

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 1959 of 2015

In the matter of:

Sudon Mia

Petitioner

-Versus-

Abul Kasem Sorker and others

Opposite parties

Mohammad Noor Hossain, Advocate

...For the petitioner

None

... For the opposite parties

Heard and Judgment on: 02.03.2026

The petitioner has filed this revisional application under Section 115 of the Code of Civil Procedure challenging the judgment and order dated 05.04.2015 passed in Miscellaneous Appeal No. 16 of 2013 by the learned Joint District Judge, Additional Court, Cumilla dismissing the appeal and thereby affirming the judgment and order dated 21.01.2013 passed in Miscellaneous (pre-emption) Case No. 11 of 2010 by the learned Assistant Judge, Muradnagor Court, Cumilla dismissing the pre-emption case.

None appeared for the opposite parties, when the Rule was taken up for hearing.

I have heard Mr. Mohammad Noor Hossain, learned Advocate for the petitioner and perused the materials on record.

The present petitioner as pre-emptor filed the pre-emption case under Section 96 of State Acquisition and Tenancy Act, 1950 (as amended in 2006) which was rejected by the trial Court on contest. Miscellaneous Appeal filed by the pre-emptor was also rejected. Challenging the same, the pre-emptor filed the instant civil revision and obtained the Rule.

The trial Court rejected the pre-emption case holding that the case was barred by limitation. The appellate Court below, on the other hand, observed that the pre-emption case was not barred by limitation. The appellate Court below, however, dismissed the miscellaneous appeal holding that the case land was recorded as “nal” in the S.A. khatian but in the present B.S. Khatian, the same is recorded as “homestead land” which is not preemptible under Section 96(15) of the Act, 1950 (as amended).

The exercise of power under Section 115 of the Code of Civil Procedure is supervisory. A series of judicial decisions has settled the principles that the revisional Court can dispose of a revision on merits even when the petitioners failed to appear to press the Rule. It is no

function of the revisional Court to sit in appeal over the findings of the appellate court. A revisional Court will not, except on limited grounds, interfere with findings of fact arrived at by the trial court and appellate court. It will not also decide a contested question of fact raised for the first time in revision. The revisional Court can interfere with an impugned decision which is vitiated by an error of law.

Judicial decisions have further settled the principles that appreciation of evidence is the function of the trial Court and the appellate Court. A finding of fact, whether concurrent or not, arrived by the lower appellate Court is binding upon the High Court Division in revision, except in certain well defined circumstances such as non-consideration and misreading of material evidence affecting the merit of the case or misconception, misapplication or misapprehension of law or misinterpretation of any material document or manifest perversity. The High Court Division is in error when it reverses the findings of the appellate court without adverting to the reasons given by the appellate Court for its findings. The revisional Court cannot interfere with a finding of fact even though it may differ with the conclusion reached by the court below in the absence of legal infirmities. Legal infirmities occur if the Court below, in arriving at the finding, has misread the evidence, or misconstrued a material document, or failed to consider material evidence, or relied on inadmissible evidence, or based on no evidence, or failed to apply the

correct legal principles of law in arriving at the finding of fact, the finding will not be immune from interference in revision. The revisional Court cannot embark upon re-assessment of evidence. A finding of fact is not immune from interference if it is based on surmise or conjecture, or it is arbitrary or perverse in the sense that on the materials available on record no reasonable judge can arrive at such finding.

On perusal of materials on record, it appears to me that the appellate Court below considered the evidence on record in the proper perspective of law. Learned Advocate appearing for the pre-emptor-petitioner has failed to show that the judgment of the appellate Court below suffers from non-consideration and misreading of material evidence affecting the merit of the case or misconception, misapplication or misapprehension of law or misinterpretation of any material document or manifest perversity or any other legal infirmity. Accordingly, I find no error of law resulting in an error in the judgment and order passed by the appellate Court below occasioning failure of justice. Hence, the Rule fails.

In the result, the Rule is discharged.

Send down the L.C.R.