

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

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 4885 OF 2014

Joy Saojal and another
Pre-emptors-Respondents-Petitioners

Versus

Sunil Kumar Halder being dead his heirs:-
Sheeta Halder and others
Preemptees-Appellants-Opposite Parties

Mr. Mamun Aleem, Advocate
for the Pre-emptors-Respondents-Petitioners

Mr. Ashfaqur Rahman, Advocate
for the Pre-emptees-Appellants-Opposite
Party Nos. 1-5

Judgment on: 21.7.2022

This Rule was issued calling upon the opposite party Nos. 1-5 to show cause as to why the impugned Judgment and Order dated 18.9.2014 passed by the learned Joint District Judge, 1st Court, Barishal in Miscellaneous Appeal No. 95 of 2010 allowing the Appeal and thereby reversing the Judgment and Order dated 18.10.2010 passed by the learned Assistant Judge, Uzirpur, Barishal in Pre-emption Miscellaneous Case No. 44 of 2002 allowing the case 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 petitioners as pre-emptors filed Pre-emption Miscellaneous Case No. 44 of 2002 in the Court of learned

Assistant Judge, Uzirpur, Barishal contending inter alia that one Samdacharan and others had been the recorded tenants of the case land measuring 10 decimals in S.A. Khatian No. 139 appertaining to plot No. 38 along with some other land of the Santhar Mouza. Subsequently one Shwakat Ali Mia (father of opposite parties Nos. 2-5) acquired the said land through a decree who thereafter sold the same by Kabla Deed No. 3631 dated 27.10.1999 to Sunil Halder (opposite party No. 1) without noticing the pre-emptors. Predecessor of the pre-emptors were the recorded tenants in different plots of S.A. Khatian No. 44 and in plot No. 37 and the pre-emptors have a homestead and they do possess the other plots in different capacity and thus the pre-emptors are contiguous land owners of the case land.

The purchaser pre-emptee Sunil Kumar Halder (father of opposite parties No. 1-5) contested the case by filing written objection.

The learned Assistant Judge, Uzirpur, Barishal allowed the pre-emptors Case by his Judgment and Decree dated 18.10.2010. Against the said Judgment and Order of the Trial Court the purchaser-pre-emptee preferred appeal being Miscellaneous Appeal No. 95 of 2010 before the Court of learned District Judge, Barishal which was transferred to the learned Joint District Judge, 1st Court, Barishal who allowed the appeal and thereby reversed the order of the Trial Court vide Judgment and Order dated

18.9.2014 and hence the pre-emptors as petitioners moved this application under section 115 (1) of the Code of Civil Procedure before this Court and obtained this Rule.

Heard the learned Advocates for both the parties and perused the record.

From the record it appears that the pre-emptor as P.W. 1 in his examination-in-chief clearly admitted regarding ownership of case jote that “নালিশী জমি লীজ নিয়ে দখল করি।” and in cross examination he stated that “২০০০ সন পর্যন্ত DCR কাটা আছে।” Evidence, quoted above, the pre-emptor admitted that he is not a owner of case jote and he was a yearly lessee till 2000 AD and a lessee has no legal right or locus standi to initiate a claim under Section 96 of the S.A.T Act, 1950.

Considering the facts and circumstances of the case I find no substance in the Rule.

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

The impugned Judgment and Order dated 18.9.2014 passed by the learned Joint District Judge, 1st Court, Barishal in Miscellaneous Appeal No. 95 of 2010 allowing the Appeal and thereby reversing the Judgment and Order dated 18.10.2010 passed by the learned Assistant Judge, Uzirpur, Barishal in Pre-emption Miscellaneous Case No. 44 of 2002 allowing the case is hereby upheld.

The order of stay and status-quo granted earlier by this Court is hereby vacated.

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