

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

**Order No-13**  
**Date-02.05.24**

Today is fixed for necessary order on the application of Order VII, Rule -11 of CPC for rejection of petition.

The petitioner and the opposite parties are present by filing hazira.

The record is taken for order. Heard learned advocate for both parties.

Ld. Advocate for the Opposite party No. 1 moves before the court the petition under Order VII, Rule -11 of CPC for rejection of the petition on the ground that the case is barred by law. It is alleged by the petitioner that the pre-emptor opposite party is a co-sharer by purchase to the disputed holding. She being not a co-sharer by inheritance to the disputed holding has no *locus Standi* to bring the present suit thus it is absolutely barred by **section 96(1) (a) of State Acquisition and Tenancy Act, 1950.**

Ld Advocate for the Pre-emptor opposite party vehemently opposed the petition by filing written objection. It is claimed by the Pre-emptor O.P that in case of pre-emption Misc. case, Order VII Rule-11 of CPC is not applicable since the petition for pre-emption cannot be treated as a plaint. It is further claimed by the Pre-emptor O.P that the question whether the petitioner is a co-sharer tenant by inheritance is a matter which is to be decided after taking evidence in full trial. At this stage there is no scope here to come in conclusion about the matter. Lastly Learned Advocate submits to the court that the petitioner herself being recorded tenant of Last Record of Rights (ROR) is very much competent to bring the instant case since the recorded owner of the ROR falls within the category as stipulated in Section 96(1)(a) of SAT Act. Thus learned advocate prayed for rejection of petition brought under Order-VII Rule-11.

I have applied my anxious consideration in the submission of learned advocate of both parties, meticulously perused the pre-emption application and the petition brought under O-7 R.11, W.O against the petition and the relevant laws.

On perusal of the petition, it appears that the opposite party as petitioner filed the present application **U/S 96 of State Acquisition and Tenancy Act, 1950** seeking pre-emption of the case land which was transferred by the opposite party No. 2 by way of registered **sale deed being No. 10973 dated 27.09.2023** in favor of **Super Petrochemical Ltd** Opposite party no.1. It is claimed by the pre-emptor Opposite Par`ty that **the petitioner along with others by Kabala no. 1062 dated 27.02.1960 purchased suit lands and her name has been duly recorded in B.S Khatian No. 408.** Thus the petitioner is a co-sharer tenant by purchase to the disputed holding whereas the O.P No.1 is a stranger purchaser. The petitioner feels great necessity of the land transferred. For this the petitioner being co-sharer to the disputed holding is entitled to pre-empt the case land as per provision of section 96 of the SAT Act 1950.

**Thus in view of the pre-emption petition it is crystal clear that the pre-emptor is a co-sharer tenant by purchase to the disputed holding and her name has been duly recorded in the last record of rights.**

The moot questions which are to be decided now are whether the present petition can be rejected applying Order-7 Rule-11 of CPC and whether the petitioner being recorded tenant of LROR is entitled to bring this present case.

**On plain reading of the Section 96(1) of the State Acquisition and Tenancy Act**, it appears that as per provision of this section only a co-sharer tenant in the holding by inheritance has been allowed to bring application of pre-emption. The co-sharer tenant by purchase or recorded tenant or contiguous land holder has no capacity here to bring such application. If we go through the previous section -96 before amendment in 2006, the tenant or tenants holding land contiguous to the land transferred could bring such application of pre-emption. But after amendment only one category such as the co-sharer tenant by inheritance has been permitted to bring the application.

Thus considering the present provision of section 96 there is no doubt that the petitioner seeking pre-emption must be a co-sharer tenant by inheritance to the disputed holding. In the present case, it appears from the petition of pre-emption that the petitioner along with others by Kabala no. 1062 dated 27.02.1960 purchased suit lands and her name has been duly recorded in B.S Khatian No. 408. Thus the petitioner appears to me as a co-sharer tenant by purchase to the disputed holding who has no right at all to bring the application of pre-emption as per provision of Section 96 of SAT Act 1950. Thus it is my considered view that this case is absolutely barred by law and the petitioner has no *locus tandi* to bring the present case.

Secondly, the pre-emptor opposite party claimed that since petition of Pre-emption Misc case is not plaint so Order-VII Rule 11 would not be applicable here and as such the petition cannot be rejected. I do agree in regard to the facts that petition of pre-emption is not a plaint and Order VII Rule 11 cannot be applicable here. But since it appears from the pre-emption petition that the

pre-emptor petitioner is a co-sharer tenant by purchase, she has no right to pre-empt the case land. The petitioner has no provability/ chance here to win the case in future. This case appears to me as a fruitless litigation. the continuation of which would incur monetary loss of both parties and waste of valuable time of the Court. Thus it is a fit case to burry it right now applying section 151 of CPC. This view finds support from a decision reported in [53 DLR (AD) page 12] whereof it has been held that “ **It is now a settled principle of law that if the continuation of the suit is found to be an abuse of process of the court, if the suit is foredoomed or if the ultimate result of the suit is as clear as daylight, the suit should be buried at its inception by rejecting the plaint by invoking the inherent powers of the court.**”

Considering the above discussion and decision it is my considered view that this pre-emption Misc Case is not maintainable at all since it is absolutely barred by law. Thus the petition is liable to be rejected invoking the section 151 of C.P.C.

Court Fee paid is correct.

Hence, it is Ordered

that this pre-emption petition is hereby rejected on the ground of barred by law invoking section 151 of CPC.

The Pre-emptor-petitioner would be entitled to withdraw the money deposited by way of Chalan.

**Dictated & Corrected by me.**

Senior Asst. Judge, 2<sup>nd</sup> Court.

Patiya, Chattogram.

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