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

Present:
Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2914 of 2021.
In the matter of:
An application under section 115(1) of the Code of Civil Procedure.

And

Joges Chandra Ray being dead his legal heirs 1(a) Samir Kumar Ray and others

...Petitioners

-Versus-

Ratan Kumar Mondal being dead his legal heirs 1(a) Dibashish Kumar Mondal and others

...opposite parties

No one appears

...For the petitioners

Mr. Abdul Bari, Advocate

...For the opposite party No.1 (a).

Heard & Judgment on 05.11.2024.

This Rule was issued calling upon the opposite party No.1(a) to show cause as to why the impugned judgment and decree dated 18.01.2021 passed by the learned Joint District Judge, 3rd Court, Faridpur in Title Appeal No.108 of 2016 affirming the judgment and decree dated 17.04.2016 (decree signed on 22.04.2016) passed by the learned Assistant Judge, Charbhadrasan Court, Faridpur in Title Suit No.32 of 2013 dismissing the pre-emption case under the Muslim

Law 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 in short are that the opposite parties as plaintiffs instituted about suit for pre-emption under the Mohamadan law against registered kobla deed dated 24.02.2010 executed by defendant No.2 in favor of defendant No.1 transferring $6\frac{1}{2}$ decimal land.

It was alleged that the plaintiff is a co-sharer by purchase and he is living in the land of the disputed plot by constructing dwelling house and defendant No.2 transferred above land beyond the knowledge of the plaintiff on 24.02.2010 to defendant No. 1 who is a stranger to the disputed joma. The plaintiff came to know about the impugned kobla deed on 13.07.2013 when defendant No.1 disclosed the same.

Defendant No.1 contested the suit by filing a written statement alleging that the plaintiff was not a co-sharer in the disputed land nor the disputed land is in any way needed for the plaintiff. Plaintiff was present at time of purchase of the disputed land by this defendant.

At trail plaintiff examined three witnesses and defendant examined 1. Documents of the plaintiff were marked as Exhibit Nos.1-4 and those of the defendants were marked as Exhibit No. ka-uma.

On consideration of facts and circumstances of the case and the evidence of record the learned Assistant Judge dismissed the suit.

Being aggrieved by above Judgment and decree of the trial court plaintiff preferred Civil Appeal No.108 of 2016 to the District Judge, Faridpur which was heard by the learned Joint District Judge, 3rd Court who dismissed the appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by and the satisfied with above judgment and decree of the court of appeal below above appellant as petitioner moved the court and obtained the rule.

No one appears on behalf of the petitioner at the time of hearing of this revision.

Mr. Abdul Bari learned Advocate for the opposite party submits that the pre-emptor, the pre-emptee and the seller of the disputed land all are Hindus by religion. But this case for pre-emption has been filed under the Mohamedan law which is not tenable in law.

I have considered the submissions of the learned Advocate for the opposite party and carefully examined all materials on record.

It turns out from record that the plaintiff and defendant Nos.1 & 2, the preemptor, the pre-emptee and the seller of the disputed land by the impugned kobla deed all are Hindus by religion.

The Mohamedan law of pre-emption is a part of the Shariah based personal law applicable only for the Muslims. Since all the parties to this suit for pre-emption are Hindus and the Mohamedan Law of Pre-emption is not applicable against non Muslims the learned judges of the courts below on correct appreciation of above facts and the law rightly dismissed the suit and the appeal respectively which calls for no interference.

I am unable to find any infirmity and illegality in the impugned judgment and decree of the court of appeal below and this petition under section 115(1) of the Code of Civil Procedure is devoid of any substance and the rule issued in this connection is liable to be discharged.

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

Let the lower Court’s record along with a copy of this judgment be transmitted down to the Court concerned at once.

Md.Kamrul Islam
Assistant Bench Officer