

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

**Civil Revision No. 2019 of 2005**

**IN THE MATTER OF**

A. Rahman Master and others

.....Defendant Nos. 11, 12, 14, 17(Ga), 20, 21  
Respondents-Petitioners

-Versus-

1. Mohammad Hamijuddin being dead his legal heirs-  
1(a). Md. Akbar Ali and others

Plaintiffs-Appellants-Opposite parties

2. Sirajul Islam being dead his legal heirs-  
2(a). Md. Jasibul and others

.....Defendants-respondents opposite parties

Mr. Md. Taherul Islam, Advocate

.....For the petitioners

Mr. Md. Khalilur Rahman, Advocate

.....For opposite party Nos. 1-4

Mr. M. A. Mannan Mohan, Advocate

.....For opposite party Nos. 6-7

Mr. Md. Mahfuj-Ul-Alam, Advocate

.....For opposite party No. 12

Mr. Biplob Goswami, Advocate

..... For the applicant Md. Zabed Ali

**Heard on 10.10.23, 06.12.23, 17.01.24, 22.01.24 and judgment  
passed on 31.01.2024**

*Present:*

*Mr. Justice Kazi Md. Ejarul Haque Akondo*

**Kazi Md. Ejarul Haque Akondo, J.**

This Rule, on an application under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following term-

*“Let the records be called for and a Rule be issued calling upon opposite party Nos. 1-34 to show cause as to why the impugned judgment and decree dated 19.02.2005 passed by the learned Joint District Judge, Panchagarh in Other Appeal No. 51 of 2003 reversing the judgment and decree dated 28.07.2003 passed by the learned Senior Assistant Judge, Panchagarh in Partition Suit No. 64 of 1999 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”*

The present opposite party Nos. 1-4 as the plaintiffs filed the instant suit for partition in respect of the suit land imp leading the present petitioners and others as the defendants.

The case of the plaintiffs, in short, is that the suit 10.64 acres of land of Hal Khatian No. 321 under Mouza-Hafizabad, P.S, and district-Panchagarh were recorded in the names of Hamizuddin, Tamizuddin, Bhumizuddin, and Maniruddin, and they got 10.64

acres of land in 'Ka' schedule and possessing the same. 'Kha' schedule lands were recorded in Hal Khatian No. 318 in the names of plaintiff Hafizuddin and Tamizuddin in equal share. Tamizuddin died living behind plaintiff Nos. 2-4 as his heirs who sold 0.50 acres of land to one Sarifuddin Ahmed as such, they are now possessing 2.77 acres of land out of 3.27 acres in schedule 'Kha' and thus, in both the schedules 'Ka' and 'Kha' of the plaint the plaintiffs are owning and possessing  $(10.64+2.77) = 13.41$  acres of land in ejmali. The defendants are disturbing them in their peaceful possession hence the suit.

Defendant Nos. 1-7, 11, 12, 14, 15, 16, 17(Kha)-17(Gha), 18, 20-22, 24, and 25 contested the suit by filing separate written statements denying the averments made in the plaint contending, amongst other, that there is no cause of action to file the suit and the suit is bad for defect of parties and hotchpots', and they prayed for their respective saham for the reasons stated in their written statements.

After the conclusion of the trial the learned Senior Assistant Judge, Sadar, Panchagarh by his judgment and decree dated

28.07.2003 dismissed the suit on the contest against the contesting defendants and ex-parte against the rest without cost.

Being aggrieved by the said impugned judgment and decree dated 28.07.2003 the plaintiffs as the appellants preferred an appeal before the learned District Judge, Panchagarh, and the same was numbered as Other Appeal No. 51 of 2003, and after hearing the same the learned Joint District Judge, 1<sup>st</sup> Court, Panchagarh by his judgment and decree dated 19.02.2005 allowed the appeal on the contest by setting aside those of the Trial Court and decreed the suit on the contest and gave a saham to the plaintiff, defendant No. 14, defendant Nos. 11 and 12, defendant Nos. 16-18, defendant No. 15, defendant Nos. 20-22, defendant Nos. 1-7 and defendant Nos. 24-25, 53-54 in respect of  $.19\frac{2}{3}$ ,  $1.27\frac{1}{3}$ , 3.00, 1.76, 3.70,  $.16\frac{1}{2}$ , 5.32 and .95 acres of land respectively.

Being aggrieved by and dissatisfied with the said impugned judgment and decree dated 19.02.2005, defendant Nos. 11, 12, 14, 17(Ga), 20, and 21 as the petitioners had preferred this civil revision before this Court and obtained the instant Rule.

Anyway, Mr. Md. Taherul Islam, the learned Advocate appearing for the defendants-petitioners by filing an application under Order 41 Rule 27 read with section 151 of the Code of Civil Procedure, 1908 prayed for sending back the case on remand for the reasons stated therein and submitted that the suit was filed for partition for an area of 10.64 acres of land from Hal Khatian No. 321 mentioned in schedule Ka and 2.77 acres of land from Hal Khatian No. 318 of schedule Kha i.e. in total  $(10.64 + 2.77) = 13.41$  acres of land, whereas; Hal Khatian Nos. 321 and 318 contain 15.16 acres and 3.27 acres in total 18.43 acres of land as such, 5.02 acres of land were not taken into hotchpot in the suit and as such, the suit is barred by the principle of hotchpot and due to such illegality the learned Appellate Court below committed an error of law in allowing saham of  $16.16\frac{1}{2}$  acres of land to the parties which are more than the quantum of the suit land.

He next submits that the suit is bad for the defect of parties since the vendees Fazlul Huq, Jobed Ali, Sarwer Alam and heirs of Ej-uddin purchased land from the suit land from the recorded owners Moniruddin, Bhumijuddin, Hamijuddin, and Tamijuddin

who were not made party as mentioned in the written statement of defendant Nos. 11 and 12. Similarly, Md. Sharif Uddin son of late Monghla Mohammad, and Most. Khadija Khatun wife of Sarifuddin as mentioned in the written statement of defendant Nos. 20-22 were not made parties even though they purchased land from the recorded tenant of S.A. Khatian No. 34.

He further submits that defendant No. 14 Safiul Islam submitted some original and photocopies of registered kabala deeds with a firisty but due to an inadvertent mistake of his learned Advocate those were not marked and exhibited, which are lying with the record are as follows-

- a. Deed No. 2634 dated 03.04.1991 executed by Shafikul Islam who purchased from recorded tenant Hamizuddin vide deed No. 3657 dated 16.07.1963 for an area of .70 decimals of land.
- b. Deed No. 9548 dated 16.06.1967 executed by Hamizuddin for an area of .50 decimals of land.

Similarly, defendant Nos. 11 and 12 purchased the suit land from the recorded tenants or through vaya by several registered

kabala deeds, which were submitted by them with firstly out of which 20(twenty) kabala deeds were marked as exhibits B to B (19) but due to an inadvertent mistake of the learned Advocate, the following deeds have not been exhibited which are lying with the record.

- i) Deed No. 1360 dated 22. 02. 1962 executed by Minoruddin and others, recorded tenants, for an area of 1.84 acres kept with the record filed by firstly dated 22. 05. 2000 at serial No.9.

He contends that the recorded tenants admitted the sabek Khatian Nos. 1992 and 2005 from which Hal Khatian No. 321 and 317 were prepared in the names of the recorded tenants, which is evident from exhibit Nos. A (6), A(7), and A(10) but both the Courts below did not take into consideration that S.A. Khatian Nos. 321 and 317.

He also submits that the original copies of the registered kabala deed Nos. 5987 dated 24. 06. 1989, 5988 dated 26. 06. 1989 and 13279 dated 30.04.1975 were annexures- A, B, and C in the application dated 15.01.2009 filed by defendant Nos. 11, 12, and 14

in the Court but those were not exhibited due to an inadvertent mistake of the learned Advocate for the defendants, and the reasons stated in paragraph Nos. 4 and 5 in the said application. The kabala deed No. 13279 dated 30. 04. 1975 was admitted by the plaintiffs. Those documents are very much relevant for the proper adjudication of the instant suit.

He lastly submits that the Appellate Court below did not reverse the finding of the Trial Court to the effect that the plaintiffs transferred more land than that of their entitlement; the Trial Court assessed the oral and documentary evidence concerning title and possession but the Appellate Court below did not controvert the said findings; there were many registered kabala deeds filed by the defendants, which were more than 30 years old but the Appellate Court below did not consider those documents, as such, as per the provision of Order 41 Rule 31 of the Code of Civil Procedure, 1908 the impugned judgment and decree of the Appellate Court below is not a proper judgment of reversal.

Conversely, Mr. Md. Khalilur Rahman, the learned Advocate appearing for the plaintiffs-opposite party Nos. 1-4 submits that



the learned Judge of the Appellate Court below considering the facts and circumstances of the case, and the evidence on record rightly passed by the impugned judgment and decree giving saham to the respective parties and thereby committed no illegality.

Mr. M. A. Mannan Mohan, the learned Advocate appearing for the defendants-opposite party Nos. 6 and 7 submits that the learned Judge of the Appellate Court below rightly gave saham to defendant Nos. 6 and 7 with which they were satisfied.

Mr. Md. Mahfuj-Ul-Alam, the learned Advocate appearing for defendant No. 12 submits that the Appellate Court below considering the evidence on record duly gave saham to this defendant along with others and thereby committed no illegality.

However, at the time of hearing of the Rule the learned Advocate Mr. Biplab Goswami by filing an application for the addition of a party submits that the applicant Md. Zabed Ali is one of those left-out co-sharers who along with Md. Fazlul Karim purchased  $1.10\frac{1}{2}$  acres of land from the recorded tenants by 4 (four) registered kabala deeds, i.e. deed Nos. 8535 dated 09.11.1988, 13190 dated 01.06.1978, 17024 dated 24.09.1974, and

3276 dated 08.04.1987 of both the suit Kahtians. Though, Fazlul Karim had made a party as a defendant (opposite party No. 14 herein), this applicant Md. Javed Ali hasn't been impleaded as a party to the suit although he acquired title to .56 acres of land by way of purchase from Tamizuddin, Afazuddin, Jamirul, Jahura, and Sanija Begum, the predecessors of some of the plaintiffs and the defendants for which the applicant is a necessary party to the suit for proper adjudication, otherwise, the suit will suffer for the defect of parties.

He also submits that the Appellate Court below, therefore, should not have decreed the suit so long the applicant herein was not made a party to the suit, for both the plaintiffs and the defendants concealed the fact, as such, the applicant is a necessary party to the suit.

He lastly submits that the applicant did not know about the instant partition suit though he has been possessing his share since his purchase. The parties of the instant suit compromised the matter beyond his knowledge and prepared a draft solenama without mentioning his share. He came to know the same from a

reliable source and became sure of the same after collecting papers of the suit.

Heard the learned Advocates of the contending parties and have perused the materials on record. It appears that the present opposite party Nos. 1-4 as the plaintiff filed the instant suit for partition and after hearing the same the learned Trial Judge dismissed the suit on the contest, against which the defendants preferred an appeal which was allowed on the contest and the suit was decreed giving saham to the contending parties, against which the respective defendants preferred the instant civil revision. However, at the time of hearing of the Rule, the learned Advocate for the petitioners made a prayer for sending back the case on remand to the Trial Court for holding a trial of the suit afresh in view of his categorical submissions made hereinbefore. On the other hand, Mr. Biplab Goswami prayed for the addition of a party of the applicant Md, Javed Ali for the reasons stated in the application and that of the above submissions made by him. I have perused the impugned judgment and decree and the materials on record and found substance in the submissions made by the

learned Advocate for the petitioners Mr. Taherul Islam, and the learned Advocate Mr. Biplab Goswami for the applicant.

Because of the above, it appears to us that justice will better be served if the case is sent back on remand to the Trial Court for holding a fresh trial of the suit by giving the parties equal opportunity in view of the categorical submissions made by the learned Advocate for the petitioners, and that of the learned Advocate for the applicant Md, Javed Ali hereinbefore; otherwise, they will be prejudiced and will suffer irreparable loss and injury.

Accordingly, the Rule is disposed of.

The impugned judgment and decree dated 19.02.2005 passed by the learned Joint District Judge, Panchagarh in Other Appeal No. 51 of 2003 allowing the appeal on the contest by setting aside the judgment and decree dated 28.07.2003 passed by the learned Senior Assistant Judge, Sadar, Panchagarh in Partition Suit No. 64 of 1999, and decreed the suit on the contest giving the respective parties saham is hereby set aside.

Stay and status quo, if any, are hereby vacated.

Accordingly, the case is sent back on remand to the Court of learned Senior Assistant Judge, Sadar, Panchagarh for holding a fresh trial of the suit for the ends of justice in view of the submissions so made hereinbefore by the learned Advocates for the defendants-petitioners, and the applicant Md. Javed Ali by giving the parties equal opportunity.

The learned Judge of the Trial Court below is hereby directed to conclude the trial of the suit as early as possible preferably within 06 (Six) months from the date of receipt of the copy of this judgment.

Send a copy of this judgment along with the L.C.R to the Court below at once.

(TUHIN BO)