

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.1131 OF 2017**

In the matter of:

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

And

Md. Ejot Ali being dead his heirs and successors-Md. Ibrahim and others

... Petitioners

-Versus-

Most. Most. Moirum Bibi being dead his heir and successors- Most. Nasrin Khatun and others

... Opposite parties

Mr. A.B.M. Matiur Rahman,, Advocate with

Mr. Shahana Sayed, Advocate

Mr. Md. Shahabuddin Khan, Advocate

... For the petitioners.

Mr. Hossain Shaheed Qumruzzaman, Advocate

....For the opposite parties.

**Heard on 11.08.2025 and Judgment on 28.08.2025.**

This Rule was issued calling upon the opposite party Nos.1-6 to show cause as to why the impugned judgment and order of remand dated 23.11.2016 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Jashore in Title Appeal No.31 of 2016 reversing the judgment and order dated 31.01.2016 passed by the learned Assistant Judge, Jikhorgacha, Jashore in Title Suit No.35 of 2005 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 in short are that the petitioners as plaintiffs instituted above suit for declaration of title, confirmation of possession and partition for 601.50 acres land appertaining to S. A. Khatian Nos.120, 208 and 268 claiming a saham for 167.88 decimal.

Defendant Nos.15-16 and 18-21 contested above suit by filing written statement claiming that the plaintiffs did not have any subsisting interest in any land in above khatians and they transferred all their land in above holdings.

At trial plaintiffs examined 4 witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-7 series. Defendants examined 3 witnesses and documents of the defendants were marked as Exhibit Nos."Ka" series – "Cha" series.

On consideration of the facts and circumstances of the case and evidence on record the learned Assistant Judge decreed above suit in part and granted saham to the plaintiffs for 56.709 decimal land and above defendants were given saham for 56.77 acres land.

Being aggrieved by above judgment and decree of the trial Court above defendants as appellants preferred Civil Appeal No.31 of 2016 to the District Judge, Jashore which was heard by the learned Joint District Judge, 2<sup>nd</sup> Court who allowed above appeal set aside the judgment and decree of the trial Court and remanded above suit for retrial.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondents as petitioners moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. A. B. M. Matiur Rahman, learned Advocate for petitioner Nos.2-5 and 7-9 submits that on scrutiny of the case record and judgment of the Court of Appeal it appears that above suit for partition was bad for not incorporating all joint properties and the plaintiffs could not produce some document at trial. The learned Judge of the Court of Appeal below on correct appreciation of above materials on record rightly allowed the appeal and sent the suit for retrial which was a justified order. The learned Advocate submits that this Court can fix a time frame for conclusion of retrial of above suit by the trial Court.

On the other hand Mr. Hossain Shaheed Qumruzzaman, learned Advocate for the opposite parties submits that the defendants as appellants preferred above appeal. Above suit for partition was bad for not incorporating all ejmali properties and the learned Judge of the Court of Appeal rightly set aside the judgment and decree of the trial Court and remanded above suit for retrial and the appellant did not challenge the legality and propriety of above judgment and decree of the Court of Appeal below. This Court may fix a time frame for the

conclusion of the retrial by the trial Court after receipt of the case record.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

As mentioned above the petitioners as plaintiffs instituted above suit for partition and defendants are their co-sharer. In a suit for partition bringing each and every piece of joint property into the hotchpotch of the suit is a mandatory requirement. The learned Advocate for both the parties have concurred that all ejmali properties were not brought into the hotchpotch of above suit for partition. The learned Advocate for the petitioner had further stated that some important documents of the plaintiffs could not be produced at trial. The learned Advocates for both the parties concurred that for a fair and conclusive settlement of the disputes between the co-sharers above suit needs to be sent for retrial with liberty to amend the pleadings and adduce further evidence.

On consideration of above facts and circumstances of the case and submissions of the learned Advocates for the respective parties I am unable to find any illegality and irregularity in the impugned judgment and decree passed by the learned Judge of the Court of Appeal below nor I find any substance in this Civil Revisional Application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, this Rule is hereby discharged.

However, there will be no order as to costs.

Send down the lower Courts records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*