

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

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 4821 OF 2006

Mohammad Altaf Hossain being dead his
legal heirs:

Md. Shaha Alam Howlader and others
Purchaser Pre-emptee-Respondent-Petitioners

Versus

Mohammad Jahangir Khan
Pre-emptor-Appellant-Opposite Party

Pryalal Mistry and others
Opposite Parties

Mr. Md. Salim Reja Chowdhury, Advocate
for the Pre-emptee-Respondent-Petitioners

Mr. Debdas Samaddar, Advocate
for the Pre-emptor-Appellant-Opposite Party

Judgment on 16.6.2022

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned Judgment and Order dated 21.6.2006 passed by the learned Joint District Judge, First Court, Barishal in Miscellaneous Appeal No. 7 of 2002 allowing the appeal and thereby reversing those dated 22.11.2001 passed by the learned Senior Assistant Judge, Barisal Sadar in Miscellaneous Case No. 67 of 1994 under Section 96 of the State Acquisition and Tenancy Act, 1950 disallowing 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 opposite party No. 1 as pre-emptor filed Miscellaneous Case No. 67 1994 before the Court of learned Senior Assistant Judge, Barishal Sadar under Section 96 of the State Acquisition and Tenancy Act, 1950 for pre-emption.

The Case of the pre-emptor, in short, is that S.A. Khatian No. 1026 of Mouza Kawarchar under Police Station Kotwali of District Barishal was recorded in the name of Ramchandra Adhikari and others. Recorded tenant Sonai Bewa alias Sona Laxmi Gharami sold his 20 decimals of land on 24.8.1956 in favour of opposite party No. 7 Hazera Khatun and Apatar Uddin. Rest 1.01 acres of land has been sold by said Sonai Bewa and her son Haralal Gharami on 21.9.1956 in favour of Harendranath and that Harendranath died leaving 3 sons namely Hironmoy, Sanjay and Hiralal Mazumder. On 25.4.1992 Hiralal sold his share in favour of the pre-emptor. Thus the pre-emptor is a co-sharer in the case jote by purchase. The opposite party Nos. 2-3 are co-sharers in the case jote by inheritance and purchase. Opposite Party No. 1 is not a co-sharer in any way. Now it is found that the $1.40\frac{3}{4}$ acres of land has been transferred on 15.4.1994 in favour of purchaser-pre-emptee including .83 acres of land from the said S.A. Khatian.

The purchaser-pre-emptee is not a co-sharer in S.A. Khatian No. 550 described in the disputed Kabola. The pre-emptor is a co-sharer in S.A. Khatian No. 1026 and prays for pre-emption in S.A. Khatian No. 1026 and prays for pre-emption in respect of .83 acres of land of that Khatian. The pre-emptor is entitled to get it as pre-emption. The pre-emptor would have purchase it if he knew it. The purchaser-pre-emptee-opposite party No. 1 does not possess the case land and the pre-emptor knew it for the first time only on 01.9.1994 from Kallyan Adhikari and finally knew on 08.9.1994 when he obtained the certified copy and filed the present case.

The purchaser-pre-emptee contested the case by filing a written objection; contended that the case is not maintainable in its present form, the case is barred by limitation and bad for defect of parties and also denied all material allegations made in the application. The main contention of the purchaser-pre-emptee is that the vendor-pre-emptee becomes owner of the case land by purchase and later on he proposed to sell it and offered it also to the pre-emptor and all the co-sharers but they denied to purchase it at proper price then the purchaser-pre-emptee agreed to purchase it as contiguous land owner within the knowledge of the pre-emptor and other co-sharers by the disputed Kabola and got possession and erected living house, kitchen, cowshed at a cost of Taka

25,000/- over Plot No. 2203 and planted there at a further cost of Taka 25,000/-. The pre-emptor is not a cultivator, he is a 1st Class Contractor. The case land is not necessary for the pre-emptor and the case is liable to be dismissed.

The Trial Court dismissed the case for defect of parties by his judgment and order dated 22.11.2001. Against the aforesaid judgment and order the pre-emptor filed Miscellaneous Appeal No. 7 of 2002 before the learned District Judge, Barishal which was transferred to the learned Joint District Judge, 1st Court, Barishal who allowed the same by reversing the judgment and order of the Trial Court dated 21.6.2006 and hence the pre-emptee as petitioner moved this application before this Court under section 115(1) of the Code of Civil Procedure and obtained this Rule.

During pendency of the Rule, the pre-emptee-petitioner died and accordingly his heirs were substituted.

Mr. Md. Salim Reja Chowdhury, learned Advocate for the purchaser pre-emptee-respondent-petitioners, submits that the pre-emptee contested the case by filling a written objection wherein in paragraph 17 he categorically stated that “এতদভিন্ন তর্কিত জমার স্বার্থবান ব্যক্তি কৃষ্ণ কান্তের এগমিক ওয়ারিশ বিপুল চন্দ্র, নিপুন চন্দ্র, মনির চন্দ্র পিতা ব্রজেন্দ্র হালদার সাং হিজলতলা পোঃ চানপুরা জিলা বরিশাল ইহা ছাড়া মনোহরের ওয়ারিশ মতিলাল, বাবুলাল পিতা-মনোহর মিস্ত্রী সাং হলতাতাহাকে পক্ষ না করায় মোকদমা পক্ষাভাব

দোষে দুই।” He further submits that the pre-emptor filed interrogatories on 03.6.1999 and the Court fixed for reply on 04.11.1999. On that date this pre-emptee prayed for time and the Court rejected time petition and debarred the pre-emptee. He next submits that on 06.1.2000 the pre-emptee filed reply along with show cause application which was kept with the record and the pre-emptor prayed for time for taking necessary steps and the pre-emptor thereafter amended the application upon some baseless false statements of transfer. The pre-emptee filed additional written objection by denying the false statement made in the application and categorically stated in paragraph 7 of the additional written objection that “...মজহরের কথিত মতে ৪ নং তরফসানি তর্কিত জমার জমায় খরিদসূত্রে শরিক বিদ্যমান হওয়ায় উক্ত ৪ নং তরফসানি কালিপদ অধিকারী মোকদ্দমা দাখিলের বহুপূর্বে ৪ পুত্র যথাএন্মে কল্যাণ অধিকারী, কুমোদ অধিকারী, সুবোধ অধিকারী, শুশীল অধিকারীকে ওয়ারিশ রাখিয়া লোকান্তরিত হন। তন্মধ্যে শুশীল অধিকারী বর্তমানে ভারতে অবস্থানরত আছেন এবং সুবোধ অধিকারী বর্তমানে ঢাকায় কর্মরত আছেন এবং কল্যাণ ও কুমোদ বর্তমানে তাহাদের নিজ বসতবাড়ী কাউয়ারচর সাকিনে বসবাসরত আছেন.....।” The pre-emptee stated in paragraph 8 of the additional written objection that “...এতদ্ব্যতীত রেডকীর্য় প্রজা মনোহর অধিকারীকে আদৌ তরফসানি শ্রেণিভুক্ত না করায় এবং তর্কিত জমায় কবলামূলে খরিদদার আফতাররদ্দিন এবং মোসাম্মত হাজেরা খাতুন স্বামী মৌলভী মোহাম্মদ উল্লাহ বিদ্যমান থাকিয়া আফতাররদ্দিন লোকান্তরিত হইলে..... তাহাদেরকেও বর্তমান মোকদ্দমায় তরফসানি শ্রেণিভুক্ত না করায়

বর্তমান মোকদ্দমা পক্ষাভাব দোষে দুষ্ট।শ্রী কালিকান্ত অধিকারী বিগত ২৩/৬/১৯৭৬ তারিখে রেজিস্ট্রিকৃত দলিলমূলে ৪১ $\frac{১}{৪}$ শতাংশ খরিদ করিয়া মালিক দখলকার থাকা স্বত্বেও তাহাকে মোকদ্দমায় তরফসানিভুক্ত না করিয়া মিথ্যা নালিশের কারণ দর্শাইয়া বর্তমান মোকদ্দমা দায়ের করায় ময়খরচায় খারিজযোগ্য।” The Trial Court categorically found at running page 36 that the P.W. 1 admitted in cross examination that he does not know কৃষ্ণ কান্তের স্ত্রী নিরোদা কালীকান্তের নিকট জমি বিক্রি করেছেন কিনা জানেন না। কৃষ্ণ কান্তের ওয়ারিশ বিপুল, নিপুন, মনির এরা ভারতে চলে গিয়াছে তাই তাহাদের পক্ষ করি নাই। But fresh Plaint shows their address at Kawarchar, Kotwali, Barishal. So that they were not impleaded properly. After clear assertion of the name and address of the necessary parties in the additional objection which has been admitted by the P.W.1 and clear finding by the Trial Court about necessary parties the pre-emptor did not take any step to cure the said defect of parties which is fatal as the case of Zeerat Textile Mills Vs. Commr. of I. Tax reported in 21 DLR 262 and Sree Biraj Mohan Roy Vs. Binodini Roy and others reported in BLT (AD) 2004 111. He lastly submits that the pre-emptor filed some documents in the Court of appeal below which were not examined in evidence nor it was marked exhibits nor it was shown to this pre-emptor to verify the genuineness of those documents or corss examine the petitioner about those documents and as such the arbitrary act of Appellate Court below is contrary to the provisions

of law and not acceptable in the eye of law and the statements as to defect of party stated in the additional written statement were not interrogated or debarred by any order of the Court. So that the pre-emptor cannot avoid those defect of party stated in the additional written objection after amendment of the plaint as a result the pre-emption case is liable to be dismissed for defect of parties and in the facts and circumstances of the case in accordance with the reported cases mentioned earlier. The pre-emption case must have failed for defect of parties after mentioning the name and address of the necessary parties despite of earlier order debarred in respect of original written objection before amendment of the plaint.

Mr. Debdas Samaddar, learned Advocate for the pre-emptor-appellant-opposite party opposes the Rule and submits that five issues i.e. framed by the Trial Court out of which only plea of defect of parties raised by the pre-emptee-petitioner, was taken by the Trial Court to dismiss the case but after examination the plaint we shall find it clear there is no defect of parties more so if we observed very carefully the Order No. 50, 51 & 52 of the Trial Court, we find in Order No. 50 that the subsequent date is fixed for answer interrogatory and in Order No. 51 the concept of the Order No. 50 was not followed by the petitioner-pre-emptee to file interrogatory and therefore the Court was very much pleased to

debar the pre-emptee petitioner to raise the plea of defect of parties, thereafter Order No. 52 speaks that the pre-emptee filed the interrogatory but the learned Trial Court does not accept the same because such a plea of defect of parties cannot be raised as pre-emptee petitioner was debarred earlier and answer to interrogatory is kept in record and Order No. 53 speaks that the pre-emptee filed an application on 04.11.1999 to accept the interrogatory but the Court very much correctly rejected as the pre-emptee was absent on that day. In this regard the learned Advocate for the opposite party referred a case of Abdur Rahman Bepari Vs Areshed Ali and others reported in 12 MLR (AD) 120.

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

The pre-emptee petitioner claimed that the instant case will be dismissed for defect of parties. From the record it appears that regarding defect of parties interrogatories were served upon the pre-emptee-petitioner to disclose the names of essential parties but the pre-emptee did not respond and the fresh plaint contended all the necessary parties who have got subsisting interest and accordingly there is no defect of parties and the Court of appeal below rightly allowed the appeal on ground of no defect of parties. Considering the facts and circumstance of the case, I find no

substance in the Rule rather I find substance in the submissions of the learned Advocate for the pre-emptor-opposite party.

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

The impugned Judgment and Order dated 21.6.2006 passed by the learned Joint District Judge, First Court, Barishal in Miscellaneous Appeal No. 7 of 2002 allowing the appeal and thereby reversing those dated 22.11.2001 passed by the learned Senior Assistant Judge, Barisal Sadar in Miscellaneous Case No. 67 of 1994 disallowing the case is hereby up-held.

The order of stay granted earlier by this Court is hereby vacated.

Send down the lower Courts record with a copy of the Judgment to the court below at once.