

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)**

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 4628 of 2001**

**In the matter of:**

Md. Abdul Aziz Prang being dead his legal heirs  
Shahton Begum Meher Neka and others

Pre-emptor-respondent-petitioners

-Versus-

Abdul Gafur Prang and others

Pre-emptee-appellant-opposite parties

Mst. Jannatul Ferdoushi (Rupa), with  
Mr. Md. Khalilur Rahman, and  
Mr. Muhammad Nurul Kabir, Advocates

...For the petitioners

None

... For the opposite parties

Heard on: 28.10.2024, 10.11.2024 and 21.01.2025  
Judgment on: 27.01.2025

Pre-emption Miscellaneous Case No. 82 of 1992 filed under former Section 96 of the State Acquisition and Tenancy Act, 1950 was allowed by the learned Assistant Judge, Singra, Natore. Miscellaneous Appeal No. 5 of 2001 was allowed and the pre-emption case was rejected by the learned Sub-ordinate Judge, 1<sup>st</sup> Court, Natore.

Being aggrieved, the pre-emptors filed the instant revision and obtained Rule on 19.08.2001.

None appeared for the pre-emptee-opposite parties when the Rule was taken up for hearing.

The appellate Court below rejected the pre-emption case on three grounds: (a) the pre-emptors are not co-sharer in the case jote, (b) the pre-emption case is not maintainable for the reason that the transfer of the case land was made by two separate deeds executed on two different dates and as such, there were two separate causes of action but a single case was filed, and (c) the deeds in question are exchange deeds, not sale deeds.

The learned Advocate appearing for the pre-emptor-petitioners refers to the deposition of OPW1 and submits that he admitted that the pre-emptors are co-sharers in the case jote by purchase. OPW1, who was the purchaser of the case land, deposed in cross-examination, “মূল মালিক চৈতে ছিল। চৈতের ওয়ারিশরা নালিশী জমি দখল করে না। তারা বিক্রি করেছে। দরখাস্তকারী তাদের কাছ থেকে খরিদ করেছে।” As per provision of Section 58 of the Evidence Act, the admission of OPW1 negates the finding of the appellate Court below that the pre-emptors are not co-sharers in the case jote. I hold that the pre-emptors are co-sharer in the case jote by purchase.

The present opposite party No. 2 Abdus Samad transferred the case land to the pre-emptee (opposite party No. 1), vide two registered exchanged deeds being Nos. 2885 dated 06.06.1992 and 4888 dated 25.07.1992 respectively. The pre-emptors' case is that after obtaining the certified copies of the deeds in question on 29.07.1992 they came to know about the transfer. Under the former Section 96 of the State Acquisition and Tenancy Act, the period of limitation for filing the case is four months of the service of notice under Section 89, or, if no notice is served, within four months of the date of knowledge of the transfer. In this case, no notice was served under Section 89. The case was filed on 16.09.1992. The oral evidence adduced by the parties establish that the case was filed within four months of the date of knowledge with regard to two exchange deeds in question. In *Hajee Majar Ullah Sowdagar vs. Mvi. Nurul Haque and others*, 23 DLR 68, it was held that one application for pre-emption filed under Section 96 in respect of 3 (three) independent sales of several holdings to which the applicant was co-sharer tenant is maintainable if it is not barred by limitation or otherwise. In *Md. Emarat Hossain vs. Md. Nurul Haque and others*, 15 MLR 207, it was held that in a case where notice under Section 89 was not served, the period of limitation for filing a pre-emption case will be counted not from the initial knowledge, but from the confirmed knowledge as is obtained only on getting certified copy of the disputed deed. The view taken in 15 MLR

207 is based on the decisions reported in Bangladesh Supreme Court Digest (1986-87) 278 and 42 DLR 24. The reasons assigned in the reported cases as to why all kinds of information received from gossip or otherwise do not constitute knowledge under Section 96 are that on obtaining the certified copy of the transfer deed in question the applicant comes to know the names of the vendees, the number of the plot of the land and the quantum of land sold by the vendor and only then the applicant can decide whether he is a qualified person under Section 96 to file a proper petition. The initial knowledge that the plot in question is sold would not help him at all in a bid to file a pre-emption case. Referring to the reported cases, the learned Advocate appearing for the pre-emptor-petitioners submits that the instant pre-emption case was filed within 4 (four) months from the date of obtaining the certified copies of the two alleged exchange deeds which are, in fact, out and out sale deeds. I find force in the submission. Therefore, the finding of the appellate Court below that the instant pre-emption case is not maintainable is not correct. The case is maintainable.

The most important aspect of the instant case is that the case land was transferred, vide two separate registered exchange deeds. Under the former Section 96(10), land transferred by exchange is not pre-emptable. It is the case of the pre-emptors that those exchange deeds are, in fact, out and out sale deeds. The trial Court found that

those exchange deeds are sale deeds. The appellate Court below, on the other hand, found that those deeds are exchange deeds.

By the impugned deeds, opposite party No. 2 Abdus Samad transferred total 41.25 decimals of land (sought to be pre-empted) to the pre-emptee Abdul Gafur (opposite party No. 1) in exchange of 10 decimals of land, vide two registered exchange deeds dated 06.06.1992 and 25.07.1992 respectively. It appears from the deposition of OPW2 that after the transfer, Abdus Samad, who obtained 10 decimals of land, transferred the same to Sukur within 03/04 months. It further appears from the evidence of OPW1 that thereafter within 15/20 days, the pre-emptee Abdul Gafur (OPW1) purchased the said 10 decimals of land from Sukur. This fact is supported by deposition of OPW3 made during cross-examination. In this manner, the transferred land consisting of 10 decimals by way of exchange returned to Abdul Gafur. The learned Advocate appearing for the pre-emptor-petitioners submits that the series of transfer of the same piece of land within a very short period of time suggest that the deed of exchange was, in fact, an out and out sale deed to deprive the pre-emptors to exercise their statutory right of pre-emption. In support of the argument, the learned Advocate refers to the case of *Abu Hanif Hawlader vs. Mohammad Amanat Ullah Hawlader and others*, 21 BLC (AD) 91. In the reported case, only four days after execution of the exchange deed, the vendor executed and registered a kabala deed

in favour of the pre-emptee in respect of the same land which was shown to have been exchanged with the case land. Both the High Court Division and the Appellate Division held that the impugned transfer was out and out a sale deed and that in order to avoid pre-emption it was made in the form of deed of exchange.

In the case in hand, the pre-emptee Abdul Gafur eventually purchased 10 decimals of land within a short span of time which was the subject matter of the impugned exchange deed. I have no hesitation to hold that 41.25 decimals of land *i.e.* the case land shown to have been transferred in exchange of 10 decimals of land, vide two registered exchange deeds were done to frustrate the pre-emptors' statutory right of pre-emption. Those exchange deeds are out and out sale deeds.

In view of the foregoing discussions, I hold that the trial Court rightly allowed the pre-emption case and the appellate Court below was wrong in allowing the appeal. Accordingly, the Rule succeeds.

In the result, the Rule is made absolute. The judgment and order passed by the trial Court allowing the pre-emption case is affirmed and that of the appellate Court below is set aside.

Send down the L.C.R.