

*Present:-*

*Mr. Justice Mahmudul Hoque*

**Civil Revision No.2587 of 1999**

Md. Abul Hossain being dead his legal heirs; 1(a) Md. Haider Ali and others  
... Petitioners

-Versus-

Md. Abdul Hamid being dead his legal heirs; 1(a) Most. Anowara Khatun and others

...Opposite-parties

Mr. M.A. Latif Prodhan, Advocate

...For the petitioners

Mr. M.M. Shafiullah, Advocate

...For the opposite-party No.1(b).

**Judgment on 3<sup>rd</sup> December, 2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party Nos.1 and 2 to show cause as to why the impugned judgment and order No.116 dated 30.05.1999 passed by the learned Senior Assistant Judge, Sadar, Joypurhat in Partition Suit No.131 of 1988 rejecting the application seeking saham should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the opposite party Nos.1 and 2, as plaintiff, filed Partition Suit No.131 of

1988 in the Court of Senior Assistant Judge, Sadar, Joypurhat for a decree of partition seeking saham for  $.08\frac{5}{6}$  sataks land in the suit plot.

The defendant No.1-petitioner contested the suit by filing written statement. The trial court after hearing by its judgment and decree dated 27.08.1991 decreed the suit as prayed for. Thereafter, the defendant No.1, preferred Other Appeal No. 11 of 1992 before the learned District Judge, Joypurhat which was transferred to the court of learned Joint District Judge, 2<sup>nd</sup> Court, Joypurhat for hearing and disposal who after hearing by the judgment and decree dated 30.09.1995 dismissed the appeal and thereby affirmed the judgment and decree of the trial court. After disposal of appeal the plaintiff prayed for making the decree final by appointing an Advocate Commissioner to effect physical partition. The trial court allowed the application. Accordingly, appointed Advocate Commissioner who after effecting partition submitted report before the trial court against which the defendant No.1 filed objection. The defendant No.1 also filed an application on 29.07.1998 praying for giving saham to him measuring  $.08\frac{2}{3}$  sataks land from the suit land on the ground that the

plaintiffs and the defendant No.1 jointly by 3(three) sale deeds purchased  $13\frac{1}{4}$  sataks land out of which the defendant No.1 is entitled to get  $\frac{1}{3}$ rd share measuring  $4\frac{2}{3}$  sataks and also claimed that by a Registered Deed No.2748 dated 24.02.1986. He also purchased 4 sataks of land from one Azizul Hoque son of Rafique Uddin, resultantly, is entitled to get saham for  $8\frac{2}{3}$  sataks and prayed for said saham. The trial court after hearing by the impugned judgment and order dated 30.05.1999 refused to allot saham for  $8\frac{2}{3}$  sataks, but allotted saham for  $4\frac{2}{3}$  sataks as decided by the trial court and affirmed by the appellate court. At this juncture, the petitioner moved this Court by filing this revision and obtained the present Rule.

Mr. M.A. Latif Prodhan, learned Advocate appearing for the petitioner candidly submits that he finds no ground for argument as judgment and decree of both the courts below does not reflect any findings that the petitioner, as defendant No.1 acquired title in  $8\frac{2}{3}$

sataks of land, but both the judgment decided his title only in respect of  $04\frac{2}{3}$  sataks. However, he submits that it is admitted by both the plaintiffs and defendant that they jointly purchased  $13\frac{1}{4}$  sataks of land by 3(three) sale deeds out of which the defendant No.1 being full brother of plaintiffs is not entitled to get  $\frac{1}{3}$  sataks of purchased property measuring  $04\frac{2}{3}$  sataks. Apart from this he submits that the defendant No.1 purchased 4 sataks of land by a Registered Deed No.2748 dated 24.02.1986 from one Azizul Hoque son of Rafique Uddin which has not been challenged by the plaintiffs. If the saham prayed for is allowed to the petitioner there is no chance of affecting the share of the plaintiffs. Though, both the courts below did not consider the sale deed Exhibit-“Ka”, because of not challenging the deeds by the plaintiffs or any other defendants, the quantum of land covered by Exhibit-“Ka” may be given to the petitioner.

Mr. M. M. Shafiullah, learned Advocate appearing for the opposite party No.1(b) submits that the defendant No.1 though filed the deed before the court without mentioning any date and number in the written statement and marked the same as Exhibit-“Ka”. The trial

court and the appellant court did not consider the same. The defendant No.1 could have agitated the matter before higher court by filing revision, but he did not take recourse to any proceeding before the higher court, meaning thereby, he has unequivocally conceded that both the judgments passed by both the courts below suffers from no illegality.

It is argued that when the title and share of the defendant No.1 has been settled by the trial court finding his title in  $04\frac{2}{3}$  sataks, the trial court cannot go beyond the decree, as such, the trial court rightly refused to give saham to the petitioner as prayed for.

Heard the learned Advocates of both the sides, have gone through the application under Section 115(1) of the Code of Civil Procedure, plaint, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and order of both the courts below.

To appreciate the fact, I have gone through the application filed by the petitioner before the trial court seeking separate saham, judgment and decree passed in Partition Suit no.131 of 1988 and Other Appeal No.11 of 1992.

From perusal of both the judgments, it appears that though the defendant No.1 filed Deed No.2748 dated 24.02.1986 showing purchase of 4 sataks of land from one Azizul Hoque did not consider the same as the defendant during trial or in his written statement did not pray for separate saham on payment of requisite court fees. That is why, the trial court while refusing a part of saham to the petitioner rightly held that in both the judgments the deed dated 24.02.1986 (Exhibit-“Ka”) has not been considered by both the courts below and as such, the trial court on the basis of preliminary decree cannot give saham for  $08\frac{2}{3}$  sataks of land to the defendant as prayed for, but he is entitled to get  $\frac{1}{3}$  rd of 3(three) sale deeds measuring  $04\frac{2}{3}$  sataks.

It is true that the petitioner is not claiming property from the share of plaintiffs exceeding  $\frac{1}{3}$  rd but he can claim other property he purchased from any lawful owner by Exhibit-“Ka” without affecting share of the plaintiff. Therefore, it is advisable to the trial court to revisit the claim of the defendant whether he actually purchased 4 sataks of land by sale deed dated 24.02.1986 from lawful owner entitling him to get saham for aforesaid 4 sataks of land. If it is found

in order and not challenged or denied by the decree-holder-plaintiff and covered by the schedule mentioned, claim of saham for such property measuring 4 sataks, may be looked into keeping saham of the plaintiffs intact.

In view of the above, apparently, I find that in refusing and disallowing the application by the trial court in the light of the findings and observations made in both the judgments has not committed any error of law in the decision occasioning failure of justice.

But the court is to see whether the defendant No.1 is unreasonably denied of getting his share driving him into further litigation where almost 37 years already spent in the instant suit. Considering such matter the trial court should see the matter again and if finds that the defendant No.1 is legally entitled to get further 4 sataks of land by purchase, may modify the order giving saham for  $08\frac{2}{3}$  sataks in place of  $04\frac{2}{3}$  sataks.

With the observations made hereinabove, I am inclined to dispose of the Rule.

In the result, the Rule is disposed of, however, without any order as to costs.

The trial court is hereby directed to proceed with the proceeding in the light of the observations made wherein above.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.