

2 SCOB [2015] HCD 41**HIGH COURT DIVISION
(Civil Revisional Jurisdiction)**

CIVIL REVISION NO. 4636 OF 2004

Abdur Rashid and others.

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

-Versus -

Md. Babul Mia and others.

.....Pre-emptor-Appellant-Opposite-parties.

No one appears.

..... For the petitioners

Mr. Shasti Sarker, Advocate

..... For the opposite parties.

Heard on: 04.03.2015 and Judgment on: 10.05.2015.

Sate Acquisition and Tenancy Act, 1950**Section 96:**

The pre-emption application filed within time and no defect of parties in the case and admittedly the pre-emptor is a co-sharer by purchase and it is also found that the pre-emptee-petitioners are also co-sharers by purchase. But on perusal of the record it is found that none of the pre-emptee-petitioners claimed pre-emption after receiving the summons within 2 months of the statutory period as mentioned in sub-section 4 of section 96 of Estate Acquisition and Tenancy Act. When an application has been made under sub-section (1) any of the remaining co-sharer tenants including the transferee, if one of them, and the tenants holding lands contiguous to the land transferred may within the period referred to in sub-section (1) or within two months of the date of service of notice of the application under clause (b) of sub-section (3) which ever be earlier apply to joint in the said application; any co-sharer tenant or tenant holding land contiguous to the land transferred, who has not applied either sub-section (1) or under this sub-section, shall not have any further right to get pre-emption under this section.

...(Para 9)

JUDGMENT**S.M. EMDADUL HOQUE, J:**

1. On an application of the petitioners Mr. Abdur Rashid and others under section 115(1) of the Code of Civil Procedure the Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and order dated 07.08.2004 passed by the Additional District Judge, Gopalganj in Miscellaneous Appeal No. 21 of 2003 reversing those dated 28.04.2003 passed by the Senior Assistant Judge, Kotalipara, Gopalganj in Miscellaneous case No. 46 of 2001 dismissing the application for pre-emption should not be set-aside.

2. Facts necessary for disposal of the Rule, in short, are that the opposite party No. 1 as petitioner filed Miscellaneous case No. 46 of 2001 in the Court of Assistant Judge, Kotalipara, Gopalganj for pre-emption under section 96 of the Estate Acquisition and Tenancy Act contending inter alia that, the pre-emptor is the co-sharer of the disputed land on the basis of the kabala deed dated 27.04.1997 and 26.12.2000. Another co-sharer of the disputed joma namely Basanta Kumar transferred the disputed land to the pre-emptees by kabala deed No. 1874 dated 12.6.2001 without any notice to the pre-

emptor. Came to know about the said transfer the pre-emptor got the certified copy of the same and confirmed about the transfer. The pre-emptor has got no land more than 60 bigha. Hence the case.

3. The case was contested by the pre-emptee petitioner by filing written objection denying all the material allegations made in the plaint contending inter-alia that, the application for pre-emption is not maintainable, and barred by limitation and the pre-emptor has no locus-standi to file the case, the same is bad for defect of parties and the pre-emptor is not a co-sharer of the joma. Further Case is that the land of R.S. Khatian No. 2, S.A. Khatian No.4 and R.S. Khatina No. 136 and S.A Khatian No. 191 originally belonged to Kadernath Mohesh who used to possess the same by way of family amicable arrangement. Thereafter Kadernath died leaving behind son Ananta Kumar Mohesh who transferred the said land to the pre-emptee No. 1 by registered kabala deed dated 6.11.1993 at a consideration of Taka 15,000/-. The pre-emptee No. 1 is a co-sharer of the joma by way of purchase. Ananta Kumar Mohesh also sold some land to the pre-emptee No. 1 by another kabala deed dated 13.01.1997 and as such he again became a co-sharer of the joma. Engineer Shaikh son of Ishaque Shaikh purchased .21 acres of land from Rabinranath son of Feduram Mohesh by kabala deed dated 18.01.2000, against which the pre-emptee No. 1 institute Miscellaneous Case No. 21 of 2000 in the Second Court of learned Joint district Judge, Gopalganj for pre-emption and got an order of pre-emption on compromise on 2.9.2001 and has been possessing the said land. So by that way he became a co-sharer of the joma. Another co-sharer of S.A. Khatian Nos. 191 and 4 namely Jogobandu Mohesh dies leaving behind one son Biddadhor who inheriting the share of his father transferred the same by kabala deed dated 30.11.1999 to the pre-emptee No. 2. By this way the pre-emptees became co-sharers of the joma. As the pre-emptees are co-sharers of the joma by purchase, so the instant application for pre-emption against them is not maintainable. The case of pre-emption is liable to be rejected.

4. At the trial both the parties adduced oral as well as documentary evidence to prove their respective cases.

5. The trial Court after hearing the parties and considering the evidence on record dismissed the miscellaneous application by its judgment and order dated 28.04.2003.

6. Against the said judgment and order of the trial court the pre-emptor opposite party No. 1 preferred Miscellaneous Appeal No. 21 of 2003 before the learned District Judge, Gopalganj. The said appeal was heard by the Additional District Judge, Gopalganj who after hearing the parties and considering the evidence on record allowed the appeal and thereby setting aside the judgment and order of the trial court and allowed the pre-emption of the pre-emptor opposite party No.1 by its judgment and order dated 07.08.2004.

7. Being aggrieved by and dissatisfied with the impugned judgment and order of the appellate court the pre-emptee petitioners filed this revisional application under Section 115 (1) of the Code of Civil Procedure and obtained the Rule.

8. Md. Rezaul Kabir Khan for Mr. Md. Masud Hasan Chowdhury the learned Advocate at the delivery of the judgment prays for time to defer the date of judgment but the learned Advocate ultimately did not turn up to press the Rule. Since this is a pre-emption case and in the instant case only law point is involved and the same was settled by our Apex Court, so considering the above facts and the position of the case I am inclined to dispose of the Rule.

9. It appears that the pre-emptee petitioners purchased the land through registered deed dated 12.6.2001 without serving notice under section 89 of the Estate Acquisition and Tenancy Act. The pre-emptor filed the application for pre-emption on 23.8.2001 and it is found that the deed was registered on 31.07.2001 under section 60 of the Registration Act. The trial court after consideration of the evidence on record opined that the case is not barred by limitation, and no defect of parties in the instant case. The appellate court after consideration of the same also affirmed the said findings of the trial court. The trial court after consideration of the evidence on records opined that the pre-

emptees are also co-sharers by purchase of the case land and the deeds of the pre-emptees are earlier than that of the pre-emptor and the pre-emptor not a co-sharer of the case land. The appellate court after consideration of the evidence on record opined that the trial court committed error of law in holding that the pre-emption is not maintainable against the co-sharer of the case jote. The appellate court relying upon the decision reported in 45-DLR(AD)-133 and the provision of sub-section 4 of section 96 of the Estate Acquisition and Tenancy Act opined that after receipt of the summons the pre-emptee ought to have filed application for pre-emption within 2 months but the pre-emptees never sought for pre-emption. The pre-emptee-petitioners without invoking the provision of law, subsequently, raised question that the pre-emption is not maintainable against the co-sharers. The matter has been settled in the case of Golchera Khatun Vs. Sayera Khatoon reported in 45-DLR(AD)-133. I have perused the impugned judgment of the courts bellow, the papers and documents as available on the records, and the referred decisions. Since the pre-emption application filed within time and no defect of parties in the case and admittedly the pre-emptor is a co-sharer by purchase and it is also found that the pre-emptee-petitioners are also co-sharers by purchase. But on perusal of the record it is found that none of the pre-emptee-petitioners claimed pre-emption after receiving the summons within 2 months of the statutory period as mentioned in sub-section 4 of section 96 of Estate Acquisition and Tenancy Act. When an application has been made under sub-section (1) any of the remaining co-sharer tenants including the transferee, if one of them, and the tenants holding lands contiguous to the land transferred may within the period referred to in sub-section (1) or within two months of the date of service of notice of the application under clause (b) of sub-section (3) which ever be earlier apply to joint in the said application; any co-sharer tenant or tenant holding land contiguous to the land transferred, who has not applied either sub-section (1) or under this sub-section, shall not have any further right to get pre-emption under this section. Considering the above facts and circumstances of the case, it is my view that the appellate court rightly decided the same.

10. It also appears that the trial court opined that the pre-emptor did not produce the deed No. 4452 dated 26.12.2000 and it could not be ascertained whether the pre-emptor is a co-sharer in Khatian No. 8197. But at the appellate stage the pre-emptor produced the certified copy of the said deed which was marked exhibited and the plaintiff proved the same by adducing evidence and accordingly, the appellate court on perusal of the exhibit Nos. 1 and 2 opined that the pre-emptor is a co-sharer in Khatian No. 1897 and through another deed dated 27.4.1997 the pre-emptor is also a co-sharer by purchase in Khatian No. 191 which is a right finding. I find nothing to interfere with the said finding of the appellate court.

11. Considering the facts and circumstances of the case, I find no merit in the Rule.

12. In the result, the Rule is discharged without any order as to cost. The impugned judgment and order dated 07.08.2004 passed by the Additional District Judge, Gopalganj in Miscellaneous Appeal No. 21 of 2003 reversing those dated 28.04.2003 passed by the Senior Assistant Judge, Kotalipara, Gopalganj in Miscellaneous case No. 46 of 2001 is hereby upheld.

13. The order of stay granted earlier by this court is hereby recalled and vacated.

14. Send down the Lower Court's Record at once.