District-Thakurgaon.

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 3976 of 2024.

Md. Roficul Islam @ Md. Rofujul Islam and others.
---- Pre-emptee-Appellant-Petitioners.
-Versus-
Md. Solayman Ali.
---- Pre-emptor-Respondent-Opposite Party.

Ms. Mahfuza Chowdhury, Advocate
---- For the Pre-emptee-Appellant-Petitioners.

Mr. Md. Jahangir Kamal, Advocate
---- For the Pre-emptor-Respondent-Opposite Party.

Heard On: 26.10.2025.
And
Judgment Delivered On: 28.10. 2025.

Md. Toufiq Inam, J.

This Rule, at the instance of the petitioners as pre-emptees, was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 02.07.2024 passed by the learned Additional District Judge, Thakurgaon in Miscellaneous Appeal No. 02 of 2019, affirming those dated 30.10.2008 passed by the learned Assistant Judge, Pirganj, Thakurgaon in Miscellaneous Case No. 46 of 2008 allowing pre-emption, 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 pre-emptees-petitioners' case, in short, is that the land described in Schedule "Ka" of the plaint was originally recorded in the name of one MoulaBaks in S.A. Khatian Nos. 532 and 534. MoulaBaks died leaving behind his wife Gulzan, two sons- Habil and Ibrahimand two daughters- Samijan and Sabina. The S.A. records were accordingly prepared in their names after his death.

The pre-emptor No. 1 is the son of Habil, while pre-emptor No. 2 is the daughter of Ibrahim. The pre-emptee No. 1 claims to have received by way of *hiba-bil-ewaz* 9.5 decimals from Plot No. 534 and 10.25 decimals from Plot No. 532 from his mother Dahijan Bewa by registered deed No. 17882, and also purchased 32.5 decimals from Bhuban Ali and Saiyed Ali by registered deed No. 10426.

The pre-emptors alleged that pre-emptee Nos. 5 and 6 secretly sold 86 decimals of land out of the said plots to pre-emptees Nos. 1–4 through a registered sale deed No. 6715 dated 09.07.2008 without their knowledge, although the pre-emptors were co-sharers by inheritance in the holding. Upon learning of the sale and obtaining a certified copy of the deed on 20.08.2008, the pre-emptors filed the present pre-emption case on 07.09.2008, depositing Tk. 1,89,506/- including consideration, compensation, and interest.

The contesting pre-emptees-petitioners, on the other hand, denied the material averments and asserted that the suit was not maintainable, contending that the S.A. recorded owners were different, being Hafizuddin, Khamir Uddin, Mojiran, Amesha Khatun, and Sanjani Bibi under C.S. Khatians Nos. 54 and 443. They claimed title through various purchases and also alleged that pre-emptee No. 1 himself had sold land from the same holding earlier and, therefore, had no right to pre-empt. They further contended that the sale was made in consultation with the pre-emptors, who thus waived their right of pre-emption under the principles of waiver, estoppel, and acquiescence.

The learned trial court, upon careful evaluation of oral and documentary evidence, framed several issues for determination and recorded specific findings, inter alia, that:

a) The pre-emptors are co-sharers by inheritance in the suit holding as descendants of MoulaBaks whose name appears in S.A. Khatian Nos. 532 and 534.

b) The case was filed within limitation under Section 96(10) of the State Acquisition and Tenancy Act, 1950.

c) The case was not bad for defect of parties.

d) The plea of waiver and estoppel was unsubstantiated by evidence.

e) The pre-emptees failed to prove that they were co-sharers in the S.A. recorded holding, as the C.S. Khatians they relied upon had long been superseded by the S.A. record.Accordingly, the trial court allowed the pre-emption case in favour of the pre-emptors.

The learned appellate court, upon a re-appraisal of the entire record, concurred with the trial court's findings and further held that the pre-emptors, being co-sharers by inheritance, had an indefeasible statutory right of pre-emption under Section 96 of the SAT Act, 1950, and that the pre-emptees' plea of co-sharership and waiver was devoid of merit. Consequently, the appeal was dismissed.

Being aggrieved, the pre-emptees as petitioners moved this Court and obtained the present Rule, which is now taken up for disposal.

Mrs. Mahfuza Chowdhury, learned Advocate appearing for Mr. AZM Fariduzzaman Farhad, learned Advocatesubmits on behalf of the pre-emptees-petitioners that both courts below misread the evidence and failed to consider that the pre-emptors had full knowledge of the sale and even participated in its negotiation, thereby forfeiting their right to pre-emption. She further contends that the pre-emptee No. 1, being heir of Ismail Hossain who purchased land from the same holding, is a

co-sharer by inheritance and, therefore, the pre-emption claim is legally untenable.

Per contra, Mr. Md. Jahangir Kamal, learned Advocate for the pre-emptors-opposite parties, supports the concurrent findings and submits that both courts below correctly found the pre-emptors to be co-sharers by inheritance in the S.A. holding and that the sale was made to strangers without serving notice under Section 89 of the SAT Act. He contends that the plea of waiver was rightly rejected as a mere afterthought unsupported by any credible or independent evidence.

This Court has meticulously examined the revisional application, the impugned judgments, and the evidence on record.

It is well settled that concurrent findings of fact based on proper appraisal of evidence should not be disturbed in revision unless shown to be perverse, based on no evidence, or resulting in a miscarriage of justice. In the present case, both the courts below have concurrently and correctly held that the pre-emptors are co-sharers by inheritance as descendants of Moula Baks, whose name appears in the S.A. record. The pre-emptees' attempt to trace co-sharership from the obsolete C.S. record is misconceived in law, as the S.A. record supersedes the earlier entries and governs the present holding.

The plea of waiver or negotiation raised by the pre-emptees is wholly unsubstantiated. No witness or documentary proof was produced to show any active participation by the pre-emptors in the sale transaction. The mere assertion of knowledge or alleged discussion does not amount to waiver of a statutory right. As held in *Fazaruddin vs. Maijuddin and others*, 44 DLR (AD) 62, the right of pre-emption conferred upon a co-sharer by inheritance is a statutory right, which cannot be defeated by mere oral assertions of acquiescence or informal consent unless supported by convincing and unequivocal evidence.

Regarding limitation, the record shows that the pre-emption case was filed within two months of the date of knowledge and well within three years of registration of the impugned deed, satisfying the dual requirements of Section 96(10) of the SAT Act, 1950.

A co-sharer by inheritance in an S.A. recorded holding retains a statutory right of pre-emption under Section 96 of the SAT Act, 1950, which can only be defeated by clear and convincing proof of waiver or participation in the sale transaction. Mere knowledge or alleged negotiation, without corroborating evidence, does not constitute waiver. Concurrent findings based on proper appreciation of S.A.

records and evidence are not open to interference in revision under Section 115 CPC.

Thus, the findings of both courts below are founded upon correct appreciation of the evidence and the governing statutory principles. The pre-emptees-petitioners have failed to demonstrate any error of law, jurisdictional defect, or misreading/non-reading of evidence that would justify interference under Section 115 of the Code of Civil Procedure.

Accordingly, this Court finds no substance in the Rule.

In the result, **the Rule is discharged**.

The judgment and order dated 02.07.2024 passed by the learned Additional District Judge, Thakurgaon in Miscellaneous Appeal No. 02 of 2019, affirming those dated 30.10.2008 passed by the learned Assistant Judge, Pirganj, Thakurgaon in Miscellaneous Case No. 46 of 2008, are hereby affirmed.

There shall be no order as to costs.

Let the lower court records be sent down at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.