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

Present:
Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 2590 OF 2011
In the matter of:
An application under Section 115(1) of the Code of Civil Procedure.
And
Md. Mazibar Rahman
... Petitioner
-Versus-
Md. Abdul Hamid and others
... Opposite parties
None appears
... For both the parties.

Heard and Judgment on 20.06.2023

On an application under Section 115(1) of the Code of Civil Procedure at the instance of the pre-emptor as petitioner is directed against the judgment and order dated 05.04.2011 passed by the learned Joint District Judge, 1st Court, Dinajpur in Miscellaneous Appeal No.12 of 2009 allowing above appeal and reversing the judgment and order dated 06.01.2009 passed by the learned Assistant Judge, Chirirbandar, Dinajpur in Miscellaneous Case No.39 of 2 004 under Section 96 of the State Acquisition and Tenancy Act dismissing the same.

Facts in short are that the petitioner filed above case for pre-emption of disputed $8\frac{1}{2}$ decimal land under Section 96 of the State Acquisition and Tenancy Act alleging that he is a co-sharer by inheritance in the disputed joma and opposite party No.1 is a stranger to the same. His brother opposite party No.2 transferred above land to the opposite party No.1 by registered kabala deed No.2525 dated

15.03.2004. After obtaining a certified copy of above impugned kabala deed on 31.03.2004 the petitioner has filed this case for pre-emption.

Opposite party Nos.1 and 2 contested the case by filing a joint written objection alleging that opposite party No.2 offered the petitioner to purchase the disputed land for a consideration of Tk.16,000/-. But the petitioner refused to buy the same. The petitioner was fully aware and gave consent to above transfer of the case land to opposite party No.1. Opposite party No.1 has constructed 6 huts and excavated one tubewell and spent Tk.20,000/- for above development.

At trial the petitioner himself gave evidence as sole PW and documents produced and proved by the petitioner were marked as Exhibit-1 and 2. On the other hand opposite Nos.1 and 2 examined 2 witnesses but did not produce and prove any documentary evidence.

On consideration of facts and circumstances of the case and materials on record the learned Assistant Judge dismissed the case holding that the case for barred by limitation.

Being aggrieved by above judgment and order of the learned Assistant Judge the petitioner preferred Miscellaneous Appeal No.12 of 2009 to the District Judge, Dinajpur which was heard by the learned Joint District Judge, 1st Court, Dinajpur who allowed the appeal and set aside the judgment and order of the trial Court and allowed above Miscellaneous Case for pre-emption.

Being aggrieved by above judgment and order the opposite party as petitioner moved to this Court and obtained the Rule.

No one appears on behalf of the petitioner or opposite parties when the Civil Revision was taken up for hearing although the Revision appeared in the list for hearing today.

It is admitted that the petitioner is a co-sharer of disputed joma by inheritance and opposite party No.1 is a stranger to the same. Admittedly this case for pre-emption under Section 96 of the State Acquisition and Tenancy Act stated was filed on 20.09.2004.

It turns out from the plaint that the petitioner has stated at paragraph-3 of the plaint that he obtained a certified copy of the impugned kabala deed No.2525 dated 15.03.2004 on 31.03.2004 and came to know about the impugned kabala deed.

On consideration of the above materials on record the learned Assistant Judge held that the case is barred by limitation since the same was not filed within the statutory period for 4(four) months from the date of registration of the impugned kabala deed or knowledge of the petitioner as to the same.

But it turns out from the evidence of petitioner Md. Abdul Hamid that on 04.02.2008 he gave further evidence in Court and stated that impugned registered kabala No.2525 dated 15.03.2004 was incorporated in the volume book on 09.07.2004. Above witness also produced a certified copy of the impugned kabala deed which was marked as Exhibit-2. On examination of Exhibit-2 it is found that above claim of PW1 is true and the impugned kabala deed was registered under Section 60 of the Registration Act on 09.07.2006. As such the learned Judge of the Court of appeal below rightly held that the case was not barred by limitation.

It has been stated in the plaint that before sale of the case land to the opposite party No.1 the brother of the petitioner, opposite party No.2 approached his brother the petitioner to purchase above land but he refused to do so. But above claim remains unspecified and vague since no mention has been made about the date, time or place when above approach or offer was made by opposite party No.2 to the petitioner. No evidence oral or documentary was adduced at trial by the opposite party to substantiate above claim.

On the contrary PW2. Md. Akbar Ali stated that opposite party No.2 offered him to purchase the case land but he refused due to paucity of money. As such, the claim of the opposite party that the case

is barred by the principle of stoppel and acquiescence stands not proved.

The opposite party has claimed to have developed the case land by spending Tk.20,000. But on analysis of the materials on record the leaned Judges of both the Courts below concurrently held that the opposite party No.1 made above improvements after receipt of the notice of this case.

In above view of the above facts and circumstances of the case and materials on record I am unable to find any substance in this Civil Revision and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

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

However, there is not order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER