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

Present:

Mr. Justice S. M. Saiful Islam

Civil Revision No. 3533 of 2017

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Jalal Uddin died leaving behind his legal heirs Most. Fatema Akhter and another.

---- Petitioners.

-versus-

Md. Shahidul Islam died leaving behind his legal heirs Most. Sahida Akter and others.

---- Opposite Parties.

Mr. Mirza Salah Uddin Ahmed, Advocate

---- For the Petitioners.

Mr. Mahmudul Alam Bhuiyan, Advocate

--- For the Opposite Parties.

Heard On: 19.02.2026, 22.02.2026 and 03.03.2026.
Date of Judgment: 04.03.2026.

S. M. Saiful Islam, J.

This Rule was issued upon an application under section 115(1) of the Code of Civil Procedure, 1908 calling upon the opposite parties to show cause as to why the impugned judgment

and order dated 10.7.2017 passed by the learned Additional District Judge, 2nd Court, Mymensingh, in Miscellaneous Appeal No. 42 of 2015, disallowing the appeal and affirming the judgment and order dated 02.07.2015, passed by the learned Senior Assistant Judge, Iswargonj, Mymensingh should not be set aside and/ or such other or further order or orders passed as to this Court may deem fit and proper.

Facts relevant for the disposal of this Rule is that the Opposite Party No. 1 as pre-emptor filed Pre-emption Miscellaneous Case No. 01 of 2011 in the Court of Senior Assistant Judge, Iswarganj, Mymensingh praying for pre-emption of the case land under section 96 of the State Acquisition and Tenancy Act, 1950. Pre-emptor- opposite parties' case in short is that the case land appertaining to S A *Khatian* No.1141 of Mauja- *Maizbag* under the Police Station- Iswarganj, district- Mymensingh was recorded in the name of Samiruddin. That Samiruddin died leaving behind 2 daughters Sufia, Marium and five brothers sons, namely, Safiruddin, Lutfor, Majibur, Fazlur and Asiruddin. Safiruddin died leaving behind four sons including the pre-emptor- petitioner. Thus, the pre-emptor is a co-sharer by inheritance in the suit *jote* (জোত). The present B R S *Record* has also been published in the name of pre-emptors father, Safiruddin. Opposite party No. 2 being co-sharer in the suit *jote* (জোত), sold the case land to opposite party No. 1 beyond knowledge of the pre-emptor. Pre-emptee-Opposite party No. 1 is a stranger in the suit *jote* (জোত). On 01.12.2010 pre-emptor came to know about the disputed sale by obtaining certified copy of the sale deed. Thereafter, the Pre-emptor-Respondent filed the Pre-emption Miscellaneous Case praying for pre-emption of the case land.

Pre-emptee-Petitioner contested the case by filing written objection contending that he earlier purchased 4 decimal land in the suit plot from other co-sharers on 11.10.2001 and he erected dwelling house thereon and has been residing in that house since then. Then he purchased 4 decimal case land from co-sharer opposite party No. 2 by virtue of the disputed sale deed dated 09.11.2010 and he purchased the case land within the knowledge of the petitioner. He has developed the case land by spending about 9.00.000-/ (nine lac) taka. The pre-emptor- petitioner as well as all other co-sharers in the case holding sold their portion of lands to others by virtue of different registered deeds. The petitioner has no subsisting interest in the case holding to pre-empt. For these reasons opposite party No. 1 prayed for dismissal of the Miscellaneous Case.

Learned Trial Court took following five points for determination for disposal of the pre-emption miscellaneous case;

1. Whether the case is bad for defect of parties;
2. Whether the case be defeated by waiver and acquiescence;
3. Whether the petitioner is a co-sharer by inheritance in the case *jote* (জোত);
4. Whether the O. P. No. 1 is entitled to get any development costs if the case be allowed;
5. Whether the petitioner may get the relief as prayed for;

Learned trial Court on perusal of evidence on record and relevant provisions of law decided all the points in favour of the Pre-emptor-Respondent and allowed the pre-emption miscellaneous case subject to payment of Tk. 15,000/- (fifteen thousand) as improvement cost in favour of Pre-emptee-Petitioner by the judgment and order dated 02/07/2015.

Against that judgment and order, the Pre-emptee-Petitioner preferred Pre-emption Miscellaneous Appeal No. 42 of 2015 before the Court of the learned District Judge, Mymensingh. That Appeal on transfer was heard by the learned Additional District Judge, 2nd Court, Mymensingh. Learned Appellate Court disallowed the appeal by the impugned judgment and order dated 10.07.2017. Being aggrieved from that judgment and order, Pre-emptee-Petitioner filed this revisional application and obtained the Rule.

The learned Advocate, Mr. Mirza Salah Uddin Ahmed, appearing on behalf of the petitioner submits that both the Courts below did not apply judicial mind in disposing of the pre-emption case and appeal which led to erroneous decision and miscarriage of justice. Both the Courts below failed to properly appreciate the evidence on record. Pre-emptee- petitioner is a co-sharer by purchase in the suit *Khatian*. The Pre-emptor-Respondent and his other relative co-sharers sold out their whole properties and thereby the pre-emptor lost his interest in the case holding. So, the Pre-emptor-Respondent has no right to pre-empt the case land. The petitioner constructed dwelling house by spending about 9.00,000/- (nine lac) taka, but the trial court awarded only Tk. 15,000/- (fifteen thousand) as improvement cost which is not proper and legal. Pre-emptee-Petitioner has no other dwelling house except the house on the suit land and he cannot be evicted according to the provisions of section 6 of the Land Reforms Ordinance, 1984. For these reasons, the learned Advocate for the petitioner prays for making the Rule absolute.

On the other hand, the learned Advocate, Mr. Mahmudul Alam Bhuiyan, appearing on behalf of the Respondent submits that the learned Appellate Court has rightly disallowed the appeal and thereby affirmed the judgment of the trial Court. Pre-

emptor-Respondent is a co-sharer by inheritance in the suit holding. He filed the pre-emption miscellaneous case within time and after complying all provisions of law stated in section 96 of the State Acquisition and Tenancy Act, 1950. Provisions of section 6 of the Land Reforms Ordinance, 1984 is not applicable to pre-emption cases. Both the Courts below on proper appreciation of relevant laws and evidence on records, have allowed the pre-emption petition. The Courts below have not committed any error of law and the decisions of the learned Courts below have not occasioned any failure of justice. There is no lawful ground to interfere with the concurrent findings of the Courts below. For these reasons, the learned Advocate for the Pre-emptor-Respondent prays for discharging of the Rule. In support of his contention, the learned Advocate refers to the case of *Abdul Hai and another -Vs- Chan Banu* reported in 13 MLR (AD) 140 and 12 BLT (HC) 208.

Heard the learned Advocates for both the parties. Perused the impugned judgment and order, revisional application and annexures therewith and the lower Courts records.

It is admitted by the Pre-emptee-Petitioner in his written objection that the Pre-emptor-Respondent is a co-sharer by inheritance in the suit holding. The Pre-emptee-Petitioner admits in his written objection that the case land appertains to S A *Khatian* No. 1141 where Safiruddin was a recorded tenant and Safiruddin died leaving behind four sons including the Pre-emptor-Respondent Shahidul Islam. Pre-emptee-Petitioner also admitted this fact in his cross-examination as O P W- 1. So, it is admitted and well proved that the Pre-emptor-Respondent is a co-sharer by inheritance in the suit holding.

Pre-emptee-Petitioner of course claims that he is also a co-sharer in the case holding by purchase. But according to the

current provision of section 96 of the State Acquisition and Tenancy Act, 1950, only co-sharer tenant by inheritance has the right to pre-empt. Moreover, the Pre-emptee-Petitioner claims in his written objection as well as in his deposition that he has separated the *jama* (জমা) regarding that 4 decimal land which he purchased earlier by virtue of *Jama Kharij* Case No. 32(IX-I)08-09 and has opened new *Khatian* No. 2038. So, admittedly the Pre-emptee-Petitioner is no longer a co-sharer in the case holding.

Pre-emptee-Petitioner then claims that the Pre-emptor-Respondent has sold the whole portion of his land to others and thus he has lost his interest in the suit holding and therefore he is not entitled to pre-empt the case land. But in the written objection filed by the Pre-emptee-Petitioner in the trial court, he has not mentioned as to how much land the pre-emptor owned in the suit *Khatian* and how much he has transferred. The Pre-emptee-Petitioner as O P W- 1 has stated in his cross examination, "প্রার্থীর নালিশী জমায় কত জমি আছে জানিনা৷" O P W- 2 has stated in his cross- examination, "শহিদুল না: জোতে মোট কতটুকু ওয়ারেশ হিসাবে পায় এবং কতটুকু বিক্রী করেছে জানিনা৷" Thus, it appears that the Pre-emptee-Petitioner has failed to prove by cogent evidence that the pre-emptor has lost all his interest in the suit holding. Both the Courts below have elaborately discussed this issue in their judgment and correctly held that the Pre-emptee-Petitioner had failed to prove that the per-emptor had lost all his interest in the suit *Khatian* by transferring his share to others.

Pre-emptee-Petitioner has further claimed that he has spent about Tk. 9,00,000/- (nine lac) in constructing house and other establishments in the case land. But according to the statement in the written objection filed by the Pre-emptee-Petitioner in the trial Court, Pre-emptee-Petitioner purchased 4 decimal lands in

the suit *plot* earlier in 2001 and constructed his house and other establishments thereon and has been living there. Regarding the case land it has been stated in the written objection, "সুফিয়া খাতুন ঘরানা বন্টনে ০৩ শতক প্রাপ্ত হইয়া থাকিলেও দলিল মূলে .০৪ শতাংশই এই ১ নং প্রতিপক্ষের নিকট ০৯/১১/১০ তারিখে বিক্রী করিয়া দেয় এবং নালিশী উক্ত ০৩ শতাংশ ভূমি ১ নং ক্রেতা প্রতিপক্ষকে দখল দেওয়াকে কেন্দ্র করিয়া এই প্রার্থীগণের সঙ্গে মনোমালিন্যের সৃষ্টি হয়। ..... কাজেই বর্তমান নালিশী ০৯/১১/১০ সালের দলিলস্থ ০৩ শতাংশ ভূমি এখনও ১ নং ক্রেতা প্রতিপক্ষকে সঠিকভাবে দখলই দেয় নাই।"

Thus, it is admitted in the written objection that the Pre-emptee-Petitioner constructed his house and other establishments on 4 decimal land which he purchased earlier in 2001. Regarding the case land, it is admitted that the Pre-emptee-Petitioner has not got proper possession of that land even. So, the claim of improvement cost regarding the case land is not tenable. However, the trial Court has approved Tk. 15000/- (fifteen thousand) as improvement cost for some development works done before the disputed sale and as the pre-emptor has not appealed against that order, the Pre-emptee-Petitioner is entitled to get that taka as improvement cost.

Pre-emptee-Petitioner further claims that he has no other dwelling house except that on the case land and as such the pre-emption case is barred by the provisions of section 6 of the Land Reforms Ordinance, 1984 as the petitioner cannot be evicted from that house under that provisions of law. But it has already been mentioned that according to the statement of the written objection filed by the Pre-emptee-Petitioner in the trial Court, Pre-emptee-Petitioner purchased 4 decimal lands in the suit plot earlier in 2001 and constructed his house and other establishments thereon and has been living there. That 4 decimal land, which he purchased in 2001 and constructed house thereon is not the case land. So, the claim of the Pre-emptee-Petitioner of

having homestead in the case land is not acceptable and the question of eviction from sole residence does not arise. On the other hand, learned trial Court referring to the case of *Abdul Hai and another -Vs- Chan Banu* [13 MLR (AD) 140, 12 BLT (HC) 208] has correctly held that the provision of section 6 of the Land Reforms Ordinance, 1984 does not apply to pre-emption cases because when the pre-emption petition is allowed by the Court, ownership of the pre-emptee on the case land is lost.

It is well settled principle of law that a revisional Court may exercise its power when there is an error of law resulting in an error which occasioned failure of justice and when the lower Court acted illegally or with material irregularity in exercise of law or has committed error in procedure during the course of trial and such breach or error has affected the ultimate exercise of the jurisdiction of the Court. In revision under section 115(1), concurrent findings of fact cannot be disturbed unless those are manifestly perverse. Considering the facts, circumstances and relevant provisions of law, I am of the opinion that, in the instant case, the Appellate Court has not committed any error of law in passing the impugned judgment and order and there is no lawful ground to interfere with the concurrent findings of the Courts below. The impugned judgment and order of the Appellate Court does not suffer from any legal infirmity or impropriety and therefore, it does not call for any interference.

In the facts and circumstances, I find no merit in the Rule. So, the Rule is liable to be discharged.

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

Records of the Courts below be sent to the concerned Court at once along with a copy of the judgment.