

Misc Pre-emption 07/2007

Bangladesh Form No. 3701

HIGH COURT FORM NO.J (2)
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE
DISTRICT- CHATTOGRAM

IN THE COURT OF SENIOR ASSISTANT JUDGE, 2ND COURT,
PATIYA, CHATTOGRAM

Present : **Mr. Md. Hasan Zaman,**
Senior Assistant Judge,
Patiya, Chattogram.

Date of Delivery of Judgment : 30th day of June, 2022

Miscellaneous Case No. 07 of 2007

Kulsuma KhatunPetitioner

-Versus-

Nur Mohammad & others**Opposite parties**

This case came up for final hearing on **22.04.2018, 18.02.2021, 13.09.2021,**
06.02.2022, 09.02.2022; 14.03.2022; 04.04.2022 and 02.06.2022.

In presence of

Mr. Muhammad Shajahan **Advocate for Petitioner.**

Mr. Ajit Kumar Dey **Advocate for Opposite parties.**

And having stood for consideration to this day, the court delivered the
following judgment:-

This is an application Under Section 96 of State Acquisition and Tenancy Act, 1950.

The petitioner on 10.09.2007 filed the present application **Under Section 96 of State Acquisition and Tenancy Act, 1950** seeking pre-emption of the land as prescribed in the schedule of the application which was transferred by way of registered **sale deed being**

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No. 5496 dated 06.07.2005 in favor of Opposite party no.1 by the opposite party no. 2 and 3.

The petitioner has filed this case by depositing the actual transaction amount of **TK. 27,000/-** along with statutory compensation amount of **TK. 6750/-** and also 8% simple annual interest for 03 years of **TK 6480/ i.e Tk 40,230/-** in total **vide Challan No. 125 dated 10.09.2007.**

Case of the Petitioner

The factual matrix of the case of the petitioner is that land sought to be pre-empted along with other lands belonged to Anarjan Bibi and Sohorjan Bibi and their name was recorded in RS Khatain no.2129 wherein each was owner of 1/4 (8 Ana) shares. Anarjan Bibi died leaving behind 04 daughters namely Mymuna Khatun, Rabeya Khatn, Nobibjan and Sair Khatun as her legal heirs. Another R.S recorded owner Sohorjan Bibi died leaving a daughter Applejan as her heir. Thus the heirs of Anarjan and Sohorjan owned and possessed 12 decimals of lands in R.S Dag no.682. Sair khatun daughter of Anarjan transferred 4 decimals lands of Dag no. 682 by way of registered deed in favour of Mohhamad Hanif and his two sons Sahabuddin and Nozumuddin. The heirs of Anarjan and Sohorjan's daughter Applejan transferred rest of the lands of Dag no 682 by way of different deeds on 10.02.1961 in favour of Sayed Ahemd Jalil Ahmed and Ekhlal Mia. Later on by pre-emption Misc case no17 of 1961, Mohammad Hanif and his two sons got rest of the lands of Dag no 682. Thus they became owner of entire 12 decimals land of Dag no 682.

It is further case of the petitioner that Mohammad Hanif died leaving his two sons Sahabuddin and Nozumuddin as his legal heirs. On 27.11.1967, Nozumuddin transferred his share to his brother Sahabuddin who thus became owner of entire 12 decimals lands. On 15.06.1970 Sahabuddin transferred 4 decimals land by different deeds in favour of Sayed Ahemd Jalil Ahmed and Ekhlal Mia and on 01.07.1970 he transferred rest of 8 decimals to Jalil Ahmed. Ekhlal Mia died leaving behind a son Yunus Mia and a wife Pakiza Khatun. Later on, Sayed Ahmed and Ekhlal transferred their share on 07.10.1996

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to Abul Kashem who again transferred the same to Jaibab Khatun. Jalil Ahmed transferred his entire share of disputed dag along with other lands by way of deed of gift vide no.986 dated 16.02.1997 to his daughter Kulsuma Khatun. In that heba deed Dag no 682 was mistakenly written as Dag no 628 which is totally foreign to R.S 2129 Khatian.

It is further case of the petitioner that the opposite party no. 2 and 3 without serving any notice upon the petitioner most secretly transferred $2\frac{2}{3}$ decimals in the disputed plot vide deed no. 5496 dated 06.07.2005 in favor of opposite party no.1. It is further claimed that the petitioner is a co-sharer to the disputed holding whereas the opposite party no.1 is a stranger. The petitioner feels great necessity of the land transferred. The petitioner finally came to know as to the said transfer on 05.08.2007 collecting certified copy of alleged deed from the sub-registry office. As the opposite party no.1, the transferee is a stranger purchaser in the holding of which he is a co-sharer by inheritance as such as per provision of section 96 of the SAT Act 1950 he is entitled to pre-empt the transfer made by the Kabala dated 06.07.2005.

Opposite parties Case :

The prayer for pre-emption was opposed by the opposite party no.1 by filing written objection contending, *inter alia*, that the case is not maintainable in its present form and manner; there is no cause of action; the case is barred by law as well as by limitation; the petitioner is a co-sharer by inheritance in the disputed holding and he is not a stranger; for this, the petition is hit by the concerned provision of law. Besides this the suit land is homestead for which it is liable to be rejected.

By denying all averments of the application, the positive case of the opposite party no.1 is that suit lands belonged to Anarjan Bibi and Sohorjan Bibi whose name was recorded and published in RS Khatian no.2129. Each was owner of 11. (8 ana) shares. Anarjan Bibi died leaving 04 daughters namely Mimuna, Rabeya , Nabinjan and Sair Khatun . On the

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other hand, Sohorjan Bibi died leaving a daughter namely Applejan. Later on, the heirs of Anarjan and Sohorjan transferred the lands of disputed Dag along with other lands on 10.02.1961 in favour of Sayed Ahemd, Jalil Ahmed and Ekhlas Mia. Later on, by pre-emption Misc case no17 of 1961, Mohammad Hanif and his two sons got the said transferred lands.

It is further case of opposite party that Mohammad Hanif died leaving 02 sons Sahabuddin and Nozumuddin. On 27.11.21967, Nozumuddin transferred his share to his brother Sahabuddin who thus became owner of entire 12 decimals lands. On 15.06.1970, Sahabuddin transferred 04 decimals land by different deeds in favour of Sayed Ahemd Jalil Ahmed and Ekhlas Mia and on 01.07.1970 he transferred rest of 8 decimals to Jalil Ahmed.

The said Jalal Ahmed leaving a wife Laila Begum, a daughter Kulsuma Khatun and other heirs. Sayed Ahmed transferred his share on 07.10.1996 in favour of Abul Kashem and Yunus Mia and Pakiza Khaun also transferred their shares vide registered deed 4241 deed 10-08-1997 to Jaibab Bibi. The said Abul Kashem and Jaibab Bibi transferred their shares vide registered deed no. 5496 dated 06.07.2005 in favor of Opposite party no.1 who is full brother of petitioner's husband. The opposite party no.1 is a co-sharer to the disputed holding and have been in possession since purchase. They with ulterior motive have created the said deed of gift on 16.02.1997. He has mutated his name vide B.S Mutation Khatian no. 2118. Thus the petitioner is not legally entitled to pre-empt the suit land and for this, it shall liable to be dismissed.

Issues:

From the rival pleadings of both the parties and considering the submissions of learned advocate of both the parties at the time of arguments, the following issues has been framed for proper adjudication of the case :

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- 1) Whether the case is maintainable in its present form and law ?
- 2) Whether the petitioner has cause of action to file this petition?
- 3) Whether the case is barred by provision of limitation?
- 4) Whether the petitioner is a co-sharer tenant to the disputed holding by inheritance?
- 5) Whether the petitioner may get the relief as prayed for?

Discussions and Decisions:

The pre-emptor **Kulsuma Khatun** examined herself as **Pt.W.1** and **Monsof Ali** as **P.W.2** before this court. **During examination of Pt.W.1** the following documents were produced and proved, which have been marked as Exhibits:-

1.	C. C of R.S Khatian no. 2129 and B.S Khatian No. 318	Exhibit 1 (series)
2.	C. C of Judgment and decree of Misc Pre-emption Case No 17/1961	Exhibit 2 (series)
3.	C. C of Deed no. 8199 and 8200 dated 27.11. 1967	Exhibit 3 (series)
4.	C. C of Deed no. 4679,4680, 4682, 4683,4683, 4684 and 4685 dated 15.06.1970	Exhibit 4 (series)
5.	C. C of Deed no.4458 dated 01.07.1970	Exhibit 4
6.	C. C of Deed no. 986 dated 16.02.1957	Exhibit 5
7.	C. C of Deed no. 858, 862, 860, 861 dated 10.02.1961	Exhibit 6
8.	C. C of Deed no. 5496 dated 06.07.2005	Exhibit 7

On the other hand the opposite parties examined **01** witnesses namely **Nur Mohammad (Op.W1)** before the court. **During examination of Op.W.1** the following documents were produced and proved, which have been marked as exhibits:-

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1. R.S Khatian no. 2129and B.S 2118 and Rent receipts	Exhibit Ka (series)
2. Certified copy of Deed no. 4082 dated 07.10.1996	Exhibit Kha
3. Certified copy of Deed no. 5496 dated 06.07.2005	Exhibit Ga
4. Certified copy of Deed no. 4241 dated 10.08.1997	Exhibit Gha
5. Heirs Certificate 03 Nos.	Exhibit Uma series

Decision with Reasons

Kulsuma Khatun (Pt.W.1) for the petitioner and **Nur Mohammad (OP.W 1)** for the opposite parties has given statements admitting the facts of the application and written objections respectively.

Issue no. 1 and 2

- 1. Whether the case is maintainable in its present form and law?**
- 2. Whether the petitioner has cause of action or *locus standi* to file this petition?**

These issues are taken up together for convenience. Ld. Advocates for both the parties did not articulate these points at the time of argument. Nevertheless, this Court finds it necessary to discuss these points for reaching to the just decision of this case.

This is an application for pre-emption under Section 96 of the **State Acquisition and Tenancy Act, 1950** where the petitioner claims the right of pre-emption of the land transferred being a co-sharer by inheritance to the disputed holding of which this Court has jurisdiction of adjudication. The petitioner by way of **Challan** has deposited the actual consideration amount together with compensation following the provision of law. This case is purely civil in nature and there is no bar to try this suit by this court.

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Therefore, considering all these this Court finds that this application is maintainable in form and in law.

The pre-emption petition reveals sufficient cause of action for the petitioner for bringing the instant case considering the allegation that the petitioner is a co-sharer tenant to the disputed holdings by way of inheritance. The opposite party no.2 and 3 very secretly and without any notice transferred the case property by a **registered deed vide no. 5496 dated 06.07.2005** in favour of opposite party no.1 who is totally a stranger to the disputed holding. This fact of secret transfer came to the knowledge of the petitioner on 05.08.2007 when he collected certified copy of the impugned deed. The opposite party no 1 refused to execute the said Kabala in favor of the petitioner. Thus the alleged transfer compelled the petitioner to bring this application for pre-emption. It is contended that the cause of action for this case arose when the opposite party No.1 purchased the case property vide a registered sale deed from the vendor. In this instant case, the factum of transfer has not been denied by the opposite parties. The opposite parties have not brought on record any evidence wherefrom it can be decided that the cause of action arose from another date than what the petitioner claims. Thus it appears to this court that the petitioner had enough cause of action to institute this present case.

In the light of above discussion these two points are decided in favour of the petitioner.

Issue No.3 :

“ Whether the case is barred by provision of limitation?”

The point of limitation is raised by the opposite party in the written objection and as the period of limitation is of much importance in case of maintainability of the pre-emption application, this Court is inclined to decide this point.

Section 96 of the Act (Amendment 2006) the limitation period for filing an application for pre-emption by a co-sharer tenant in the holding by inheritance is two months from the date of knowledge of such transfer and in case notice is served upon the co-sharer

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tenant under section 89, the limitation period is also two months from the date of service of such notice.

Now to determine the date from when the limitation starts to run in case of pre-emption, this Court is inclined to rely upon the decision of a case reported in [43 DLR 506, 10 BLC, 250], wherein Hon'ble Court uniformly held that “ *the limitation for making the application for pre-emption u/s 96 does not start from the date of execution of the document transferring the land but from the date of registration of the deed because the date of registration is the date of accrual of the right of pre-emption.*” It is also held that the date of registration means the date when the registration of the deed of transfer is completed under Section 60 of the Registration Act.

It is the specific plea of the petitioner that he has not been served with the notice of the impugned sale. The opposite parties have not brought any evidence to establish that notice was served upon the petitioner. In this circumstance, this Court presumes that no notice was served upon the petitioner. In view of above discussion, the period of limitation for filing application for pre-emption by will run from the date of completion of registration of the impugned sale deed.

In this instant case, on perusal of **the Exhibit- Ga**, it appears that the date of completion of registration is on **03.08.2008**. On perusal of the record it appears that the petitioner has filed this application on **10.09.2007**. Accordingly, this case is found to be pre mature. In this context, this court is very much inclined to rely on the decision of the case reported in **[44 DLR (AD) 65]** wherein it has been held that if pre-emption application is filed before registration of the sale deed, it is not to be dismissed on the ground of pre-maturity if the same is registered during pendency of the pre-emption proceeding. In another case reported in **[45 DLR 126]** it has been held that **pre-maturity is cured when registration is effected during pendency of the case.**

In view of above discussion , this court is of considered view that there is no bar to the maintainability of application during period of presentation of such deed and subsequent

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completion of its registration. It can be said that no final or interlocutory relief can be meted out to a pre-emptor till completion of registration of the deed. As a result this instant case is not affected at all due to its premature filing rather in view of this it can be safely presumed there is no question of its being barred by law of limitation. In the light of above discussion this point is decided in favour of the petitioner.

Issue No 4 and 5 :

“ Whether the petitioner is a co-sharer tenant in the disputed holding by inheritance? ”

“ Whether the petitioner may get the relief as prayed for? ”

It is admitted by both parties that suit lands belonged to Anarjan Bibi and Sohorjan Bibi whose name was recorded in RS Khatain no.2129. Each was owner of 11. (8 ana) shares in that khatian. Anarjan Bibi died leaving 04 daughters namely Mimuna, Rabeya , Nabinjan and Sair Khatun .On the other hand, Sohorjan Bibi died leaving a daughter namely Applejan.

In view of **Exhibit 7 and 7(ka)-7(Ga)**, it appears that the heirs of Anarjan and Sohorjan transferred the lands of disputed plot along with other lands on 10.02.1961 in favour of Sayed Ahemd, Jalil Ahmed and Ekhlash Mia. **Exhibit 2 and 2(ka)** reveals that Mohammad Hanif and his two sons Sahabuddin and Nazumuddin became the owner of the entire 12 decimals by dint of pre-emption Misc case no 17 of 1961 against Sayed Ahmed and others.

In view of Exhibit 3, 3(Ka), it is found that Nozumuddin transferred his share of 6 decimals to his brother Sahabuddin and thus he became owner of entire 12 decimals lands. It also appears from **Exhibits 4, 4(Ka)-4(Uma)** that on 15.06.1970 Sahabuddin transferred of total 04 decimals land in favour of Sayed Ahemd, Jalil Ahmed and Ekhlash

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Mia and Exhibit -5 reveals that on 01.07.1970 Sahabuddin transferred rest of the 8 decimals to Jalil Ahmed.

Exhibit-Kha reveals that Sayed Ahmed and Ekhlas transferred their share on 07.10.1996 to Abul Kashem who again transferred the same to Jaibab Khatun. **Exhibit-6** reveals that Jalil Ahmed transferred his entire share of disputed dag along with other lands of total $41\frac{1}{2}$ decimals by way of deed of gift vide no.986 dated 16.02.1997 to his daughter Kulsuma Khatun, the petitioner in this case.

There is no dispute to the facts that petitioner's father Abdul Jalil was the recorded tenant of B.S khatian no. 318. **Exhibit- 1(Ka) proves the facts to be true.** It is admitted by Pt.W.1 that Abdul Jalil has transferred his entire share of the disputed holding in favor of the petitioner of this case by way of gift. The petition clearly reveals that “ অপর খরিদদার জলিল আহম্মদ অন্যান্য ভূমিসহ নালিশী দাগের আন্দরে তাহার সমুদয় স্বত্বাংশ গত ১৬/০২/১৯৯৭ ইং তারিখে ৯৮৬ নং রেজিস্ট্রিকৃত দানপত্র মূলে একমাত্র কন্যা কুলসুমা খাতুন বরাবরে দান করিয়া দানকৃত ভূমি দখল প্রদান পূর্বক নালিশী আর এস ৬৮২ দাগের ভূমি হতে স্বত্বদখল চ্যুত হন (প্যারা-৮)।” Thus it appears that after transferring the entire share of disputed holding in favor of his daughter Kulsuma Khatun, all right title and interest of Abdul Jalil has been extinguished. He had left no more lands in the disputed holding to inherit by the petitioner. For this the petitioner has no scope here to be a co-sharer tenant by inheritance to the disputed holding.

Thus it is my considered view that the petitioner is not a co-sharer tenant by inheritance to the disputed holding.

Again in view of the impugned Kabala (**Exhibit- 8**), it appears that the class of the transferred land has been shown as homestead and low land. Section 96 of sub-section 16 of the Act clearly reveals that right of pre-emption u/s 96 cannot be applied in case of home stead land. Since the lands of disputed Kabala is homestead, the petitioner has no right to pre-empt the said land as it is barred by Section 96 of sub-section 16 of the Act.

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The oral evidences in this case are of not much effect in this scenario. In the light of above observation, in this instant case, this Court finds that the petitioner is not a co-sharer tenant by inheritance to the disputed holding. The petitioner also is barred by Section 96 of sub-section 16 of the SAT Act. Now this Court has no hesitation to hold that the petitioner has totally failed to fulfill the criteria to claim pre-emption in respect of the schedule property on the ground of co-sharer tenant by inheritance.

In the light of the above discussion and also considering the decisions of the foregoing points this Court finds that there is absolute bar to allow the instant application for pre-emption filed by the petitioner on the ground of co-sharer tenant by inheritance and the homestead nature of suit land. Accordingly, these points have been decided against the petitioner.

In result the case fails.

Court fee paid is correct

Hence,

It is Ordered

that the pre-emption case be disallowed on contest against the opposite party no.1 and ex-parte against the rest without any order as to cost. The petitioner is allowed to withdraw the money deposited in this behalf.

The case is thus disposed of.

DA to make note in the concerned register.

Typed & Corrected by me

Md. Hasan Zaman
Senior Assistant Judge,
Senior Assistant Judge, 2nd Court,
Patiya , Chattogram.

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Patiya , Chattogram.