

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

Present:

**Mr. Justice Md. Riaz Uddin Khan**

**Civil Revision No. 595 of 1995**

**IN THE MATTER OF :**

An application under section 115(1) of the Code of Civil Procedure

**-And-**

**In the Matter of:**

Sayed Ali and others

... Defendant-Petitioners

**-Versus-**

Abdul Matin @ Matin Mia being dead his heirs:

1(a) Md. Abdur Rashid and others

...Plaintiff-Opposite Parties

Ms. Sayeda Shoukat Ara, Advocate with

Mr. H.M. Borhan, Advocate

... For the petitioners

Mr. Md. Abdus Salam Bhuiyan, Advocate

...For the Opposite Party Nos. 1, 2 and 9

Mr. Tushar Kanti Roy, Advocate

...For the Opposite Parties 8(ka)-8(cha), 19, 32 & 52

**Judgment on: 20.05.2026**

**Md. Riaz Uddin Khan, J:**

Rule was issued calling upon the plaintiff-opposite party No.1 to show cause as to why the judgment and decree dated 17.09.1994 passed by Additional District Judge, 1<sup>st</sup> Court, Cumilla in Title Appeal No. 173 of 1993 should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and proper.

At the time of issuance of Rule all further proceedings of Title Suit No. 287 of 1980 of the 1<sup>st</sup> Court of Subordinate Judge, Cumilla was stayed.

Succinct facts for disposal of this Rule are that the Opposite Party No.1 as Plaintiff instituted Title Suit

No. 287 of 1980 in the 1<sup>st</sup> Court of Subordinate Judge, Cumilla for Partition of the Suit Properties and for allotment of a separate Saham to him for his claimed share. The Plaint Case was that 1<sup>st</sup> and 2<sup>nd</sup> Scheduled Properties originally belonged to one Abdul Gazi. He sold 8 anna share of the 2<sup>nd</sup> Scheduled property to his granddaughter Khatija Bibi and C.S. Khatian was accordingly prepared in their names. Thereafter Abdul Gazi gifted the 1<sup>st</sup> Scheduled land to his only daughter Johora Bibi by registered deed of gift dated 24<sup>th</sup> Sraban 1329 B.S. He also gifted the rest 8 anna of 2<sup>nd</sup> Scheduled property along with other non-Suit land to his daughter Johora Bibi and grand-son-in-law Abbas Ali by deed of gift dated 6<sup>th</sup> Jaistha 1334 B.S. Thereafter Abbas Ali transferred his share to his mother-in-law Johora Bibi and his wife Atarjan by Kabala dated 12<sup>th</sup> Ashar 1334 B.S and became disinterested. Johora Bibi thus being the owner of the suit land died leaving only daughter Atarjan who got 8 anna of the 2<sup>nd</sup> Schedule Property by inheritance and purchase. Then she gifted 1.84 acres out of the 1<sup>st</sup> Schedule land and 1.34 acre out of 2<sup>nd</sup> Schedule land to her sons Plaintiff and defendant Nos.1-3 by *Bil Ewaz Heba* dated 22.5.1960 A.D. She also gifted 1.04 acre out of 2<sup>nd</sup> Schedule land in favour of Plaintiff and defendant Nos.1-3 by the deed of gift dated 12.4.1963. She further gifted .22½ acres out of 2<sup>nd</sup> Schedule land in favour of Defendant No.3. After the aforesaid transfers she retained 2.43 acres of 1<sup>st</sup> Schedule and 1.37½ acres in 2<sup>nd</sup> Schedule. Thereafter she died leaving 4 sons the Plaintiff and Defendant Nos. 1-3 and 2 daughters Defendant Nos.13 and Manik Jan (predecessor of defendant nos.4-12). So each son inherited .76 acres and each daughter  $38^{3/10}$  acres. Afterwards Manikjan, Abid Ali (Son of Defendant No.13) and Defendant No.7 sold .69 acres to Plaintiff and defendant Nos.1-3. That plaintiff and Defendant Nos.1-3 sold .93 acres to Abid Ali and his mother. Defendant Nos.4-12 are the heirs of Manikjan.

Defendant Nos.1 & 2 sold .21 acres to one Ali Ahmed against which the Plaintiff filed Miscellaneous Case No. 192/1966 for Preemption and the said Case was allowed on Compromise. That Plaintiff purchased .12 acres from Defendant No.1 out of the 1<sup>st</sup> Scheduled land. Defendant No.2 gifted some lands to his son Rafiqul Islam. Plaintiff purchased .02 acres from this Rafiqul Islam. Thus the Plaintiff claimed 2.41 acres by inheritance, gift and purchase. That Khatija Bibi, the owner of 8 anna share of 2<sup>nd</sup> Schedule land died leaving Defendant Nos.14 and 16 as her heirs. Defendant Nos.17-62 have been made Parties as purchasers from suit properties. The suit land is in ejmali amongst the parties and was never partitioned by metes and bounds and the parties to the suit have been quarreling over the ejmali possession. So, the Plaintiff demanded Partition lastly on 15<sup>th</sup> Kartik 1387 B.S but to no effect hence, instituted the suit for Partition of the Scheduled properties.

Defendant Nos.18, 46 and 47 contested the suit by filing a joint written statement. They admitted the ownership of Abdul Gazi in suit properties. They also admitted the transfer of 8 anna of 2<sup>nd</sup> Schedule in favour of Khatija and the gift of 1<sup>st</sup> Schedule in favur of Johora Bibi by Abdul Gazi and also admitted the gift of the rest 8 anna of 2<sup>nd</sup> Schedule in favour of Johora Bibi and grand son-in-law Abbas Ali. It was also admitted that Abbas Ali sold his share to his mother-in-law Johora and wife Atarjan, daughter of Johora.

The main contention of these contesting defendants was that landlord Kumar Satyadhan Ghosal and others brought Rent Suit No.132/1946 in the 3<sup>rd</sup> Court of Munsif, Cumilla against Khatija bibi and others for arrear Rents of 1<sup>st</sup> Schedule properties and got decree. They got the decree into execution in Execution Case No.156/1947 and the decree holder auction purchased the holding (Jote) on 13.5.1947 A.D. The said Sale was confirmed on 30.6.1947 and decree

holder took delivery of possession. Johara Bibi having died Atarjan was made party in that Suit. Likewise, the aforesaid landlords filed Rent Suit No. 1102/1942 against the 2<sup>nd</sup> Scheduled holding (Jote) in 6<sup>th</sup> Court of Munsif, Cumilla against Johora, Khatija and Kaluni bibi (a done through *heba*) and got decree. Thereafter the said landlord filed Rent Execution Case No. 135/1945 and auction purchased the 2<sup>nd</sup> Schedule Jote on 15.9.1945 and the same was confirmed on 9.11.1945 A.D and they took possession of the same. That some of the Judgment debtors took settlement of part of the suit land from the landlord and rest of the Suit Jote were taken Settlement by recorded tenants or their heirs. That Defendant No. 18 Sayed Ali, Ali Akbar and Sultan Ahmed took Settlement of .60 acres out of Plot No. 871/877 of the 2<sup>nd</sup> Schedule by the Registered Kabuliyat dated 29.5.1946 at a Jama of Taka 1:12/- from the said landlord Ghosal and got possession. Accordingly S.A Khatian No.86 has been finally published. They paid rent to the ex-landlord and thereafter to the Government and were granted rent receipts. That defendant No. 18 got .20 acre in his share by the aforesaid Settlement. He also purchased .12 acres out of Plot No.871 from Abdul Gafur by Kabala dated 22.2.1968 A.D. Abdul Gafur purchased that land from Sultan Ahmed, one of the Settlement holders. That defendant No.18 also took settlement of .89 acres out of 1<sup>st</sup> schedule from the said landlord by registered Kabuliyat dated 01.11.1950 A.D and got possession and paid rent to the ex-landlord. S.A Khatian No.91 was correctly published in his name and he paid rent to the landlord and the government. That Khatija by registered *Heba* deed dated 16.11.1950 gifted some land out of the suit Jote to her son Abdul Gafur and admitting that she has acquired the said property by way of Settlement by Kabuliyat and dakhila from the ex-rent receivers and in this regard the Plaintiff has filed that document in Court. That Defendant No. 18 gifted some land

to his sons Defendant Nos. 46 and 47. He also gifted .32 acres of 2<sup>nd</sup> Schedule land to Defendant Nos. 46/47 by two deeds dated 18.7.78 A.D and delivered possession to them. Thus the original Jote was split up long ago after Settlement given by the ex rent receivers. Plaintiff and his brothers also took settlement of some land through dakhila and suppressing those facts and in collusion with his brothers defendant Nos.1-3, the plaintiff filed the Suit for illegal gain. That Separate S.A Khatian are in their names relating to the lands got through settlement and they paid rents. Thus the contesting Defendants 18, 46 and 47 claimed 1.02 acres in total in the suit land. That the transfers made by Plaintiff and his brothers on 22/4/60, 18/2/60 and 22/4/63 are fraudulent and the judgment of Preemption by solenama is collusive and fraudulent. That Plaintiff's suit is liable to be dismissed with cost as the same is not maintainable in law in the present form.

The defendant Nos.14 & 15 also filed a similar joint written statement supporting the Case of the Defendant Nos. 18/46/47 and some other Defendants also prayed for Saham.

That Plaintiff submitted the deed of gift in favour of Johora Bibi (Exbt-1) and that of Johora and Abbas Ali [Exbt-1(Ka)] and the sale deed by Abbas Ali in favour of Johora and Atarjain (Exbt-2) and deed of gift by Atarjan in favour of Plaintiff and defendant Nos.1-3 [Exbt 1(kha)] and his purchased deeds [Exbt-2(ka) & 2(kha)]. The Plaintiff examined himself as PW-1 and Defendant No.52 Joidhar Ali as PW-2. That contesting Defendants submitted the Certified Copies of Sale Certificates [Exbt-Kha & Kha(1)] and Certified Copies of Sale Certificates of Rent suit Register [Exbt-Ka & Ka-1) and Certified Copies of Registered Kabuliyat dated 29.5.1946 and 14.10.1950 A.D [Exbt-(Ga) & Ga(1)]. They also submitted the Certified Copies of S.A Khatian [Exbt-(gha) series] and Rent receipts (Exbt-Uma

Series) and their title deeds [Exbt-Cha & Chha]. The defendants examined as many as 3 DWs including Contesting Defendant Nos. 46 as DW-1.

The learned Subordinate Judge who tried the Suit was pleased to decree the same in part by his judgment and decree dated 30.06.1993 holding that the auction sale was not acted upon as the landlords did not take possession through Court. It was further held that Johora and Atarjan, the admitted owners were not made party in Rent Suits and no writ of delivery of possession could be filed by the defendants. The defendants failed to prove of taking settlement by the heirs of Abdul Gazi.

Against the aforesaid Judgment and decree dated 30.06.1993 the Petitioners preferred Title Appeal No.173 of 1993 which was transferred to the Court of Additional District Judge, 1<sup>st</sup> Court, Cumilla who was pleased to dismiss the appeal by the impugned judgment and decree dated 17.09.1994 and affirmed the Judgment of the Trial Court.

Being aggrieved by and dissatisfied with the Judgment and decree dated 17.09.1994 passed by Additional District Judge, 1<sup>st</sup> Court, Cumilla in Title Appeal No. 173 of 1993 affirming those dated 30.6.1993 passed by Subordinate Judge, 1<sup>st</sup> Court, Cumilla in Title Suit No. 287 of 1980 decreeing the suit in part, the present Petitioners preferred this civil revision before this Court and obtained Rule and Stay as stated at the very outset.

The defendant-opposite party Nos. 1, 2, 8, 9, 19, 32 and 52 entered appearance and filed counter affidavits and supplementary affidavits.

Mr. HM Borhan the learned advocate appearing for the petitioners submits that having regard to the split up of the C.S holding into many holdings, different S.A Khatian having been prepared in the names of the parties as per their settlement and as such the property having not been

in ejmali possession of the parties, the courts below concurrently committed the error in holding that the suit was maintainable which gives rise to an error in the decision occasioning failure of justice.

The learned advocate then submits that the landlord Kumar Satyadhan Ghosal and others brought Rent Suit No. 132 of 1946 in the 3<sup>rd</sup> Court of Munsif, Cumilla against Khatija Bibi and others for arrear rents of 1<sup>st</sup> schedule properties and got decree. They put the decree into execution in Execution Case No. 156 of 1947 and the decree holder auction purchased the Jote on 13.5.1947 A.D. Said sale was confirmed on 30.06.1947. Johora Bibi having died her daughter Atarjan was made party in that suit. Likewise, the aforesaid Landlord filed Rent Suit No. 1102 of 1942 (Exhibit-Ka) against the 2<sup>nd</sup> scheduled Jote in 6<sup>th</sup> Court of Munsif, Cumilla against Johora, Khatija and Kaluni Bibi and got decree. Thereafter the said landlord filed Rent Execution Case No. 135 of 1945 and auction purchased the 2<sup>nd</sup> schedule Jote on 15.09.1945 and the same was confirmed on 09.11.1945 A.D. The Defendant No.18 Sayed Ali, Ali Akbar and Sultan Ahmed took settlement of .60 acres out of plot No. 871/877 of the 2<sup>nd</sup> schedule by the Registered Kabuliyat dated 29.05.1946 at a Jama of tk-1.12/- from the said landlord Ghosal and got possession. S.A khatian No.86 was finally published accordingly. They paid rent to the landlord and thereafter to the government and obtained rent receipts. That defendant No.18 got 20 decimals in his share by the aforesaid settlement and also purchased 12 decimals out of plot No. 871 from Abdul Gafur by kabala dated 22.02.1968 (Exhibit-Ga), Abdul Gafur purchased that land from Sultan Ahmed, one of the settlement holders. That defendant No.18 also took settlement of .89 acres out of 1<sup>st</sup> schedule from the said landlord by registered kabuliyat dated 01.11.1950 A.D and got possession and paid rent to the landlord. During S.A operation, S.A khatian No. 91

(Exhibit-Kha-1) was prepared correctly in his name and the same was finally published and he paid rent to the landlord. So the auctions held in rent suits and subsequent settlement by the landlord have been proved by recording the names of settlement holders in the S.A khatian and payment of rent by them clearly proves that those auctions were acted upon from the very beginning.

The learned advocate next submits that Khatija by registered *Heba* deed dated 16.11.1960 gifted some land out of the suit jote to her son Abdul Gafur admitting that she has acquired the said property by way of settlement through kabuliyat and dakhila from the ex-rent receivers which has escaped consideration of the Courts below while passing the impugned judgment. The plaintiff has failed to submit any rent receipt in support of his possession and on the other hand contesting defendant Nos. 18/46/47 filed series of Maleka Dakhila and government rent receipts in support of their possession to the suit land (Exhibit-Uma series).

The learned advocate further submits that having regard to the fact that Johora died before the filing of Rent Suit No.132 of 1946 for which her daughter Atarjan was made party which fact is disclosed in the deposition of Defendant no. 46 (DW-1) and the courts below committed error of law holding the auction sale as defective without taking into consideration the unchallenged testimony of DW.1 in this regard.

Mr. Borhan forcefully submits that the Plaintiff as PW-1 himself admitted that the Defendant Nos. 46 and 47 are in possession of 1.46 acres in suit land and further admitted in his cross examination that Johora sold some land to Kaluni Bibi. The finding of the appellate Court that auction purchaser got symbolical possession and thereby did not acquire title in the suit property is quite illegal and erroneous and rather evidence shows that the possession of the auction purchaser is an admitted fact in

the instant case and having regard to Exhibit (Ga) and Exhibit Ga(1) the registered Kabulyat dated 13.04.1946 and 01.11.1950 and the preparation of number of S.A Khatian Exhibits 'gha' series and dakhila exhibit 'Uma' series and above all the admission of Khatija, one of the recorded tenants and judgment debtors in registered deed of gift dated 16.11.1960 executed by her in favour of her son Abdul Gofur and the admission of possession by the plaintiff in 1.46 acres of suit land by the contesting defendants conclusively proved the delivery of possession taken by the auction purchaser landlord and then the possession of the settlement holders from the auction purchaser, the courts below committed error of law in their decisions holding that no delivery of possession by landlord was proved. The findings of the trial court that Kaluni Bibi had no interest in the suit property and she was made party unnecessarily and similarly Sayed Ali, Ali Akbar, Sultan Ahmed and Ali Ashraf and Mahabbar Ali also had no interest but made parties unnecessarily are erroneous due to misreading of evidence and non consideration of evidence both documentary and oral.

The learned advocate lastly submits that the impugned judgment passed by the Additional District Judge is simply the reproduction of the judgment of the trial court and no independent reasoning has been given by the appellate court considering the evidence on record as final court of fact and in that view it is not a judgment as per Order-XLI, Rule-31 of the Code of Civil Procedure.

On the other hand Mr. Md. Abdus Salam Bhuiyan, the learned advocate appearing for the opposite party Nos. 1, 2 and 9 supports the judgments passed by the courts below and submits that both the courts below concurrently found that no possession was taken by the auction purchaser-landlord and as such subsequent settlement holder acquired no right and title to the suit land.

Mr. Tushar Kanti Roy, the learned advocate appearing for the opposite party Nos. 8(Ka)-8(cha), 19, 32 and 52 submits that the suit land described in the 1<sup>st</sup> and 2<sup>nd</sup> schedules of the plaint originally belonged to one Abdul Gazi who sold 8(eight) anna share i.e. 4.0550 acres out of 8.1100 acres to his granddaughter Khatija Bibi and C.S Khatian was duly recorded in their names; subsequently Abdul Gazi gifted the 1<sup>st</sup> schedule land to his only daughter Johora Bibi by a registered Deed of Gift dated 24.04.1329 B.S and also gifted the remaining 8(eight) anna share of the 2<sup>nd</sup> schedule land along with other non-suited lands to his daughter Johora Bibi and grandson-in-law Abbas Ali by another registered Deed of Gift dated 06.02.1334 B.S; Abbas Ali later transferred his share to his mother-in-law Johora Bibi and his wife Atarjan by Sale Deed in 1334 B.S and thereby he had become title-less; Johora Bibi died leaving behind only daughter Atarjan who inherited 8(eight) anna share of the 2<sup>nd</sup> schedule property by inheritance and purchase; subsequently she gifted 1.84 acre of land out of 4.27 acres of 1<sup>st</sup> schedule and 1.34 acre out of 8.11 acres of 2<sup>nd</sup> schedule to her sons (the plaintiff and the defendant Nos. 1-3) by a *Heba Bil Ewaz* Deed dated 22.05.1960 and further gifted 1.04 acre of land out of 2<sup>nd</sup> schedule in favour of plaintiff and the defendant Nos.1-3 by Deed of Gift dated 12.04.1963 and she also gifted .2250 acre of 2<sup>nd</sup> schedule land in favour of the defendant No.3; that, on 29.03.1934 Johora Bibi as Mutwali of Waqf donated .3000 acre of land in favour of Mosque (Exhibit-Dha) and Johora Bibi further gifted .4800 acre of land in favour of Kaluni Bibi vide *heba* Deed dated 19.03.1934 (Exhibit-Jha, filed by defendant Nos.63/66); on 07.03.1952 Atarjan sold .3600 acre of land to Ali Ahmed (Exhibit-ta) and she also sold .3100 acre of land to Sayed Ali vide Kabala dated 21.01.1951 (Exhibit-cha, filed by defendant Nos.17/60/61); Johora and Atarjan thus sold in total  $(.3000+.4800+.3600+.3100)=1.5100$

acre of land, but the same was not mentioned in the plaint and hence after the aforesaid transfer, Atarjan retained ownership of 2.2900 acres of land in both schedules. Thereafter Atarjan died leaving behind 4 sons Plaintiff Matin Mia, Defendant Nos.1-3, Gura Mia, Anu Mia and Fazlul Huq and two daughters namely Manik Jan (mother of defendant nos.4-12) and Nurjahan Begum, defendant No.13 and thus each son inherited .4600 acres of land and each daughter .2300 acres. The learned advocate submits that Manik Jan (mother of defendant nos.4-12), Nurjahan Begum (defendant no.13) and Abid Ali (defendant No.32) did not sell any land in favour of the plaintiff and the defendant Nos.1-3 vide registered sale deed no.4429 dated 29.07.1963 as claimed by the plaintiff and the said deed is fabricated and forged.

The learned advocate next submits that Abbas Ali, grandson-in-law of the late Abdul Gazi, transferred .4800 acre of land in favour of Manikjan and Nurjahan Begum from C.S Plot Nos. 877 & 1571 through registered Deed of Gift No. 3701 dated 29.04.1963 [(Annexure-1, Counter Affidavit by O.P. Nos.19 & 32(a))-32(h)] by which Nurjahan Begum acquired .2400 acre of land; on 29.07.1963 the Plaintiff, Matin Mia, defendant Nos. 1-3, Gura Mia, Anu Miah and Fazlul Huq all brothers sold .2400 acre of land from C.S Plot Nos. 570 & 1571 in favour of Nurjahan, defendant No.13 and her son Abid Ali, defendant No.32 vide registered Sale Deed No. 4434 dated 29.07.1963 by which Nurjahan acquired .1200 acre and Abid Ali got .1200 acre [(Annexure-2 of Counter Affidavit by O.P Nos.19 & 32(a))-32(h)]; Nurjahan Begum, defendant no.13 inherited .2300 acres of land from her mother Atarjan and in these way the defendant No.13 Nurjahan Begum acquired  $(.2400+.1200+.2300)=.5900$  acre. The defendant No.13 Nurjahan Begum died leaving behind one daughter Momtaj Begum and one son Abid Ali; Momtaj Begum got .1967 acre and Abid Ali got .3933 acre by way of inheritance; thus Abid Ali, defendant no.32 got .1200 acre

by purchase +.3933 acre by inheritance =.5133 acre of land; since summons of the suit were not properly served upon the defendant Nos.13 & 32 and hence they were prevented to appear before the trial court to contest the suit and it caused prejudice to the defendant Nos. 13 & 32 and now their heirs; the plaintiff obtained the decree by practicing fraud upon the Court.

The learned advocate then submits that in the original Title Suit No. 287 of 1980 for partition one Abdu Miah was made party as defendant No.2 and from record it appears that on 17.02.1981 soon after filing of the suit, defendant No.1, Gura Miah and defendant No.2, Abdu Miah jointly prayed saham of 2.75 acres of land and on 23.06.1993 Md. Ali Arshad, son of late Gura Miah, deposed himself as PW-2 and the trial court allotted saham of 1.0150 acre jointly to defendant nos.1 and 2. But in fact defendant No.2 whose name is Anu Miah was mentioned in the plaint as Abdu Miah got  $(.4600+.3350+.2600+.4600+.1750) = 1.6875$  acres of land out of which he sold 1.1375 acres and on 01.05.1969 he gifted .1000 acre with .0400 acre non-suit land to his son Rafiqul Islam, defendant No. 49 from C.S. Plot No. 569 by Gift Deed dated 01.05.1969 and thus Anu Mian retained  $[1.6875-(1.1375+.1000)] = .4500$  acre of land. Anu Miah died leaving behind two sons Rafiqul Islam and Yusuf Miah and four daughters Afhula Begum, Sahida Begum, Safhia Begum and Ahida Begum and each son got .1125 acre and each daughter got .0562 acre; thus, Rafiqul Islam, defendant no.49 got  $(.1125+.1000) = .2125$  acre of land and this Rafiqul Islam sold .0200 acre of land to the plaintiff (exhibit-Da-6) and thus Rafiqul Islam retained  $(.2125-.0200) = .1925$  acre of land as opposite party No. 8(a) who is also shown as opposite party no.52.

Mr. Roy strenuously submits that Defendant Nos.1-3 are full brothers of plaintiff and in the plaint, the plaintiff named defendant No.2 as 'Abdu Miah' instead of

Anu Miah' and summons was not duly served upon Anu Miah; Anu Miah never appeared in the suit, nor did he file any application for saham jointly with defendant No.1, Gura Miah; he had no knowledge of the suit at all. Moreover, Rafiqul Islam, son of Anu Miah, was impleaded as defendant No.49 and although from the record it appears that he appeared by filing application claiming .1000 acre of land along with Vokalatnama but he also had no knowledge of the suit, never appeared and was not served with any summons. The plaintiff created a false and fabricated Gift Deed No. 2386 dated 15.10.1994 by which Anu Miah was purported to have transferred a total of .4500 acre of land to Md. Abdul Matin, the plaintiff. In fact, before execution of the said deed, Anu Miah died on 05.08.1994. Similarly another Gift Deed no.2387 dated 26.10.1994 purports to show Anu Miah as Donor transferring .1000 acre of land from C.S Plot No. 569 to his two daughters, Afhula Begum and Mst. Shafia but their father had died already on 05.08.1994. The plaintiff created and manufactured those deeds in order to grab said land owned by Anu Miah; the conduct of the plaintiff manifesting that he obtained the preliminary decree by practicing fraud upon the Court through false personification and forged and fabricated documents. Moreover, in this civil revision, on 24.09.2014, the learned Advocate Mohammad Ali (now dead) filed an application for substitution before this Court for substituting the heirs of the opposite party No.8 Abdu Miah alias Anu Miah wherein the signatures of the applicants i.e the heirs of the late Anu Miah in the Vokalatnama were forged and fabricated. The heirs of Anu Miah did not supply any Vokalatnama, Warish Certificate and Death Certificate of late Anu Miah to anyone. From the above mentioned documents, the learned advocate submits, it is crystal clear that the plaintiff and his heirs took the shelter of fraud and manufactured deeds and documents in order to grab

the properties of late Anu Miah and since fraud vitiated everything and hence the decree obtained by the plaintiff is liable to be set aside for securing ends of justice.

The learned advocate lastly submits that in the original Title Suit No. 287 of 1980 Nurjahan Begum was made party as defendant No. 13 who is a full sister of the plaintiff and the defendant Nos.1-3; during the pendency of the said suit on 13.07.1988 Nurjahan Begum died leaving behind one son Abid Ali(defendant No.32, opposite party No.52 herein) and one daughter Momtaj and husband namely late Ajgor Ali but the plaintiff did not file any application for substitution of the heirs of the deceased Nurjahan Begum in the said suit; thereafter during the pendency of civil revision the defendant-opposite party no.32 Abid Ali died on 18.06.1998 leaving behind one wife Kanchon Bibi, 4(four) daughters namely Rowshon Ara Begum, Mst. Sukena Begum, Saleha Begum and Aleya Begum and 3(three) sons Md. Dulal Miah, Abul Basar and Helal Uddin; but the heirs of late Abid Ali were not also substituted in the instant civil revision. The summons of the suit were not properly served upon the defendant No. 13 Nurjahan Begum and defendant No.32 Abid Ali and hence they did not get any chance to contest the suit or to pray SAHAM in respect of their claim.

I have heard the learned advocates appearing for the parties, perused the revision petition, counter affidavits and supplementary affidavits along with annexures. I have also perused the Lower Court Records including the plaint, written statements, depositions and exhibited documents of the parties, order sheets and both the judgments passed by the courts below.

In the instant Title Suit No. 287 of 1980 for partition one Abdu Miah was made party as defendant No.2 and from record it appears that on 17.02.1981 soon after filing of the suit, defendant No.1, Gura Miah and defendant

No.2, Abdu Miah jointly prayed saham of 2.75 acres of land and on 23.06.1993 Md. Ali Arshad, son of late Gura Miah, deposed himself as PW-2 and the trial court allotted saham of 1.0150 acre of land jointly to defendant nos.1 and 2. Admittedly defendant Nos.1-3 are full brothers of the plaintiff and in the plaint, the plaintiff named defendant No.2 as 'Abdu Miah' instead of Anu Miah' and summons was not duly served upon the real person, i.e. Anu Miah; it appears from the postal receipt, the defendant No.2 was shown as 'Abdu Miah', not 'Anu Miah' and that incorrect name (Abdu Miah) continues to appear even in the present civil revision as opposite party No.8. The heirs of Anu Miah by filing affidavit before this Court asserted that late Anu Miah never appeared in the suit, nor did he file any application for saham jointly with defendant No.1, Gura Miah on 17.02.1981; he had no knowledge of the suit at all. Furthermore, Rafiqul Islam, son of Anu Miah, was made defendant No.49 (opposite party no.52 herein) and although from the record it appears that he appeared by filing application claiming .1000 acre of land along with Vokatnama but he asserts before this Court that he also had no knowledge of the suit, never appeared and was not served with any summons. The heirs of Anu Miah claimed before this Court that plaintiff created false and fabricated Gift Deed No. 2386 dated 15.10.1994, showing Anu Miah as Donor by which Anu Miah was purported to have transferred a total of .4500 acre of land to Md. Abdul Matin, the plaintiff. In fact, before execution of the said deed, Anu Miah died on 05.08.1994 and the heirs of Anu Miah, opposite party no.8(a)-8(h) annexed the said deed as Annexure-X-1. Similarly another Gift Deed no.2387 dated 26.10.1994 (Annexure-X-2 herein) purports to show Anu Miah as Donor transferring .1000 acre of land from C.S Plot No. 569 to his two daughters, Afhula Begum and Mst. Shafia. The heirs of late Anu Miah including these alleged donees

appearing before this Court by filing affidavits claimed that they had no knowledge of the deed, as their father had died already on 05.08.1994. They further claimed that the plaintiff and/or his heirs created those forged deeds in order to grab said land owned by late Anu Miah.

Moreover, in this civil revision, on 24.09.2014, one learned Advocate Mohammad Ali (now dead, certified by the secretary of the Bar) filed an application for substitution before the this Court for substituting the heirs of the opposite party No.8 Abdu Miah alias Anu Miah and the heirs of the late Anu Miah appearing before this Court by filing new Vokatnama asserted that the signatures of the applicants i.e the heirs of the late Anu Miah in that Vokatnama were forged and fabricated and they did not supply any Vokatnama, Warish Certificate and Death Certificate of late Anu Miah to learned Advocate Mohammad Ali or to anyone.

In the original Title Suit No. 287 of 1980 for partition one Nurjahan Begum was made party as defendant No. 13 who was a full sister of the plaintiff and the defendant Nos.1-3 and admittedly a co-sharer of the suit land as per the plaint. Successors of Nurjahan Begum appearing before this Court by filing affidavit claimed that during the pendency of the said suit i.e. on 13.07.1988 the defendant No.13, Nurjahan Begum (opposite party No. 19 herein) died leaving behind one son Abid Ali(defendant No.32, opposite party No.52 herein) and one daughter Momtaj and husband namely late Ajgor Ali but the plaintiff did not file any application for substitution of the heirs of the deceased Nurjahan Begum in the said suit; thereafter during the pendency of civil revision the defendant-opposite party no.32 Abid Ali died on 18.06.1998 leaving behind one wife Kanchon Bibi, 4(four) daughters namely Rowshon Ara Begum, Mst. Sukena Begum, Saleha Begum and Aleya Begum and 3(three) sons Md. Dulal Miah, Abul

Basar and Helal Uddin; but the heirs of late Abid Ali were not also substituted in the instant civil revision. They claimed that summons of the suit were not properly served upon the defendant No. 13 Nurjahan Begum and defendant No.32 Abid Ali and hence they did not get any chance to contest the suit or to pray Saham in respect of their claim. They further claimed that the registered sale deed no.4429 dated 29.07.1963 is fabricated and forged Manik Jan (mother of defendant nos.4-12), Nurjahan Begum (defendant no.13) and Abid Ali (defendant No.32) never executed the same and did not sell any land in favour of the plaintiff and the defendant Nos.1-3 as claimed by the plaintiff.

From the above mentioned facts and circumstances and the documents cast serious doubt regarding the conduct of the plaintiff and or his heirs who obtained the decree by practicing fraud upon the court by suppressing summons upon the defendant nos. 2, 13, 32 and 49 who were prevented from appearing before the trial court to contest and place their case and since fraud vitiates everything hence the decree obtained by the plaintiff is liable to be set aside for securing ends of justice. Whether any forged and fabricated documents were submitted is to be decided by the trial court after taking evidence in this regard. The genuineness of the documents filed for the first time before this Court is also to be decided by the trial court after taking evidence.

All these facts and circumstances as mentioned above *ifso facto* suggest that the instant suit should be sent on remand for fresh trial by giving the parties an opportunity to place their respective cases before the trial court and in that view I have no option but to interfere with the judgments and decrees passed by the courts below. Since I have already decided to send the case on remand to the trial court by setting aside the impugned judgments and decrees passed by the courts below, I am not inclined to

discuss the case of the contesting defendant nos.18, 46 and 47 and or other defendants regarding the two auction sales through Rent Suit Nos.1102 of 1942 and 132 of 1946 as mentioned above. Suffice is to say that the observations made by the courts below regarding those auction sales and taking/handing over possession are to be reconsidered by the trial court afresh considering the documents filed by the parties along with oral evidence whether those auctions were acted upon or not.

In the result the Rule is **disposed of** in the light of this judgment and the case is sent back on remand to the trial court for fresh trial.

The impugned judgment and decree dated 17.09.1994 passed by the Additional District Judge, 1<sup>st</sup> Court, Cumilla in Title Appeal No. 173 of 1993 dismissing the appeal and thereby affirming the judgment and decree dated 30.06.1993 in Title Suit No. 287 of 1980 passed by the 1<sup>st</sup> court of Subordinate Judge, Cumilla is set aside.

The interim order passed earlier stands vacated.

The heirs of the defendant Nos. 2, 13 and 32 are at liberty to file the written statement, if so advised and the heirs of the plaintiff and other defendants are also at liberty to amend their pleadings if so advised. The trial court is directed to dispose of the suit as early as possible after notifying all the parties and without affording parties any adjournment unless dire necessity keeping in mind that the original suit was filed in the year 1980. The depositions and exhibited documents already on record must be considered along with new depositions and documents, if any, in deciding the suit by the trial court.

Send down the lower court records along with a copy of this judgment at once.