

**Present:**

**Mr. Justice Md. Kamrul Hossain Mollah**

**Civil Revision No. 1650 of 1997**

**IN THE MATTER OF:**

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

- AND -

**IN THE MATTER OF:**

Abdul Matin and another

..... Pre-emptee-Respondent-Petitioners

-Versus –

Serajul Haque and others

.....Pre-emptor-Appellant-Opposite Parties

No one appears

..... For both the parties

**Judgment on merit on 02.08.2023**

**Md. Kamrul Hossain Mollah, J:**

On an application filed by the petitioners, under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and order dated 06.04.1996 passed by the learned Additional District Judge, Noakhali in Miscellaneous Appeal No.137 of 1984 reversing the judgment and order dated 29.07.1984 passed by the learned Assistant Judge, Companygonj in Miscellaneous Case No.3 of 1984 should not be set-aside and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court stayed the operation of the impugned judgment and order dated 06.04.1996 passed by the learned District Judge, Noakhali in Miscellaneous Appeal No.137 of 1984.

Facts necessary for disposal of the Rule, in short, are that the opposite party No.1 as pre-emptor filed Miscellaneous Case No.132 of 1973 in the 2<sup>nd</sup> Court of Munsif, Sadar, Noakhali which on being transferred to the Court of Assistant Judge, Companiganj renumbered as Miscellaneous Case No.3 of 1984 praying for pre-emption of the case land under section 96 of the State Acquisition and Tenancy Act stating inter alia there is a tenancy Khatian No. 1901/I in respect of 1.60 acre of land in the name of Hafez Nurul Huq as rayati under Petty Khatian No. 1901 and in respect of land of that holding the pre-emptor opposite party is a co-sharer by purchase and beside this he is also the owner of contiguous land of the disputed plot No. 18720 and present opposite party No.2 transferred the case land appertaining to holding No.2523 of Plot No. 18720 to the petitioners by registered kabala dated 07-07-1971 in respect of which the petitioners are strangers and regarding the disputed transfer the petitioners had no earlier knowledge and before the disputed transfer the vendor opposite party No.2 used to possess the disputed land through bargadar and the pre-emptor opposite party came to know about disputed sale on 14-07-1973 when there had been exchange of words between him and present petitioner No.1 regarding boundary dispute and thereafter by making search he obtained the certified copy on 26-07-1973 and hence filed the pre-emption case.

The petitioners as purchaser pre-emptees contested the case filing joint written objection denying the material facts raising preliminary objections as to defect of parties, bar of limitation and bar of waiver, estoppel and acquiescence and their substantive case in short is that there is a Sub-servient Khatian No.1901/7 under petty settlement Khatian No.1901 and the land of holding No.2525 of the said Khatian was owned by one Monir Ahmed Mia from whom by way of subsequent transfer one Sidul Haq became the owner from whom the pre-emptor by way of purchase acquired the said land for which during Diara settlement there had been made separate Khatian and therefore pre-emptor is not a co-sharer in respect of the disputed holding and he is not a contiguous owner of the transferred disputed land and he has not made the other contiguous owners as parties in his case and that the disputed land is alluvial land in which the vendor opposite party was always in possession of the case land and after purchase the present petitioners have been possessing the case land within the knowledge of the pre-emptor and that the present petitioner No.1 was never a bargadar under the vendor opposite party and there was no exchange of words on 14-07-1973 between the pre-emptor and pre-emptee as alleged by the pre-emptor and that being allowed by the increase of value of the land this pre-emption case has been filed which is liable to be rejected with cost.

After hearing both the parties and upon considering the materials on record, the learned Assistant Judge, Companiganj rejected the

Miscellaneous Case No.3 of 1984 for pre-emption by his judgment and order dated 29.07.1984.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 29.07.1984 passed by the learned Assistant Judge, Companiganj in Miscellaneous Case No.3 of 1984 the pre-emptor-appellant-opposite parties filed Miscellaneous Appeal No.137 of 1984 and after hearing both the parties and upon perusing evidence on record the learned Additional District Judge, Noakhali allowed the Miscellaneous Appeal No.137 of 1984 by his judgment and order dated 06.04.1996.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 06.04.1996 passed by the learned Additional District Judge, Noakhali in Miscellaneous Appeal No.137 of 1984 allowing the Appeal the petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and stay.

No one appears for both the parties, when the matter was taken up for hearing and disposal although it appears in the daily cause list several times.

I have perused the revisional application, the impugned judgment and order of the Courts' below, the papers and documents as available on the record.

It appears from the record that the opposite party No.1 as pre-emptor filed Miscellaneous Case No.132 of 1973 in the 2<sup>nd</sup> Court of Munsif, Sadar, Noakhali which on being transferred to the Court of Assistant Judge, Companiganj renumbered as Miscellaneous Case No.3 of 1984 praying for

pre-emption of the case land under section 96 of the State Acquisition and Tenancy Act stating inter alia there is a tenancy Khatian No. 1901/I in respect of 1.60 acre of land in the name of Hafez Nurul Huq as rayati under Petty Khatian No. 1901 and in respect of land of that holding the pre-emptor opposite party is a co-sharer by purchase and beside this he is also the owner of contiguous land of the disputed plot No. 18720 and present opposite party No.2 transferred the case land appertaining to holding No.2523 of Plot No. 18720 to the petitioners by registered kabala dated 07-07-1971 in respect of which the petitioners are strangers and regarding the disputed transfer the petitioners had no earlier knowledge and before the disputed transfer the vendor opposite party No.2 used to possess the disputed land through bargadar and the pre-emptor opposite party came to know about disputed sale on 14-07-1973 when there had been exchange of words between him and present petitioner No.1 regarding boundary dispute and thereafter by making search he obtained the certified copy on 26-07-1973 and filed the pre-emption case. The petitioners as purchaser pre-emptees contested the case filing joint written objection denying the material facts mentioned that there is a Sub-servient Khatian No.1901/I under petty settlement Khatian No.1901 and the land of holding No.2525 of the said Khatian was owned by one Monir Ahmed Mia from whom by way of subsequent transfer one Sidul Haq became the owner from whom the pre-emptor by way of purchase acquired the said land for which during Diara settlement there had been made separate Khatian and therefore pre-emptor is not a co-sharer in respect of the disputed holding and he is not a contiguous owner of the transferred disputed land and he has not made the

other contiguous owners as parties in his case and that the disputed land is alluvial land in which the vendor opposite party was always in possession of the case land and after purchase the present petitioners have been possessing the case land within the knowledge of the pre-emptor and that the present petitioner No.1 was never a bargadar under the vendor opposite party and there was no exchange of words on 14-07-1973 between the pre-emptor and pre-emptee. After hearing both the parties and upon considering the materials on record, the learned Assistant Judge, Companiganj rejected the Miscellaneous Case No.3 of 1984 for pre-emption by his judgment and order dated 29.07.1984. Being aggrieved by and dissatisfied with the impugned judgment and order dated 29.07.1984 passed by the learned Assistant Judge, Companiganj in Miscellaneous Case No.3 of 1984 the pre-emptor-appellant-opposite parties filed Miscellaneous Appeal No.137 of 1984 and after hearing both the parties and upon perusing evidence on record the learned Additional District Judge, Noakhali allowed the Miscellaneous Appeal No.137 of 1984 by his judgment and order dated 06.04.1996.

Considering the above facts, circumstances and evidence on record, it appears that the learned lower court has given a decision regarding the statement of non-participation in the case of co-sharers in the original petition Diara No. 871, and the case filed by the pre-emptor in the prayer of pre-emption is defective. The said decision of the learned lower Court is not correct. Since, the suit land is not transferred to opposition by reference to diara khatian. On perusal of the above duplicate copy of Exhibit-‘Ga’ of

Diara No. 871 Khatian and original pleadings shows that other sharers belonging to Diara Khatian have been made opposite party Nos. 4-6 in the case.

In the light of the above discussion and on perusal of the evidence on record, I have come to the conclusion that the pre-emptor is the owner of the land adjoining the land in opposition and no notice of the opposition sale was served on him and after the fact of the opposition sale was properly notified he filed the suit for pre-emption within the period prescribed by law by observing the all formalities properly. Therefore, the learned Assistant Judge, Companigonj, Noakhali passed the judgment and order dated 29.07.1984 rejecting the Miscellaneous Case No.3 of 1984 is liable to be quashed and set-aside. On the other hand, the learned Additional District Judge, Noakhali rightly passed the judgment and order dated 06.04.1996 is maintainable in the eye of law and I do not find any substance to interference into the said judgment and order.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged on merit.

The judgment and order dated 06.04.1996 passed by the learned Additional District Judge, Noakhali in Miscellaneous Appeal No.137 of 1984 allowing the Appeal and thereby setting-aside the judgment and order dated 29.07.1984 passed by the learned Assistant Judge, Companigonj in Miscellaneous Case No.3 of 1984 rejecting the pre-emption case is hereby upheld and confirmed.

The order of stay granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

Let a copy of this judgment and order with L.C.R be sent to the concerned Court below at once.

Md. Anamul Hoque Parvej  
Bench Officer