

*Present:-*

*Mr. Justice Mahmudul Hoque*

**Civil Revision No. 5212 of 2005**

Md. Anower Hossain

... Petitioner

-Versus-

Hamida Khatun and others

...Opposite-parties

No one appeared.

...For the petitioner

Mr. A. Z. M. Mohiuddin, Advocate

...For the opposite-party No. 1.

**Heard on 08.05.24, 09.05.24 and**

**Judgment on 12<sup>th</sup> May, 2024.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 30.05.2005 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Habigonj in Miscellaneous Appeal No. 19 of 2002 dismissing the same and affirming the judgment and order dated 13.02.2002 passed by the learned Assistant Judge, Bahubal, Baniachong, Habigonj in Pre-emption Case No. 01 of 1992 allowing the pre-emption case in part should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the opposite-party, as pre-emptor, filed Pre-emption Case No. 01 of 1992 in the Court of Assistant Judge, Bahubal, Baniachong, Habigonj seeking pre-emption stating inter alia, that she is a co-sharer by purchase and contiguous owner of the land mentioned in the schedule to the application for pre-emption. The pre-emptee opposite party behind the back of the pre-emptor purchased the case land from the opposite party Nos. 2-6 by three registered Deed Nos. 2755 of 1991, 2806 of 1991 and 2824 of 1991 dated 30.11.1991, 19.12.1991 and 21.12.1991 respectively. The pre-emptor by depositing consideration money amounting to Tk.  $(7,000+3,000+4,000)=14,000/-$  alongwith 10% compensation therewith filed the case praying pre-emption of the case land.

The pre-emptee purchaser, as opposite party No. 1 contested the case denying the material allegations made in the pre-emption application contending inter alia, that the case is not maintainable in its present form and the same is bad for defect of parties as co-sharers and contiguous owners were not made party to the case. Defence case, in short, is that the case land pertaining to Khatian No.

40, Plot Nos. 71, 73 and 74 belonged to Abdur Rahman who died leaving behind Marfat Ullah as only son, Hazera as wife and 5 daughters namely, Surjan, Putuljan, Kamala Banu and Ruhitorjan in whose names the land was recorded in the khatian. By amicable partition among the heirs Surjan, Putul Bibi got 26 sataks in Plot No. 74, Kamala Banu 7 sataks in the said plot. Being owners and possessors of the said land, they transferred the same to the pre-emptee opposite party No. 1 with the knowledge of pre-emptor. The pre-emptor did not raise any objection. The pre-emptor has no right to file pre-emption application for case khatian belonged to Zafar Ullah. The pre-emptee opposite-party No. 1 purchased the land from Elash Miah and Hiron Miah by registered Deed No. 2824 of 1991, but they were not made party to the case and did not implead the contiguous owners of the case land. The pre-emptee has only homestead on case Plot No. 73. He is son-in-law of Marfat Ullah, the recorded owner of the case land. The pre-emptee opposite party No. 1 is in possession of the case land. Therefore, the case is liable to be dismissed.

The trial court framed 6(six) issues for determination of the dispute between the parties. Both the parties adduced evidences both oral and documentary in support of their respective case. The trial court after hearing by judgment and order dated 13.02.2002 allowed the pre-emption case in part. The pre-emptee opposite-party No. 1 being aggrieved and dissatisfied with the judgment and order of the trial court preferred Miscellaneous (Pre-emption) Appeal No. 19 of 2002 and the pre-emptor preferred Cross Appeal No. 24 of 2002 in the Court of District Judge, Habigonj which was subsequently, transferred to the Court of Joint District Judge, 2<sup>nd</sup> Court, Habigonj for hearing and disposal who by its judgment and order dated 30.05.2005 disallowed both the appeals affirming the judgment and order passed by the trial court. At this juncture, the petitioner, moved this Court by filing this revisional application and obtained the present Rule and order of stay.

No one appears for the petitioner to press the Rule.

Mr. A. Z. M. Mohiuddin, learned Advocate appearing for the opposite party No. 1, pre-emptor submits that admittedly the pre-emptor is a co-sharer by purchase in Khatian No. 40 and contiguous

owner of the property in Khatian No. 37. At the first instance pre-emption in part was allowed by the trial court. The pre-emptee preferred appeal wherein the suit was sent back on remand to the trial court for fresh trial. After coming on remand, the pre-emptor served an interrogatory upon the pre-emptee asking him to supply name of the persons required to be added, but the pre-emptee did not answer the interrogatory. Rather at the time of hearing learned Advocate for the pre-emptee submits that inadvertently he has mentioned the name of Renu Dev. Consequently, the trial court again by its judgment and order dated 13.02.2002 allowed the case in part leaving 7 sataks of land in Plot No. 73, Khatian No. 40 and Plot No. 73 under Khatian No. 37 in favour of pre-emptee as homestead. He submits that the pre-emptee again preferred Miscellaneous Appeal No. 19 of 2002 before the learned District Judge which was subsequently heard and disposed of by the Joint District Judge, 2<sup>nd</sup> Court, Habigonj who also by the impugned judgment and order dated 30.05.2005 disallowed the appeal and Cross Objection No. 24 of 2002 affirming the judgment and order of the trial court. He argued that both the courts below concurrently found that the pre-

emptor is a co-sharer by purchase as well as owner of contiguous land of some property. Since on evidence it was found that the pre-emptee has been possessing a portion of the land in Plot No. 73 measuring 7 sataks as homestead, said land was not liable to be pre-empted. Consequently, the case of the petitioner was allowed in part giving pre-emption of case land measuring 41 sataks. There is no illegality or error of law in the decision occasioning failure of justice.

Heard the learned Advocate for the opposite party No. 1, have gone through the pre-emption application, written objection thereto, evidences both oral and documentary and the impugned judgment and order passed by both the courts below.

It is not disputed that the pre-emptor purchased 54 decimals of land from Plot No. 74 under Khatian No. 40 vide Deed Nos. 1479 of 1984, 603 of 1989, 3397 of 1990 and 458 of 1991 from opposite party No. 7. Plot Nos. 71 and 73 stands recorded in Khatian Nos. 40 and 37. Plot Nos. 71, 73 and 74 are situated side by side contiguous to each other. The pre-emptor is a co-sharer by purchase in Plot No. 74 and contiguous owner of the land of other Plot Nos. 71 and 73. The opposite party-pre-emptee purchased the land behind the back of

the petitioner. When he came to know about transfer of the land to the opposite party No. 1 by registered Deed No. 2755 dated 05.11.1991 from opposite party No. 4 and 5 vide Deed No. 2806 dated 11.11.1991, from opposite party No. 6 vide Deed No. 2824 dated 13.11.1991, from opposite party Nos. 2 and 3. The pre-emptor requested him to transfer the property to the pre-emptor, but he did not agree. Consequently, the pre-emptor filed the instant case praying for pre-emption of the case property under Section 96 of the State Acquisition and Tenancy Act, as co-sharer by purchase and contiguous owner of the property. The pre-emptee is a stranger to the property as such the trial court considering all the facts and circumstance of the case found that the pre-emptor is legally entitled to get pre-emption of the case property. The pre-emptee by filing written objection and on oath claimed that he has homestead on Plot No. 73 and has been living therein with his family and also claimed that he married with the daughter of Marfot Ullah one of the co-sharer in the case property. The trial court as well as the appellate court considering the case of opposite party refused pre-emption of 7

sataks land and left the same to the opposite party as his homestead and for remaining 41 sataks pre-emption was allowed.

From perusal of judgment and order of both the courts below this Court finds that both the courts concurrently found and observed that as per provision of Section 96 of the State Acquisition and Tenancy Ac, a co-sharer by purchase and contiguous owner has right to seek pre-emption of property transferred by any co-sharer and contiguous owner to a stranger other than co-sharer or contiguous owner, accordingly, both the courts below allowed the pre-emption in part living only 7 sataks of land being used by opposite party No. 1 as his homestead.

In view of the above, I find no illegality or error in the judgment and order of both the courts below calling for interference by this Court.

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

The order of *stay* granted at the time of issuance of the Rule is hereby vacated.



Communicate a copy of the judgment to the Court concerned  
and send down the lower court records at once.

*Helal-ABO*