean cannot be ruled out. The petitioners may take

appropriate legal recourse both civil and criminal against Shila Rani and/or her husband Pt.W-2, Sontosh Kumar, if so advised.

In the facts and circumstance and position of law as discussed above I am of the view that the courts below though did not discuss the position of Shila Rani whether she was a stranger or co-sharer in the suit land but come to the right conclusion that the pre-emptor is entitled to get the pre-emption of the case land. Hence I do not find any reason to interfere with the ultimate decision of the courts below.

In the result the Rule is **discharged**. However, without any order as to cost.

The interim order passed earlier by this Court stands vacated.

Sent down the lower court records and communicate this judgment at once.