

District-Jessore.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)****Present:****Mr. Justice Md. Toufiq Inam****Civil Revision No. 4418 of 2006.**

Most. Hoshneara Begum.

---- Pre-emptor-Appellant-Petitioner.

-Versus-

Md. Jahangir Alam and others.

---- Pre-emptee-Respondent-Opposite Parties.

Mr. Hasan Shaheed Quamruzzaman, Advocate

---- For the Pre-emptor-Appellant-Petitioner.

Mr. Kazi Md. Shafiqul Hasan, Advocate

----For the Pre-emptee-Respondent-Opposite Parties.

Heard On: 26.10.2025.And**Judgment Delivered On: 03.11.2025.****Md. Toufiq Inam, J.**

This revision arises from the impugned judgment and order dated 25.06.2006, passed by the learned Additional District Judge, 2nd Court, Jessore, in Miscellaneous Appeal No. 40 of 2003, (analogously heard with Miscellaneous Appeal No. 39 of 2003), wherein the learned appellate court affirmed the dismissal of the petitioner's pre-emption application in Miscellaneous Case No. 86 of 1997 and simultaneously allowed the pre-emption application filed by the opposite parties in Miscellaneous Case No. 98 of 1998.

The petitioner has filed this revision on the ground that the courts below committed errors of law and fact, failed to appreciate her status as a bona

fide co-sharer, misapplied the law on pre-emption, and overlooked the evidence on record, resulting in a manifest failure of justice.

The factual background reveals that the disputed land is situated in Mouza Kallyandah, under Police Station Kotwali, District Jessore, recorded in S.A. Khatian No. 110 in the name of vendor–opposite party No. 6 along with others. The petitioner purchased 0.05 decimals of land from plot No. 148 under Kabala Deed No. 6207 dated 25.06.1997, thereby becoming a bona fide co-sharer. Subsequent to this purchase, opposite party No. 6 transferred 0.06 decimals of land to opposite party No. 1 on 06.10.1997, without the knowledge or consent of the petitioner, thereby triggering her right of pre-emption. The petitioner contended that as a co-sharer, she had a preferential right to purchase the disputed land and that the subsequent transfer to the opposite parties was subject to her pre-emption right.

Learned counsel for the petitioner argued that she had lawfully become a co-sharer through her purchase and that her right of pre-emption was protected under law. It was contended that the courts below failed to appreciate the petitioner’s long possession and residence on the disputed land, the fact that the transfer to opposite party No. 1 was made without her knowledge, and that no waiver or acquiescence could be imputed to her in these circumstances. It was further submitted that the appellate court erred in affirming the Trial Court judgment without properly

evaluating the evidence and that such errors resulted in a failure of justice.

The opposite parties contested the case on various grounds. Learned counsel for the opposite parties submitted that the petitioner had no right, title, or interest to maintain the case; that the suit was barred by limitation; that doctrines of estoppel, waiver, and acquiescence operated against her; and that the petitioner's claim was untenable in view of prior transfers and gift deeds affecting the same khatian. They emphasized that the land recorded in S.A. Khatian No. 110 was originally held by Barek Ali, Akbar Ali, and Momtaj Mia, and that portions had already been transferred or gifted to various parties, including opposite parties Nos. 1–3 and 7, before the petitioner's purchase. It was further contended that Miscellaneous Case No. 98 of 1998, filed by opposite parties, was subsisting, and as such, the present Miscellaneous Case No. 86 of 1997 was not maintainable.

The learned Trial Court had framed issues regarding maintainability, limitation, defect of parties, waiver or acquiescence, and entitlement to pre-emption. The petitioner examined two witnesses in support of her claim, while the opposite parties examined one witness in defence. Despite clear evidence that the petitioner had purchased a share of the disputed land and had been residing thereon, the Trial Court dismissed her application, holding that she had no preferential right. On appeal, the

Appellate Court analogously heard the case with Miscellaneous Appeal No. 39 of 2003, filed by the opposite parties in Miscellaneous Case No. 98 of 1998, and affirmed the dismissal without adequately considering the petitioner's status as a co-sharer or her right of pre-emption.

Upon careful examination of the impugned judgment and materials on record, it appears that the findings of the courts below are supported by cogent reasoning, and no jurisdictional error or perversity is apparent.

First, both the Trial Court and the Appellate Court found that the petitioner failed to establish herself as a *subsisting co-sharer* in the holding at the time of the impugned transfer dated 06.10.1997. Although she purchased 0.05 decimals from plot No. 148, the evidence revealed that the land comprised in S.A. Khatian No. 110 had undergone several prior transfers and gift deeds long before her purchase, including conveyances to opposite parties Nos. 1–3 and 7. The courts concurrently held that by the time the petitioner purchased her portion, the khatian had already been fragmented among many transferees, thereby diminishing or extinguishing the character of joint ownership. Consequently, her claim of preferential right as a co-sharer was not sustained on evidence.

Second, the courts below concurrently found that the petitioner's pre-emption claim was barred by limitation. The evidence showed that she had knowledge of the impugned transfer well before filing the case, and her assertion of lack of knowledge was not accepted. The Trial Court and the Appellate Court both concluded that her application under Section 96 of the SAT Act was time-barred, and that the statutory limitation operated as a complete bar, irrespective of her claimed possession or residence.

Third, both courts below held that the doctrines of *waiver*, *estoppel*, and *acquiescence* applied against the petitioner. It was established through defence evidence that she not only had notice of the previous transfers affecting the holding but also acquiesced in those transfers without asserting any claim. The courts found that she waited until the opposite parties filed Miscellaneous Case No. 98 of 1998, and only thereafter sought to pre-empt the transfer in favour of opposite party No. 1. This conduct was considered inconsistent with the exercise of a bona fide and diligent pre-emption right.

Fourth, the courts below correctly accounted for the pendency of Miscellaneous Case No. 98 of 1998. The opposite parties had filed their pre-emption petition earlier and had shown themselves to be prior co-sharers with valid claims. The courts concurrently held that the opposite parties' petition was maintainable, earlier in time, and supported by

stronger documentary and oral evidence. Accordingly, the Trial Court allowed their application, which was rightly affirmed in appeal.

Fifth, the appellate court, upon reappraisal of evidence, held that the petitioner's claim of long possession and residence did not override the statutory prerequisites for pre-emption. Mere possession does not create a preferential right unless accompanied by a valid co-sharership at the time of sale. The courts found that she failed to prove that the impugned transfer was made behind her back or that any fraud was committed on her knowledge. Her plea that the transfer was made without her consent was held not legally material once she was found not to be a subsisting co-sharer.

Taken together, these findings demonstrate that the courts below applied the correct legal principles, properly evaluated the evidence, and reached a concurrent conclusion that the petitioner was not entitled to pre-emption, whereas the opposite parties had successfully proved their own statutory right. No error of law, misreading of evidence, or failure of justice is apparent so as to call for interference in revision.

In the instant case, no such illegality or irregularity has been demonstrated. The findings are not perverse, nor based on any

misapplication of law. Therefore, this Court finds no ground to interfere with the concurrent judgments and orders passed by the Courts below.

Accordingly, **the Rule is discharged.**

The impugned judgments and orders passed by the Courts below are hereby affirmed. The order of stay granted at the time of issuance of the Rule stands vacated.

Let the Lower Court Records be sent down at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.