

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 4574 of 2014

Amol Chandra Mollik petitioner

-Versus-

Odir Mollik alias Mondol..... opposite party

No one appears for the petitioner

Mr. FM Mizanur Rahman, Advocate

..... for the opposite party

Judgment on 04.02.2024

Rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 12.06.2014 passed by the Joint District Judge, Court No. 2, Khulna in Miscellaneous Appeal No. 53 of 2013 dismissing the appeal and affirming the judgment and order dated 29.04.2013 passed by the Assistant Judge, Dumuria, Khulna in Miscellaneous Case No. 28 of 2004 allowing the case for pre-emption under section 96 of the State Acquisition of Tenancy Act (the SAT Act, 1950) should not be set aside.

Opposite party 1 herein as pre-emptor filed the miscellaneous case for pre-emption stating facts that Mahtab Uddin Akunji was the original owner of the suit land. He transferred 1.09 acres of land to the father of the pre-emptor Madhab Chandra by a registered *kabala* dated 19.02.1963. He further sold .33 acres to the father of opposite parties 2 and 3 Fulchan Mandal and accordingly record was prepared in their

names. During possession and enjoyment over the land of 1.09 acres Madhab Chandra died leaving behind the pre-emptor and opposite party 5 as heirs. Subsequently the pre-emptor and opposite party 5 transferred a part of the land to opposite parties 6, 7 and 8. But they owned and possessed the remaining lands thus they are co-sharer in the suit *jote* by inheritance. DP khatian has been prepared in their names. After the death of Fulchan Mandal his heirs, opposite parties 2-4 became heirs in respect of his share. Opposite party 2 very secretly without serving any notice upon the pre-emptor sold out the lands of CS khatian 494 corresponding to SA khatian 736 of .79 acres to opposite parties 1 and 2 at a consideration of Taka 65,000/-. The pre-emptor came to learn that opposite party 2 sold the pre-empted land to opposite party 1 by a registered *kabala* dated 02.05.2004. He collected the certified copy of the *kabala* and then filed the case for pre-emption.

Opposite party 1, pre-emptee contested the case by filing written objection denying the facts of the pre-emption application. He stated there that the pre-emptor is not a co-sharer of the suit *jote* because he has transferred his entire share to Ramendra Nath and Ratan Kumar. The suit is bad defect of parties and barred by limitation. The pre-emptor was aware of the said transfer and as such the application for pre-emption is not maintainable.

During trial the pre-emptor examined 3 witnesses and produce documents exhibits 1-9. The pre-emptee examined 2 witnesses and produced document exhibits ka-ga.

However the Assistant Judge, Dumuria, Khulna after framing as many as five issues and considering the evidence both oral and documentary allowed the case for pre-emption against which the pre-emptee filed appeal before the District Judge, Khulna which was heard on transfer by the Joint District Judge, Court No. 2, Khulna. The transferee Court by its judgment and order dated 02.06.2014 dismissed the appeal and affirmed the judgment and order passed by the trial Court. In this juncture, the pre-emptee approached this Court in the aforesaid revision and obtained this rule.

No one appears for the appellant.

Mr. FM Mijanur Rahman, learned Advocate for opposite party 1 opposes the rule. He submits that the concurrent finding of facts arrived at by the Courts below should not be interfered with in revision unless there is gross misreading and non consideration of the evidence on record. There is no misreading and non reading of evidence in the impugned judgments. The rule, therefore, bearing no merit would be discharged.

This is a revision of 2014 against order and the original miscellaneous case was filed in 2004 and as such the rule is taken up disposal on merit hearing the learned Advocate for opposite party 1 only.

I have considered the submissions of the learned Advocate for opposite party 1, gone through the judgments passed by the Courts below and documents lying with the records.

It transpires that the pre-emptor claimed that he is co-sharer in the suit *jote* by way of inheritance. It is found in the evidence of PW 1 as well as in the exhibited documents that the pre-emptor's father Madab Chandra Mandal became a co-sharer in the suit *jote* through a registered *kabala*. After his demise the pre-emptor and his brothers became co-sharers in the suit *jote* by way of inheritance. Although the pre-emptee brought allegation that the pre-emptor is no more a co-sharer in the suit *jote* but failed to bring anything before the Court in support of his claim. It further appears that disputed *kabala* was registered on 07.03.2004 and the pre-emptor came to learn about the transfer on 01.05.2004. He obtained the certified copy on 02.05.200 and filed the case on 19.05.2004 which is within the statutory period of limitation. It is also found that no notice was served upon the pre-emptor as required under section 89 of the SAT Act. The case is also not bad for defect of parties. The trial Court addressed all the above issues

and found those in favour of the pre-emptor and accordingly allowed the case for pre-emption. In appeal the appellate Court affirmed the aforesaid judgment and order passed by the trial Court.

It is well settled that concurrent finding of facts arrived at by the Courts below should not be interfered with by this Court in revision unless the petitioner can show that there is misreading and non reading of the evidence on record which was not considered by the Courts below and if those were considered the decision could have been otherwise. We find that no such ground has been taken in the revisional application. On record, we donot find any arena which was not considered by the Courts below.

Therefore, we find no merit in this rule. Accordingly, the rule is discharged without any order as to costs.

The order of stay stands vacated.

Communicate the judgment and send down the lower Court records.

