

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

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 2875 of 2016**

Abdul Jabbar Talukder and another

Petitioners

-Versus-

Dewan Shamsul Alam being dead his legal heirs  
Hasna Ara Begum and others

Opposite parties

Mr. Md. Abdus Sabur Khan, Advocate

... For the petitioners

Mr. Shamsul Hoque, Advocate

... For the opposite parties

Heard on: 10.01.2026

Judgment on: 12.01.2026

The present petitioners and others as plaintiff filed partition suit being No. 194 of 1977 in the Court of Joint District Judge, 1<sup>st</sup> Court, Tangail impleading the present opposite parties and others as defendants. The preliminary decree was drawn on 30.04.1981 and the final decree was drawn on 02.05.2001. Thereafter, the present opposite parties, who were defendant Nos. 31 and 32 in the partition suit, filed Miscellaneous Case No. 31 of 2007 in the Court of Joint

District Judge, 1<sup>st</sup> Court, Tangail under Order 9 rule 13 of the Code of Civil Procedure (CPC) for setting aside the *ex parte* decree against them. The miscellaneous case was contested by the present petitioners. The learned Joint District Judge, vide judgment and order dated 14.02.2010 rejected the miscellaneous case. Present opposite parties filed Miscellaneous Appeal No. 29 of 2010 which was allowed on contest by the learned Special District Judge, Tangail on 01.03.2016 and the judgment and preliminary decree dated 30.04.1981 and final decree dated 02.05.2001 passed in Partition Suit No. 194 of 1977 were set aside and the same was restored to its original file and number. Being aggrieved, the petitioners filed the instant revision and obtained Rule on 07.08.2016.

It appears from the materials on record that the only ground taken by the present opposite parties (defendant Nos. 31 and 32 in the partition suit) in the miscellaneous case for setting aside the *ex parte* decree is that summons of the original partition suit was not duly served upon them. Their case is that the name of the defendant No. 31 is Dewan Shamsul Alam but in the plaint of the partition suit, his name was written as Hurmuj Mia which is his nick name. Similarly, the name of the defendant No. 32 is Dewan Shamsul Haque. In the plaint, his name was written as Tula Mia which is his nick name. They are full brothers. The further case of the defendant Nos. 31 and 32 is that at the time of service of summons, defendant No. 31 used to stay

at Savar and defendant No. 32 used to stay at halls of residence of the University of Dhaka. The process server did not serve summons upon them and the summons shown to have been served upon the defendant No. 32 was done fraudulently showing that defendant No. 32 received summons on behalf of himself and the defendant No. 31.

The case of the plaintiff-petitioners is that defendant Nos. 31 and 32 and other defendants contested the partition suit by filing a joint written statement. Their further case is that defendant No. 32 received the summons properly and no fraud was committed in the process of service of summons. Their further case is that the names of the defendant Nos. 31 and 32 were written in the plaint by the nick names by which they were known in the locality.

The applicants of the miscellaneous case examined one witness. The opposite parties of the miscellaneous case examined three witnesses. The process server report was tendered in evidence and was marked as exhibit-ka/1. The learned Joint District Judge observed,

“ও,পি,ডব্লিউ-৩ তুলসী দাস রায় জবানবন্দীতে দেখা যায় যে, তাহার পিতা যতীন্দ্র মোহন রায় টাংগাইল জজ কোর্টের জারীকারক ছিল। তিনি মারা গেছেন। পিতার লেখা ও দস্তখতের সহিত তিনি পরিচিত। সমনজারীর রিপোর্ট পিতার হাতের লেখা। উক্ত রিপোর্ট প্রদঃ-ক/১ হিসাবে চিহ্নিত হয়। পর্যালোচনায় দেখা যায় উক্ত সমনে ৩১ নং বিবাদী হুরমুজ মিয়া, পিতা-দেওয়ান আঃ খালেক সাকিন নবরত্নবাড়ী, থানা-ঘাটাইল এর নামে ইস্যু করা হয় এবং তুলা মিয়াকে ৩২ নং বিবাদীকে হাজির পাইয়া পরোয়ানার মর্ম জ্ঞাত করাইয়া টিপসহি/রশিদ দিয়া নকল পরোয়ানা রাখিতে বলায় উক্ত ২৫/৩২ নং বিবাদীদ্বয়

রশিদ দিয়া নকল পরওয়ানা গ্রহণ করিয়াছে। উক্ত সমন রীতিমত জারী হিসাবে কর্তব্যরত নাজির দস্তখত দিয়া সত্যায়ন করিয়াছে।

উপরোক্ত সাক্ষ্য এবং প্রদঃ চিহ্নিত সমন পর্যালোচনায় দেখা যায় ৩২ নং বিবাদী যিনি তুলা মিয়া হিসাবে এলাকায় পরিচিত নিজে স্বাক্ষর করিয়া সমন গ্রহণ করিলেও যথাসময়ে আদালতে উপস্থিত হইয়া বর্ণনা দাখিলক্রমে মূল মোকদ্দমায় প্রতিদ্বন্দ্বিতা করেন। মূল মোকদ্দমাটি দোতরফা সূত্রে প্রাথমিক ডিক্রি হইয়া উক্ত প্রাথমিক ডিক্রী চূড়ান্ত ডিক্রীতে পরিণতঃ হওয়ায় এবং দীর্ঘ ২৮ বছর পর অত্র ছানী মোকদ্দমা দায়ের করায় উহা তামাদিতে বারিত। ফলে অত্র ছানী মোকদ্দমা আইনতঃ রক্ষণীয় নহে।”

The appellate Court below allowed the miscellaneous appeal holding that no evidence was given to show that Dewan Shamsul Haque (defendant No. 32) was known as Tula Mia who was shown to have received the summons. The appellate Court below held that summons was not duly served and on this ground allowed the miscellaneous appeal.

The petitioners have filed a supplementary affidavit annexing the certified copy of the written statement as Annexure-A. It appears from the said written statement that defendant Nos. 21-25, 29-33 and 37-39 filed the written statement jointly. It further appears from the said written statement that the present opposite parties (defendant Nos. 31 and 32) put their names in the written statement as Shamsul Alam (Hurmuz) and Shamsul Haque (Tula). Therefore, I have no hesitation to hold that the summons was duly served upon defendant Nos. 31 and 32 who entered appearance in the suit by filing a joint

written statement with other defendants. The learned Joint District Judge rightly rejected the miscellaneous case filed under Order 9 rule 13 of the CPC and the appellate Court below committed an error of law resulting in an erroneous decision occasioning failure of justice in allowing the miscellaneous case. Hence, the Rule succeeds.

In the result, the Rule is made absolute. The judgment and order passed by the appellate Court below is set aside and those passed by the learned Joint District Judge, 1<sup>st</sup> Court, Tangail is upheld.