

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

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 4574 OF 2016**

**IN THE MATTER OF:**

An application under section 115(1) of the  
Code of Civil Procedure. (Against Decree)

-And-

**IN THE MATTER OF:**

Ibrahim Laskar

--- Defendant-Respondent-Petitioner.

-Versus-

Aklima Begum and others (OP Nos. 4 and 22  
died leaving behind their legal heirs:)

--- Plaintiff-Appellant-Opposite Parties.

Mr. Md. Mubarak Hossain with

Mr. Rajib Kanthy Aich, Advocates

--- For the Defendant-Petitioner.

Mr. Kawser Ahmed Halim, Advocate

---For the Opposite Parties.

**Heard on: 19.11.2023, 26.11.2023,**  
**04.12.2023, 05.12.2023 and 10.12.2023.**

**Judgment on: 13.12.2023.**

At the instance of the present defendant-respondent-petitioner, Ibrahim Laskar, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1-20 to show cause as to why the impugned judgment and decree dated 27.10.2016 passed by the learned Additional District Judge, Jhalakathi in the Title Appeal No. 69 of 2011 allowing the appeal

and decreeing the suit and *setting aside* the judgment and decree dated 25.05.2011 passed by the learned Joint District Judge, Court No. 2, Jhalakathi in the Title Suit No. 28 of 2011 dismissing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party Nos. 1-20 as the plaintiffs filed the Title Suit No. 28 of 2011 against the present defendant-petitioner Nos. 1-100 praying for declaration of title and partition of the suit land situated in the former Khebot No. 219, Mouza-Dapdapia, Police Station and Upazilla- Nalchity, District-Jhalakathi land measuring 99 decimals which was originally owned by Hawlader Mochan Kha and Ismail Kha. Subsequently, former Khebot No. 219 land measuring 99 decimals was recorded in the name of Ismail Kha, thereafter, the same land was recorded in the name of Sobhan Kha, Alep Kha and Moijudding. The said Ismail Kha died leaving behind his legal heirs: a wife Hachan Banu and a daughter Asia Khatun and 4 (four) nephews, namely, Zabrut Ali, Karam Ali, Apter Ali and Amzad Ali. The said Hachan Banu remarried one Abdul Shikder and of this couple (2<sup>nd</sup> wedlock of Hachan Banu) a son Nazar Ali and (two) daughters, namely, Alfatu, Karfuli were born.

Thereafter, 2<sup>nd</sup> husband Abdul Shikder died leaving behind his legal heirs: a son Najar Ali and 2 daughters Alfatu and Karfuli and a wife Haaachan Banu. After the death of Hachan Banu Hachan Banu her property was inherited by her son Najar Ali, 2 daughters of 2<sup>nd</sup> wedlock Alfatu and Karful and a daughter of 1<sup>st</sup> wedlock Asia Khatun. After the death of Asia Khatun her property was inherited by her two sons, namely, Abdul Barek and Abdul Rob and 5 (five) daughters plaintiff Nos. 1-4 and Minoti Begum. After her death 2 sons and Mozammel Hossain inherited the property of Minoti Begum. After the death of Mozammel Hossain his 2 sons and a daughter plaintiff Nos. 6-8 inherited his property. After the death of Abdul Barek, son of Asia Khatun a son and a daughter the plaintiff Nos. 9 and 10 inherited his property. After the death of Abdur Rob, sons of Asia Khatun 4 sons and 2 daughters and a wife the plaintiff Nos. 11-17 inherited the property of Abdur Rob. In this way, the plaintiff Nos. 1-17 have been enjoying the suit property measuring 52 decimals of former Khebot No. 219. The land of S. A. Khatian Nos. 743, 479 and 742 have been increasing to 3.11 acres and wrongly recorded in the names of the predecessors of the defendants, petitioner and proforma opposite parties. R. S.

Khatian No. 63 and S. A. Khatian No. 743 have been recorded wrongly. There is no basis of the present record prepared in the names of the predecessors of the defendant-petitioner but the plaintiffs have been possessing the suit land since their predecessors. The 55 decimals of land in the schedule 'Ka' increased to 1.04 acres and the predecessors of the plaintiffs have been possessing the suit land and other heirs of the Ismail Kha inherited 52 decimals of land of C. S. Khebot No. 219 and they are in possession. Subsequently, after the death of Asia Khatun her heirs inherited the suit property measuring 52 decimals out of total land measuring 3.11 acres which was increased and wrongly recorded in the name of predecessors of the defendants and others without any lawful basis. The plaint also contains that the total suit land is 55 decimals described in the schedule "Ka" of the plaint. The plaintiffs were not aware of the wrong record but the possession of the suit land remains under Asia Khatun by way of inheritance. There was no partition among the parties, as such, the suit was filed claiming title and possession among the co-sharers.

The petitioner as the defendant contested the suit by filing a written statement denying the claim of the plaintiffs. The

defendant-petitioner contended that Ismail Kha died leaving behind 99 decimals of land situated within the Khebot No. 219 which was inherited by his 4 (four) nephews, namely, Zabrat Ali, Karam Ali, Apter Ali and Amzed Ali. The said 4 (four) nephews sold 50 decimals of land to one Ahad Ali Laskar by a registered sale deed dated 31.03.1932. The remaining land within the former Khebot No. 219 was recorded in the name of Sobder Kha and Alep Kha. The said Alep Kha died leaving behind 4 (four) sons who became owners. Aler Uddin, Joinuddin Zamina, Lazmi and Azan Bib sold 50 decimals land to Ahad Ali Laskar and Shahadat Laskar by deed dated 01.06.1932. Ahad Ali gifted his share to his nephew Moslem by gift deed dated 19.03.1955. Shahadat Ali died leaving behind his legal heirs and Moslem Ali died leaving behind his legal heirs. There were several transfers of the suit land by the sale deed became owners by way of inheritance. Without any issue, Ahad Ali Laskar died, in the meantime, the brothers-in-law of Ahad Ali Laskar, namely, Moslem Ali Laskar and Yeasin Mollik created a forged Heba Deed No. 1427 dated 19.03.1955 by taking some thumb impressions of the dead Ahad Ali Laskar as well as a forged record was created by them. The plaint failed to make parties by

the plaintiffs who are necessary parties, as such, the case of the plaintiffs should be dismissed. The learned Joint District Judge, Court No. 2, Jhalakathi heard the parties and obtained the documents adduced and produced by the parties who passed the judgment and decree dated 25.05.2011 dismissing the said Title Suit No. 28 of 2011.

Being aggrieved the present plaintiff-opposite party Nos. 1-20 preferred the Title Appeal No. 69 of 2011 in the Court of the learned District Judge, which was eventually transferred to the learned Additional District Judge, Jhalakathi for hearing who after hearing the parties allowed the appeal by his judgment and decree dated 27.10.2016 and thereby setting aside the judgment and decree passed by the learned Joint District Judge, Court No. 2, Jhalakathi.

Being aggrieved this revisional application has been filed by the present defendant-respondent-petitioner under section 115(1) of the Code of Civil Procedure and the present Rule was issued thereupon.

Mr. Md. Mubarak Hossain, the learned Advocate, appearing along with the learned Advocate, Mr. Rajib Kanthy Aich for the defendant-respondent-petitioner submits that the

learned appellate court below passed the judgment and decree on the basis of deposition of PW-3, the Member of a Union Parishad who tried to prove the "Certificate" issued by the Chairman of the Union Parishad which is totally beyond the law and oral evidence and adverse possession of the first party opposite party No. 1 but not on the basis of the said documentary evidence i.e. deed of sale and Heba Deed which have been submitted before the learned court by the petitioner as well as second party thereby committed a serious error of law resulting in an error of decision an occasioning failure of justice, therefore, the Rule should be made absolute.

The learned Advocate also submits that the deed of kabala executed on 31.03.1932 and registered on 08.04.1932 has not been canceled or declared forged by any courts and on the basis of the said deed record has been prepared in the name of predecessors of the petitioner and the petitioner has been possessing the suit land erecting building and cultivating fruits thereon and the learned trial court most properly dismissed the suit against the plaintiff-opposite party Nos. 1-20 but the learned Additional District Judge, Jhalakathi committed a serious error of law resulting in an error of decision occasioning failure of

justice in passing the impugned judgment and decree, as such, the judgment and decree dated 27.10.2016 passed by the learned Additional District Judge, Jhalakathi is liable to be *set-aside*.

The present Rule has been opposed by the present opposite parties.

Mr. Kawser Ahmed Halim, the learned Advocate, appearing on behalf of the present opposite parties submits that the original owner of the suit property Ismail Kha and he was owned and possessed the suit land measuring 55 decimalas out of 99 decimals of the land. He died leaving behind his legal heirs a wife Hachan Banu, a daughter Asia Khatun and also 4 (four) nephews, namely, Zabrut Ali, Karam Ali, Apter Ali and Amzad Ali inherited the land by way of inheritance but the learned trial court failed to consider the evidence and subsequent heirs who have been possessing the suit land, as such, the learned trial court misreading and misconstrued the said inheritance at the course of trial, thus, dismissed the suit unlawfully and erroneously. However, the learned appellate court below carefully examined the evidence correctly and properly and also came to a lawful conclusion to allow the appeal and decreed the suit by reversing



and *setting aside* the judgment and decree passed by the learned trial court, as such, this Rule is liable to be discharged.

The learned Advocate further submits that the present plaintiff-opposite parties filed the present suit as soon as they came to know about the wrong record of right which was published erroneously, as such, the succession from Ismail's wife, daughter, and 4 nephews have been proved the legitimate way of inheritance, thus, filed the present suit claiming title and partition among the co-sharers by the learned trial court and the learned trial court committed an error of law and came to an unlawful decision and conclusion and passed the erroneous judgment and decree but the present defendant-petitioner obtained the present Rule by misleading the court which is liable to be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed by the present defendant-respondent-petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below as well as perusing the essential

documents available in the lower courts records, it appears to this court that the present plaintiff-opposite parties filed a title suit praying for title and partition of the suit land measuring 55 decimals out of total 99 decimals. The plaint also contains that the original owner Ismail Kha died leaving behind a wife, a daughter and 4 (four) nephews who succeeded the land as the legal heirs. The defendant-petitioner contested the suit by filing a counter-statement claiming that the suit land was purchased by the executed sale deed dated 21.03.1932 which was registered on 08.03.1932 land measuring 53 decimals of the suit land situated within the former Dag Nos. 2175, 2176, 2177, 2179 and 2180 by the 4 nephews of Ismail Kha to Ahad Ali Laskar, former Khebot No. 219 and the present defendant-petitioner obtained the land in the course of the inheritance.

From the above-given facts, both parties filed their pleadings in the court of the then-learned Subordinate Judge (now the learned Joint District Judge), Court No. 2, Jhalakathi. The plaintiffs' case and the defendant's case have a history of complicated processes of inheritance in support of the respective parties. However, the admitted position of the parties is that Ismail Kha was the original owner and the land is situated within

the Khebot No. 219, Mouza- Dapdapia, Police Station and Upazilla- Nalchiti, District- Jhalakathi. The principal difference within the dispute among the parties is whether Ismail Kha died leaving behind his legal heirs: a wife and a daughter and 4 (four) nephews whereas the defendant-petitioner claimed that the said Ismail Kha died unmarried, thus, only 4 (four) nephews are his legal heirs.

In this factual aspect, the plaintiff-opposite parties adduced and produced their evidence. The plaintiffs claimed that the said Ismail Kha died leaving behind his legal heirs: a wife, a daughter and 4 (four) nephews inherited the land but the defendant-petitioner contended that Ismail Kha died unmarried and only legal heirs other than his only 4 (four) nephews. Plaintiffs adduced 5 PWs and the defendant adduced 3 DWs. The plaintiffs exhibited as Exhibit- 1 and 1(Ka) to prove the situation of the suit land within the Khebot No. 219, Mouza- Dapdapia, Police Station and Upazilla- Nalcity, District- Jhalakathi and also adduced Exhibit- 2, 2(Kha), 3 and 3(Ka) and other Exhibits to prove the title by way of inheritance and the possession of thereabout. On the other hand, the present defendant-petitioner adduced 3 DWs and exhibited as Exhibit- 'Ka', 'Ka(2)' for

describing possession and position of the suit land and also other Exhibits to prove the record of right and entitlement.

The then-learned Subordinate Judge (now Joint District Judge), Court No. 2, Jhalakathi examined the documents produced by the parties. The learned trial court came to a decision and conclusion to dismiss the suit filed by the plaintiff-opposite parties on the basis of the following findings:

...“কিন্তু পি. ডব্লিউ. ৪ শুধুমাত্র প্রদর্শনী ৫, ৫(ক) এবং ৫(গ) তে কর্তৃপক্ষ হিসাবে স্বাক্ষর প্রদান করেন। উক্ত ওয়ারিশী সনদপত্রে কোথাও আছিয়া খাতু-নর কয় পুত্র এবং কয় কন্যা ছিল তাহা উল্লখ নাই। প্রদর্শনী-৫(খ), ৫(ঙ), ৫(চ), ৫(ছ)) মামলার পরবর্তী সময় আনয়ন করা হইয়া-ছ। প্রদর্শনী- ৫(ঘ) তে চেয়ারম্যা-নর সই এর ফ-টোকপি করা হইয়া-ছ। ইহাছাড়া, ওয়ারিশীর বিষয়ে বাস্তব জ্ঞান সম্পন্ন কোন বয়স্ক সমর্থিত ব্যক্তি দ্বারা বাদীপক্ষ সাক্ষ্য প্রদান করিয়া প্রমাণ ক-রন নাই। পি. ডব্লিউ. ৪, ০৯/০৫/০২ তারিখ যে তদন্ত করিয়া-ছেন তাহা সার্টিফি-ক-ট লে-খন নাই বলিয়া জেরায় উল্লখ ক-রন। তিনি তাহার আত্মীয় গ্রাম পুলিশ রাজ্যাক তাহা-ক নিয়া তদ-ন্ত যায় নাই বলিয়া উল্লখ ক-রন। বাদীর বর্ণনা অনুযায়ী সার্টিফি-কট দেওয়া হয় বলিয়া তিনি উল্লখ ক-রন। সার্টিফি-কট পর্যালোচনায় উক্ত ওয়ারিশী সার্টিফিকেটের বক্তব্য বিশ্বাসযোগ্য নয় ও অপ্রমানিত হইয়া-ছ বলিয়া অত্রাদালত মনে করে। রাষ্ট্রপ-ক্ষর সাক্ষী পি. ডব্লিউ. ১ মামলা করার বছর ১ নং বিবাদী জোর করিয়া সেখা-ন অর্থাৎ মামলার জমি-ত ঘর করিয়া-ছ বলিয়া জবানবন্দী-ত উল্লখ ক-রন। তিনি জেরায় কোন দা-গর কতটুকু জমি ভোগ দখল ক-রন তাহা বলি-ত পা-রন নাই। তিনি ২২৫৩, ২৩৪১, ২৩৫৪, ১৪৮৮ দা-গর কোন দা-গর কতটুকু ভূমি-ত ভোগ দখল ক-রন তাহা বলি-ত পা-রন নাই। তিনি জেরায় ৪ টি

দা-গর কোন দা-গ কতটুকু জমি তাহা বলি-ত পা-রন নাই। তিনি জেরায় ১ নং বিবাদীর পূর্ববর্তীর বরাব-র দলিল মূ-ল হস্তান্ত-রর কথা স্বীকার ক-রন। বাদীপ-ক্ষর অপর সাক্ষী পি. ডব্লিউ. ২ জবানবন্দী-ত জমির বাগান ও নাল জমি চাষাবা-দ ভোগ দখল ক-র ম-র্ম উ-ল্লখ করি-লও নালিশী জমির দাগ ও খতিয়ান নম্বর এবং জমির সঠিক পরিমান বলি-ত পা-রন নাই। মোট কতটুকু জমি নিয়া মামলা তাহা সঠিক বলি-ত পা-রন নাই। বাদীরা কোন দা-গর -কান পাশ দিয়া কতটুকু জমি ভোগ দখল ক-র তাহা বলি-ত পা-র নাই। মামলার জমির বাড়ীর দা-গ ১ নং বিবাদীর বাড়ী-ঘর আ-ছ বলিয়া জেরায় উ-ল্লখ ক-রন। বাদীপ-ক্ষর অপর সাক্ষী পি. ডব্লিউ. ৩ নালিশী ভূমি-ত বাদীগণ আছিয়র ওয়ারিশ হিসা-ব ভোগ দখল ক-রন ম-র্ম জবানবন্দী প্রদান করি-লও মামলার জমি কয়টি দা-গ তাহা জেরায় বলি-ত পা-রন নাই। মামলার জমি-ত বাদী-দর কোন ঘর-বাড়ী নাই ম-র্ম জেরায় উ-ল্লখ ক-রন। তিনি তাহার বিরু-দ্ধ জি. আর. ২৮/১১ নং মামলা রুজু থাকায় তিনি সাক্ষী দেন বলিয়া অত্রাদালত মনে করেন। উপরোক্ত সাক্ষ্য প্রমাণ পর্যালোচনায় আর্জির (ক) তপছিল বর্ণিত ভূমি-ত বাদীর স্বত্ব দখল প্রমাণ হয় না। নালিশী ভূমি-ত বাদীর দখল না থাকায় স্বত্ব সাব্যস্ত পূর্বক খাস দখল সহ বন্ট-নর প্রার্থনা ব্যাতীত বাদীর অত্র মোকদ্দমা অত্রাকারে ও প্রকারে অচল। আর্জি, জবাব গৃহিত সাক্ষ্য প্রমাণ পর্যালোচনায় অত্র মামলায় পক্ষদোষ এবং হচপচ দোষ পরিলক্ষিত হয় না।”...

The learned appellate court below has also cautiously and mindfully examined the depositions given by the PWs and DWs and also examined all the documents adduced and produced by the respective parties and came to the final thought and conclusion to allow the appeal and thereby reversing and *setting*

*aside* the judgment of the learned trial court on the basis of following findings:

...“কা-জই বিবাদীগ-ণর অনুকূল সম্পাদিত আর. এস. ৬৩ এবং এস. এ. ৭৪৩ নম্বর খতিয়ান এবং নালিশী তপছিল ভুক্ত সাবেক ২১৯ খেবটের ৯৯ শতক সম্পত্তি সাবেক -রকডীয় মালিক ইসমাইল হক এর স্ত্রী হি-স-ব হাচন বানু ১২.২৭ শতক এবং কন্যা আয়সা আজার ৪৩.১৩ শতক সম্পত্তি-ত মোট ৫৫.৪০ শতক সম্পত্তি স্বত্ববান এবং দখলকার আছে মর্মে অত্র আদালতের নিকট প্রতীয়মান হয়।

বিজ্ঞ বিচারিক আদালত যে সকল যুক্তি মতামতের উপর ভিত্তি করিয়া অত্র মামলা খারিজ করিয়াছেন সেই সকল যুক্তি এবং মতামতের সহিত অত্র আপীল আদালত দ্বিমত পোষণ করেন। বিজ্ঞ বিচারক তাহার রায়ে যে সকল যুক্তি উপস্থাপন করিয়া-ছেন তাহা বেআইনী, কা-জই, বিজ্ঞ বিচারিক আদালত কর্তৃক প্রদত্ত রায় ও ডিক্রির সহিত দ্বিমত পোষণ করিয়া অত্র আদালত উহা রদ রহিতের জন্য সিদ্ধান্ত গ্রহণ করিলেন।

সার্বিক পর্যা-লাচনায় বাদীগ-ণর পূর্ববর্তী সা-বক রেকডীয় প্রজার ক্রম ওয়ারিশ হিসেবে প্রমাণ করিতে বাদীগণ সক্ষম হইয়াছেন এবং নালিশী জমি-ত বাদীগণ তাহা-দর দখল প্রমাণ করি-ত সক্ষম হইয়া-ছেন।”...

In view of the above conflicting judgment, I consider that the learned trial court carelessly failed to consider the evidence submitted by the plaintiffs as to the genealogy of inheritance and also possession of the suit land. However, the learned appellate court below came to a lawful conclusion as to the evidence of genetics submitted by the plaintiff-opposite parties and as to the inheritance existing of Ismail Kha died leaving behind his legal

heirs: a wife, a daughter along with allocating with his 4 (four) nephews.

The learned trial court failed to allocate Shahams in favour of either of the parties. In a suit for title and partition the court is under an obligation to allocate Shahams on the basis of the title and possession of the land. The learned trial court dismissed the suit filed by the plaintiff-opposite parties and did not find any title despite the documents submitted before the court for entitlement upon the suit land, as such, came to a wrongful conclusion to dismiss the suit either the plaintiffs or defendant. However, the learned appellate court below appropriately and lawfully considered the Shahams on the basis of the above plaint and depositions given before the learned court by the 5 PWs and 3 DWs, as such, the learned appellate court below committed no error of law by allocating Shahams of the successors of the said original/former recorded owner Ismail's land measuring 99 decimals of former Khebot No. 219, R. S. Khatian No. 63 and S. A. Khatian No. 743 by allocating Shahams of land measuring 12.27 decimals in favour of the heirs of Ismail Kha's wife Hachan Banu, land measuring 43.13 decimals total land measuring 55.40 decimals has been entitled and possessed by a

daughter, namely, Ashia/Ayesha Akter. The learned appellate court below also allocated all Shahams as per the law and lagitimately.

In view of the above discussions and considering the merit of the case of the plaintiff-opposite parties, the learned trial court seriously misread the evidence and came to an unlawful decision and conclusion by dismissing the suit but the learned appellate court below came to a lawful decision and conclusion in favour of the plaintiff-opposite parties legitimately by *setting aside* the judgment and decree of the learned trial court and thereby reversing and *setting aside* the judgment and decree passed by the learned trial court, thus, the learned appellate court below did not commit any error of law or illegality by passing the impugned judgment and decree reversing the judgment and decree of the learned trial court. I, therefore, consider that this is not an appropriate case for interference from this court and this Rule does not need any further consideration.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The interim order passed by this court at the time of issuance of this Rule staying the operation of the impugned



judgment and decree dated 27.10.2026 passed by the learned Additional District Judge, Jhalakathi in the Title Appeal No. 69 of 2011 allowing the appeal and decreeing the suit and *setting aside* the judgment and decree dated 25.05.2011 passed by the learned Joint District Judge, Court No. 2, Jhalakathi in the Title Suit No. 28 of 2011 for a period of 6 (six) months and subsequently the same has been extended from time to time are hereby recalled and vacated.

The impugned judgment and decree dated 27.10.2016 passed by the learned Additional District Judge, Jhalakathi in the Title Appeal No. 69 of 2011 allowing the appeal and decreeing the suit and thereby *setting aside* the judgment and decree dated 25.05.2011 passed by the learned Joint District Judge, Court No. 2, Jhalakathi in the Title Suit No. 28 of 2011 dismissing the suit is hereby upheld.

The concerned section of this court is hereby directed to send down the lower courts records along with a copy of this judgment and order to the learned courts below immediately.