

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.601 of 1995

In the matter of:

An application under Section 115 of the Code of Civil Procedure.

And

Hazi Mvi. Mohammad Faruk and others

.... Petitioners

-Versus-

Farid Khan and others

.... Opposite parties

Ms. Syeda Nasrin, Advocate

.... For the petitioners.

None appears

.... For the opposite parties.

Heard on 27.08.2025 and Judgment on 19.11.2025.

On an application under Section 115 of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 29.06.1994 passed by the learned Sub-ordinate Judge, 1st Court, Cox's Bazar in Other Appeal No.101 of 1991 affirming the judgment and decree dated 19.10.1991 passed by the learned Senior Assistant Judge, Cox's Bazar in Other Suit No.25 of 1988 should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted above suit for declaration of title, confirmation of possession and partition of 9.63 acres land of Schedule No.1 seeking saham for 10 decimal land as

described in the schedule of the plaint alleging that plot No.6691 comprising an area of 21 decimal land belonged to Debendra Lal Barua who died leaving two sons Chaitanna Charan and Lalita Kumar as heirs. Above Chaitanna Charan transferred 21 decimal land of above plot to defendants predecessor Mabia Khatun by registered kabla deed dated 21.08.1967. But Chaitanna Charan did not have right, title, interest and possession in above 21 decimal land and he was lawful owner of above land. Above Lalita Kumar was the lawful owner and possessor of 10 decimal land of above plot who transferred the same to the plaintiff by registered kabla deed dated 09.05.1985 and delivered possession. Plaintiff is in possession in above land but above property was not partitioned by meets and bounds and the defendants refused to effect an amicable partition.

Defendant Nos.1(Ka)-1(Kha) contested above suit by filing a joint written statement wherein they have denied all material claims and allegations set out in the plaint and stated that Lalita Kumar and Chaitanna Charan by amicable partition possessed their land and 21 decimal land of plot No.6691 was allotted to Chaitanna Charan who was in possession in above land by constructing dwelling house and excavating tank and he mutating name and paying rent to the Government. Above Chaitanna transferred above 21 decimal land alongwith dwelling house and tank to Mabia Khatun by registered kabla dated 21.08.1967. Defendants purchased above property from

above Mabilia Khatun by a registered kabla deed dated 18.01.1974 and possessing above dwelling house and tank. Lalita Kumar did not have any right, title, interest and possession in above land and by purchase from Lalita Kumar the plaintiff did not get possession of above land.

At trial plaintiffs and defendants examined 3 witnesses each. Documents of the plaintiffs were marked as Exhibit Nos.1-6 and those of the defendants were marked as Exhibit Nos.'Ka' to 'Uma'.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed above suit.

Being aggrieved by above judgment and decree of the trial Court above plaintiffs as appellants preferred Other Appeal No.101 of 1991 to the District Judge, Cox's Bazar which was heard by the learned Joint District Judge who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by above judgment and decree of the Court of appeal below above appellants as petitioners moved to this Court with this Civil Revisional application under Section 115 of the Code of Civil Procedure and obtained this Rule.

Ms. Syeda Nasrin, learned Advocate for the petitioners submits that admittedly 21 decimal land of plot No.6691 belonged to Debendra Lal Barua who died leaving two sons, plaintiff's predecessor Lalita Kumar and defendants predecessor Chaitanna Charan who inherited

above land in equal shares. Defendants have claimed that by family arrangement or oral exchange Chaittan Charon alone owned and possessed above property. But the defendants could not prove the claim of above oral exchange or amicable partition by legal evidence. Both the Courts below rightly observed that the plaintiffs have title in 50% land of above plot but since the plaintiff could not prove his possession his appeal was dismissed. But this is a suit for partition and the possession of one co-sharer is deemed to be possession of all co-sharers. But at the time of drafting of plaint the learned Advocate for the plaintiffs committed some mistakes and the plaint suffers from formal defects. The learned Advocate frankly concedes that in this suit for partition all the co-sharers were not impleaded as defendants nor total property of Chaittana Charan and Lalita Kumar were not brought into hotchpotch. The ends of justice demands that a suit for partition involving disputes between the co-sharers be settled on merit once and for all on the basis of legal evidence. The impugned judgment and decree is set aside and the suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduced further evidence.

No one appears on behalf of the opposite parties at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

I have considered the submissions of the learned Advocate for the petitioners and carefully examined all materials on record.

It is admitted that 21 decimal land of disputed plot No.6691 belonged to Debendra Lal Barua who died leaving two sons Lalita Kanto and Chaitanna Charan as heirs. It is not disputed that above Chaitanna Charan had his dwelling house and tank in the land of above plot and he transferred total 21 decimal land of above plot to defendants predecessor Mabia Khatun by a registered kabla deed dated 21.08.1967. On the other hand plaintiff claims to have purchased 10 decimal land of above plot No.6691 from above Lalita Kanto by registered kabla deed on 09.05.1985. This is a suit for partition but the plaintiff has sought his saham for 10 decimal land out of plot No.6691. It turns out from registered kabla deed of the defendant (Exhibit No.5) that the plaintiff purchased 10 decimal land out of two plots being Nos.6691 and $\frac{6684}{7310}$. As such there is no lawful basis of claim of 10 decimal land out of plot No.6691 nor the plaintiff may be given separate saham for above land from above plot alone.

The plaintiff did not dispute the genuinity and correctness of registered kabla deed of defendant predecessor Mabia Khatun of 1967 nor the defendant dispute the correctness and jenuinity of above kabla deed (Exhibit No.5) of the plaintiff. Defendant claims that by amicable partition or family arrangement or oral exchange Chaitanna Charon alone possessed above 21 decimal land of plot No.6691. Above claim of

partition or family arrangement has been denied by the plaintiff. Since above suit for partition was not properly instituted by incorporating total land and impleading all co-sharers I hold that the ends of justice will be met if the judgment and decree of the Court of appeal below is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

In above view of the facts and circumstances of the case and materials on record I find substance in this Civil Revision and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 29.06.1994 passed by the learned Sub-ordinate Judge, 1st Court, Cox's Bazar in Other Appeal No.101 of 1991 is set aside and the above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

However, there is no order as to costs.

Send down the lower Court's records immediately.