Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 2294 of 2017
Majeda Khatun and others
.....petitioners
-Versus-
Parija Khatun and others
.....opposite parties

Mr. Ahmed Nowshed Jamil with
Ms. Sayeda Shoukat Ara and
Ms. Fatima Nasrin, Advocates
.....for the petitioners

Mr. Abul Kalam Chowdhury, Senior Advocate with
Mr. Iqbal Kalam Chowdhury, Advocate
.....for opposite parties

Heard on: 08.07.2026, 23.07.2026, 26.07.2026, 28.07.2026 and 25.08.2026

Judgment on: 02.09.2026

In the instant revision Rule was issued calling upon the opposite parties 1-103 to show cause as to why the judgment and decree dated 29.03.2017 passed by the learned Joint District Judge, Additional Court, Comilla in Title Appeal Number 03 of 2012 allowing the appeal thereby reversing the judgment and decree dated 28.09.2011 passed by the learned Senior Assistant Judge, Sadar Court, Comilla in Title Suit Number 317 of 1970 should not be set aside and/or such other

or further order or orders be passed as to this Court may seem fit and proper.

The opposite parties as plaintiffs filed Title Suit Number 317 of 1970 on 23.12.1970 in the Court of the Third Munsif, Comilla for partition in respect of 135 decimals of land out of the total partible land measuring 215 decimals. The suit was subsequently transferred to the Court of the Senior Assistant Judge, Sadar Court, Comilla.

The plaintiffs' case in brief is that Komruddin was the owner in possession of the land recorded in C.R. Khatian Number 12. He died leaving behind his wife Zulekha Bibi and two daughters namely Pairon Bibi and Omeda Bibi as his heirs. Thereafter Zulekha Bibi married Bashiruddin for the second time and a daughter named Maleka was born to them. Zulekha Bibi died leaving her three daughters as her heirs.

Omeda Bibi died leaving her husband Nawab Ali, her son Mamud Ali and her daughter Jobeda Bibi as her heirs. Nawab Ali subsequently married for the second time and Abdur Rahman was born from that marriage. Nawab Ali died leaving Mamud Ali, Abdur Rahman and Jobeda Bibi as his heirs. Plaintiffs 5-8 are the heirs of Abdur Rahman. Defendant

1 is the heir of Jobeda Bibi. Defendants 2-6 are the heirs of Maleka.

Pairon Bibi died leaving behind two sons namely Mofiz Uddin and Foyez Uddin as her heirs. Mofiz Uddin is plaintiff 1. Foyez Uddin died leaving plaintiffs 2-4 as his sons, defendants 7-8 as his daughters and defendant 9 as his wife.

Defendant 1 transferred her share of the land to plaintiffs 1-4 by a registered sale deed dated 12.12.1970. The plaintiffs thus claim title to 135 decimals of land by inheritance and purchase. On 18.12.1970 the plaintiffs demanded partition from the defendants but the defendants refused. Hence the suit was filed.

On the other hand the petitioners who are defendants 24(Ka)-24(Uma) and 25 appeared in the suit and prayed for a separate saham in respect of 28 decimals of land. Their case is that Omeda Bibi's son Mohammad Ali alias Mamud alias Ahmad alias Amod became the owner of 38 decimals of land comprised in C.R. Plot Numbers 444, 445 and 402. He gifted the said 38 decimals of land to his son Halim alias Hashem by a deed of gift dated 10.06.1921.

Halim alias Hashem thereafter sold 28 decimals of land to Basharat Ali alias Bashirullah by a deed dated 31.07.1927.

Basharat Ali was the ostensible owner under the said deed. Accordingly by a deed of release dated 21.10.1940 Basharat Ali transferred the said land in favour of his son Syed Ali who was the real owner.

Syed Ali died leaving his wife, four sons and two daughters as his heirs. Thereafter ownership of the said land was transferred among them by different deeds dated 11.08.1972, 06.06.1972, 10.08.1978 and 07.01.2001. The said defendants therefore prayed for a separate saham in respect of the 28 decimals of land on the basis of their respective acquisitions.

In addition defendant 37 and after his death his heirs prayed for a separate saham in respect of 65 decimals of land. Defendants 2-6 claimed a saham in respect of 34 decimals. Defendants 12-17 claimed a saham in respect of 9 decimals. Defendant 46 claimed a saham in respect of 20 decimals. Defendants 83-85 claimed a saham in respect of 4.5 decimals. Defendants 86 and 87 claimed ownership of 11 decimals and prayed for a saham accordingly.

The trial Court recast the issues and framed two issues as to whether the plaintiffs have title and interest in the suit land

and whether the plaintiffs and the defendants claiming saham are entitled to saham as claimed.

The plaintiffs examined three witnesses to prove their case. On the other hand the defendants examined eleven witnesses. Both sides also produced documentary evidence in support of their respective cases.

Upon consideration of the pleadings and oral and documentary evidence and other materials on record the trial Court by judgment and decree dated 28.09.2011 passed a preliminary decree for partition in part. By the said decree the trial Court allotted 57.1748 decimals to the plaintiffs, 25.25 decimals to defendants 37(Kha)-37(Ta), 14.8541 decimals to defendants 2(Ka)-6(Uma), 28 decimals to defendants 24-28/88, 4.5 decimals to defendants 83-85, 10.5 decimals to defendants 86 and 87, 9 decimals to defendants 12(Ka), 12(Ga), 13(Ka)-13(Gha) and defendants 16 and 17, 20 decimals to defendant 46 as their respective separate saham.

None of the defendants preferred any appeal against the said judgment and decree. Being aggrieved by the judgment the plaintiffs preferred Title Appeal Number 3 of 2012 before the District Judge, Comilla. The appeal was subsequently transferred to the Court of the Joint District Judge, Additional

Court, Comilla. Upon hearing the appeal the appellate Court by judgment and decree dated 29.03.2017 enhanced the plaintiffs' saham to 116.88 decimals while keeping the saham allotted to all the other defendants unchanged except defendants 24-28/88 who were allotted 28 decimals.

Being aggrieved by the said judgment and decree of the appellate Court defendants 24-28/88 preferred the present Civil Revision before this Court and obtained the Rule on 16.07.2017.

The learned Advocate Mr. Ahmed Nowshed Jamil along with Ms. Sayeda Shoukat Ara and Ms. Fatima Nasrin for the petitioners submits that the trial Court upon proper consideration of the pleadings and evidence of both sides gave its judgment in accordance with law and the manner in which the appellate Court disbelieved the case of the petitioner-defendants is not sustainable in law.

He submits that Exhibit-M is referred to in several old documentary evidence relied upon by the appellate Court including Exhibits Ga-17 and Ga-18 and although a registered document carries strong presumptive value the appellate Court disbelieved Exhibit-M in a manner which is wholly

inconsistent with the evidence on record and is not legally sustainable.

He further submits that it is evident from the record that the names of several persons changed over the passage of time. For instance in Civil Revision Number 5401 of 1998 concerning the same land between the parties which has been marked as Exhibit-Ga-26 the present Basharat was described as Bashirullah. Likewise in the present case Pairon's son Foyez Uddin was described as Paja Gazi. Similarly Omeda's son Mamud Ali was described by different names including Mohammad Ali, Amod Ali and Amud Ali. Such variations in names are not uncommon in our society and cannot by themselves discredit an otherwise supported claim where the identity of the person is established by other evidence. The Court ought to consider the evidence as a whole and give due weight to the evidence which is otherwise found to be reliable. The appellate Court having failed to appreciate this aspect of the case arrived at a conclusion which is not sustainable in law.

He next submits with particular emphasis that according to the finding of the appellate Court Exhibit-M shows the father of Mohammad Ali as Azgar who was not the husband

of Omeda. On that basis the appellate Court held that the defendant-petitioners could not establish any title through Exhibit-M and therefore had no right to claim any saham. He submits that the trial Court recorded an important finding on this question upon a proper analysis of the evidence. The appellate Court however did not reverse that finding upon proper consideration of the evidence and nevertheless arrived at the aforesaid conclusion. Such approach amounts to complete misreading and non-consideration of material evidence which affects the merit of the case and occasions failure of justice.

He further submits that the appellate Court failed to properly analyse the evidence and thereby arrived at an erroneous finding while disbelieving Exhibit-M. It failed to appreciate and consider that the subsequent record of rights was prepared in the name of the predecessor of the petitioners and the predecessor has been paying rent in respect of the land. The relevant documents relating to such payment and the subsequent record of rights were produced in evidence and marked as exhibits. The appellate Court however failed to consider those material documents and thereby committed an error of law which has occasioned failure of justice.

He further submits that the appellate Court on the one hand relied upon Exhibit-Ga-17 dated 18.11.1922 with reference to Exhibit-M but on the other hand disbelieved Exhibit-M itself. According to him such a finding is internally inconsistent and is perverse and misconceived. The finding is therefore liable to be set aside outright as it has occasioned failure of justice. He finally prays that the Rule be made absolute.

In support of his submissions he has referred to Jitendra Nath Mistry Vs. Abdul Malek Howlader and others reported in 54 DLR(AD) 106 and Sree Gopal Chandra Mondal and another Vs. Lasman Dasi and others reported in 7 BLD(AD) 207.

Learned Senior Advocate Mr. Abul Kalam Chowdhury along with Mr. Iqbal Kalam Chowdhury appearing on behalf of the opposite parties submits that the appellate Court upon proper appreciation of the evidence and materials on record correctly found that the defendant-petitioners are not entitled to any saham as claimed by them. He submits that there is no evidence to establish that the donor Mohammad Ali mentioned in Exhibit-M was also known as Mamud Ali or Ahmad Ali. He further submits that on a proper reading of

Exhibit-M it appears that Mohammad Ali was the son of Azgar Ali and the said Mohammad Ali was not the son of Omeda. The father of Mohammad Ali is shown in Exhibit-M as Azgar Ali whereas the husband of Omeda was Nawab Ali. Therefore Mohammad Ali mentioned in Exhibit-M cannot have been the son of Omeda and consequently the defendant-petitioners acquired no title through Exhibit-M. He submits that this finding of fact having been arrived at by the final Court of fact on the basis of material evidence cannot be interfered with by this Court in its revisional jurisdiction.

He further submits that the defendants apparently failed to prove that Omeda had married twice. He also submits that by a partition deed dated 18.11.1922 marked as Exhibit-Ga-17 the predecessor-in-interest of the defendants namely Hashem obtained non-disputed land in C.R. Plot Numbers 74 and 75 of mouza Krishnapur. Therefore since Abul Hashem did not obtain any land in the suit mouza all subsequent registered documents executed after Exhibit-M in respect of the alleged land were ineffective and conveyed no title. According to him the finding of the appellate Court in this regard is based on proper appreciation of the evidence.

He submits that the appellate Court therefore rightly decreed 116.81 decimals of land in favour of the plaintiffs. He further submits that the appellate Court made an independent finding on the basis of the evidence after complying with the provisions of Order 41 Rule 31 of the Code of Civil Procedure. There is thus no legal ground for interference with the judgment and decree of the appellate Court in revision. He finally prays that the Rule be discharged.

I have heard the learned Advocates for both sides and perused the materials on record. I have also gone through the judgments passed by the Courts below.

It appears from the schedule to the plaint that the exact quantum of land claimed by the plaintiffs was not specifically stated. However from paragraph 14 of the plaint it appears that the plaintiffs filed the partition suit claiming 135 decimals of land.

The suit was decreed exparte against some and contested by others by a preliminary decree dated 17.10.2006. By the said decree the trial Court allotted 53.60 decimals to the plaintiffs, 13.85 decimals to defendants 2(Ka)-6(Uma), 65 decimals to contesting defendants 37, 28 decimals to defendants 24-28 and 88, 4.5 decimals to defendants 83-85,

11.5 decimals to defendants 86 and 87, 9 decimals to defendants 12-13 and 16-17, 10 decimals to defendant 47 as their respective saham.

The plaintiffs thereafter preferred Title Appeal Number 17 of 2009. In that appeal the appellate Court found that the documents relied upon by defendant 37 could not be accepted as genuine or satisfactory and accordingly remanded the suit for fresh consideration.

The plaintiffs' case is that Omeda Bibi died leaving behind her husband Nawab Ali, son Mamud Ali and daughter Jobeda Bibi as her heirs. Nawab Ali subsequently married for the second time and a son named Rahman was born from that marriage. Significantly the plaintiffs did not mention the name of Nawab Ali's second wife anywhere in the plaint. After the death of Nawab Ali his two sons namely Mamud Ali and Rahman and his daughter Jobeda Bibi survived him as his heirs. Thereafter Mamud Ali died leaving his half-brother Rahman and his full sister Jobeda Bibi as his heirs.

The present defendant-petitioners dispute the plaintiffs' case. Their case is that Mamud Ali and Mohammad Ali were one and the same person and Mohammad Ali was the son of Omeda Bibi. According to them Omeda Bibi's first husband

was Azgar Ali. Mohammad Ali died leaving his son Abdul Hashem as his heir.

Thus the case of the plaintiffs and defendant 37 is that Omeda Bibi's husband was Nawab Ali and that she had never married any other person. According to them Mamud alias Mohammad Ali was not the son of Omeda Bibi. On the other hand the case of the present defendants is that Mamud alias Mohammad Ali and Jobeda Bibi were full brother and sister and both were the children of Omeda Bibi. Their case further is that Nawab Ali was Omeda Bibi's second husband. Upon the death of Nawab Ali his son Rahman by his second wife and his son Mamud alias Mohammad Ali and daughter Jobeda Bibi by his first wife survived him. Thus according to the defendants Mamud alias Mohammad Ali and Jobeda Bibi were Rahman's maternal half-brother and half-sister.

In this connection Exhibit-M being registered Deed of Gift Number 3219 dated 11.06.1921 produced by the defendants bears considerable importance. It appears from the said deed that the father of Mamud Ali alias Mohammad Ali is described as Azgar Ali.

In considering this question the evidence of PW-1 Ramzan Ali aged about 77 years is of particular importance. In

his deposition he stated that Omeda's husband Nawab Ali subsequently married a second wife and the second wife died during his lifetime. He further stated that Rahman was their only son and Amod Ali was also known as Ahmad Ali. He stated that Ahmad Ali died leaving his half-brother Abdur Rahman and sister Jobeda.

More importantly PW-1 clearly admitted in cross-examination that Omeda had a daughter named Jobeda and a son named Abed Ali by her first husband. Thus the evidence of PW-1 contains a clear admission regarding Omeda's first marriage. This admission cannot be brushed aside merely because PW-1 did not use the expression that Omeda had "married twice" in those exact words.

Therefore the evidence of PW-1 read together with Exhibit-M supports the case that Omeda Bibi had a first husband named Azgar Ali and the donee Hashem mentioned in Exhibit-M is his grandson. This aspect of the evidence assumes further significance because except for Abdur Rahman the plaintiffs did not adduce any acceptable evidence to establish that Mamud alias Mohammad Ali or Jobeda Bibi was the child of Nawab Ali.

The plaintiffs merely pleaded that upon the death of Omeda Bibi she left her husband Nawab Ali, son Amod Ali and daughter Jobeda Bibi as her heirs. But they took no effective step to prove that Nawab Ali was in fact the father of Amod Ali and Jobeda Bibi. A bare assertion in the plaint cannot take the place of proof when the parentage of the alleged heir is specifically disputed.

The appellate Court however while dealing with the claim of the defendants referred to the evidence of PW-1 and observed that PW-1 had nowhere stated that Omeda had married twice. In doing so the appellate Court completely misread the material admission made by PW-1 in cross-examination regarding Omeda's first marriage. Such an admission was of vital importance to the determination of the identity and parentage of Mamud alias Mohammad Ali. The appellate Court without properly considering that admission reversed the finding of the trial Court. Such approach amounts to misreading and non-consideration of material evidence which has materially affected the decision of the case and has occasioned failure of justice.

The appellate Court completely misread the evidence and wrongly found that the predecessor of the said defendants

named Mohammad Ali claimed ownership of the suit land at different times as an heir of Omeda Bibi or by way of setllement from the zamindar upon payment of rent or by purchase. In fact the defendants never made any such claim. I find no proper basis for such observation in the evidence on record. In particular neither the application for saham dated 09.09.1987 nor the subsequent application dated 15.09.2005 contains any such admission. More importantly the entire deposition of DW-10 Suraj Mia who appeared on behalf of defendant 25 does not support the observation made by the appellate Court.

The appellate Court thus appears to have arrived at the aforesaid finding by misreading the evidence and by attributing to the defendants an admission which is not borne out by the record. Such a finding is perverse and misconceived and cannot be sustained in law.

The appellate Court further referred to the partition deed dated 18.11.1922 marked as Exhibit-Ga-17 and observed that according to the admitted position Abul Hashem had obtained land in C.R. Plot Number 45 and 75 of non-disputed Krishnapur Mouza. On that basis the appellate Court concluded that since Abul Hashem had not obtained any land

in the suit mouza the subsequent transfer of the suit land on the basis of Exhibit-M and the subsequent deeds was ineffective. Nowhere does it appear in the record that the defendants admitted that their predecessor had obtained the land of the non-suit mouza as observed by the appellate Court. The word "admitted" used by the appellate Court therefore has no support from the pleadings or evidence on record. The appellate Court misused and misinterpreted the expression "admitted" and thereby proceeded on a factual premise which was not established by the evidence.

There is another significant aspect of the matter. Exhibit-Ga-17 itself shows that Hashem the donee under Exhibit-M dated 11.06.1921 was not a party to the said partition deed. Therefore the appellate Court could not have treated the recitals or allotments contained in Exhibit-Ga-17 as conclusive against the title claimed by these defendants through Exhibit-M without first determining the identity of the persons concerned and the legal effect of the respective documents.

Another important point is that the appellate Court disbelieved Exhibit-M dated 11.06.1921 but relied upon partition deed dated 18.11.1922 Exhibit-Ga(17) which recognizes the title of the heirs of the executant of Exhibit-M.

So there is no reason to disbelieve Exhibit-M if Exhibit-Ga(17) is accepted as genuine and reliable. Thus the finding of the appellate Court is contradictory and inconsistent.

Thus it is apparent that the appellate Court failed to examine the documentary and oral evidence in their proper perspective. Its findings regarding the identity and parentage of Mamud alias Mohammad Ali and the effect of Exhibit-M and the subsequent transactions are founded upon misreading and non-consideration of material evidence. These errors go to the root of the matter and have materially affected the rights of these defendants to claim saham.

It has been earlier discussed that Jobeda is the daughter of Azgar. The plaintiffs claim that they acquired the land from Jobeda's son Jabbar by the deed dated 03.12.1970 marked as Exhibit-2. The appellate Court relied upon Exhibit-2 and granted a decree in favour of the plaintiffs. Significantly the said deed was executed only twenty days before the filing of the suit. If the plaintiffs accepted the existence of Jobeda who is found to be the daughter of Azgar and purchased the land from her son on the basis of Exhibit-2 there was no reason for them to dispute Exhibit-M executed by Mamud alias Mohammad Ali on 11.06.1921. The appellate Court

disbelieved Exhibit-M by misreading the evidence of PW-1. Otherwise the plaintiffs never took any legal step to challenge the validity or genuineness of Exhibit-M. It is also significant that the plaintiffs impleaded the present defendants as co-sharers and did not seek any relief whatsoever against Exhibit-M.

The property acquired by Hashem under Exhibit-M was subsequently sold by him to Basarat by registered sale deed Number 3003 dated 31.07.1927 in respect of 28 decimals of land. The original deed has been marked as Exhibit-M-7. Thereafter Basarat transferred the said 28 decimals of land to Syed Ali the predecessor-in-interest of the present defendants by registered deed of release Number 3585 dated 21.10.1940 Exhibit-M-1. The said deed contains a clear recital that the deed in respect of the land was executed in the name of Basarat with the money and for the benefit of Syed Ali. Thus Basarat was the ostensible owner whereas Syed Ali was the real owner. The original of the said deed was also produced before the Court.

Under Section 90 of the Evidence Act these documents having been produced from proper custody and being more than thirty years old the Court is entitled to raise a

presumption that they were duly executed and duly attested. The plaintiffs failed to take any effective step to rebut or dislodge such statutory presumption.

The chain of title reflected in Exhibits-M, M-7 and M-1 and the subsequent documents marked as Exhibits-M-2, M-3, M-4, M-5 and M-6 establishes the claim of the present defendants in respect of the 28 decimals of land. The plaintiffs have failed to show any legal basis for disbelieving or disregarding the said chain of documents. On the contrary the defendants have been able to establish their title to the said 28 decimals by cogent and admissible evidence.

The original defendant 24 Torab Ali examined himself as DW-1. On 21.08.1975 he produced before the Court the separate Khatian Number 190/2 standing in the name of Syed Ali with reference to Separation Case Number 317 of 1962-63, R.S. Khatian Number 172, municipal tax, receipts and electricity bills. Those documents were marked as Exhibits-A, B, C, D and E respectively and those evidence support Exhibit-M. Yet the appellate Court did not consider any of these material pieces of evidence.

In view of the foregoing discussion I find that defendants 24-28 and 88 have successfully established their title and

interest in respect of the 28 decimals of land claimed by them. They are therefore entitled to a separate saham in respect of the said 28 decimals of land.

The plaintiffs did not produce any document in support of their title except the deed dated 12.12.1970 marked as Exhibit-2.

Under Exhibit-Ka Pairon Bibi and Omeda Bibi sold 20 decimals of land to their mother. After the said sale each of them retained 81.2187 decimals of land. Accordingly each of them acquired 96.5728 decimals of land by inheritance from their mother and by their own title. Their step-sister Maleka on the other hand acquired 15.3541 decimals of land. It appears that the trial Court upon misreading of evidence of P.W.-1 wrongly found that Omeda Bibi sold 30 decimals of land. The said finding is not supported by the evidence on record.

Therefore upon the death of Omeda Bibi her husband Nawab Ali was entitled to 24.1432 decimals, her son Mamud Ali to 48.2864 decimals and her daughter Jobeda to 24.1432 decimals of land. The heirs of Abdur Rahman namely plaintiffs 5-8 were thus entitled to 16.6432 decimals of land.

The record further shows that Pairon Bibi transferred a total of 55.5 decimals of land by the documents marked as

Exhibits-Kha, Ga-1, Ka-Ka and Ka-Ka-Ka. After the said transfers Pairon Bibi retained 41.0728 decimals of land. Upon her death she was survived by her two sons Mofiz Uddin and Foyez Uddin. Each of them therefore inherited 20.5364 decimals of land.

Plaintiff 1 is the son of Mofiz Uddin. After giving effect to the transfer made by Mofiz Uddin plaintiff 1 inherited 16.0364 decimals of land from his father.

Foyez Uddin was survived by plaintiffs 2-4 as his three sons, defendants 7 and 8 as his two daughters and defendant 9 as his wife. During his lifetime Foyez Uddin sold 4 decimals of land. Thus 16.5364 decimals of land remained with him for succession.

Accordingly plaintiffs 2-4 jointly inherited 10.8520 decimals of land from Foyez Uddin.

On this calculation, plaintiffs 1-8 as the heirs of Rahman, inherited 16.6432 decimals of land. They further acquired 24.1432 decimals under Exhibit-2. Plaintiff 1 additionally inherited 16.0364 decimals as the son of Mofiz Uddin while plaintiffs 2-4 jointly inherited 10.8520 decimals as the sons of Foyez Uddin. Thus the plaintiffs collectively acquired a total of 67.6748 decimals of land by inheritance and purchase.

It is claimed that the predecessor of defendants 37(Ka)-37(Ta) namely Mozaddid Hossain claimed title to 65 decimals of land on the basis of several deeds executed on different dates. During pendency of the suit however defendants 37-Kha, 37-Ga and 37(Umma)-37(Ta) entered into a compromise with the plaintiffs and claimed a saham in respect of 26 decimals out of the said 65 decimals. Defendants 37-Ka and 37-Gha opposed the said solenama.

Upon consideration of the relevant deeds and other materials on record the trial Court ultimately allotted 25.25 decimals of land to defendants 37-Kha, 37-Ga and 37(Umma)-37(Ta).

The order sheet of the trial Court particularly Order Number 174 dated 29.11.2010 shows that the plaintiffs and defendants 37(Ka)-37(Ta) filed a solenama dated 24.10.2010. The petitioner-defendants 24-28/88 filed an objection thereto on 07.04.2011. Thereafter on 27.07.2011 another solenama was filed between the plaintiffs and defendants 37-Kha, 37-Ga and 37(Umma)-37(Ta).

In support of the said solenama the plaintiffs examined Dulal Mia as PW-3 on 21.09.2011. He stated in his deposition that he signed the solenama and under the solenama the

plaintiffs would receive 87 decimals of land whereas the defendants would receive 26 decimals. On the same day Abdul Kader Gani was examined as DW-11 on behalf of defendants 37-Kha, 37-Ga and 37(Umma)-37(Ta). He also stated that those defendants would receive 26 decimals of land by way of compromise.

DW-1 however admitted in cross-examination that two of the heirs of his father namely defendants 37-Ka and 37-Gha had not signed the solenama. When he was given the suggestion that the solenama had been executed with an intention to deprive those two defendants of their legitimate share he denied the same. Although the solenama was produced before the trial Court it was not admitted into evidence or marked as an exhibit. The trial Court also did not allot any saham to the plaintiffs on the basis of that solenama.

The order sheet of the appellate Court shows that on 12.02.2017 the plaintiff-appellants filed an application under Order 41 Rule 27 of the Code of Civil Procedure seeking admission and marking of certain documents as additional evidence. The appellate Court by order dated 06.03.2017 marked the documents filed by the appellants as Exhibits-3 and 4. The order sheet however does not show that the

appellate Court passed any order admitting the said documents as additional evidence upon compliance with the requirements of Order 41 Rule 27 of the Code. It also does not show that any witness was recalled or examined for the purpose of proving the said additional evidence.

It is well settled that additional evidence at the appellate stage cannot be admitted as a matter of course. The appellate Court is required to record its reasons for admitting additional evidence in accordance with Order 41 Rule 27 of the Code of Civil Procedure. It is also required under Rule 29 to specify the particular point to which the additional evidence is to be confined. In the present case the appellate Court did not follow those requirements. Such failure is a serious procedural irregularity.

However having regard to the peculiar facts and circumstances of the case and in order to secure the ends of justice I consider it appropriate to take Exhibit-4 into consideration for the limited purpose of determining the effect of the compromise concerning the claim of defendant 37 and his heirs.

Exhibit-4 is the registered arbitration acknowledgement dated 24.10.2010. It appears from the said document that

although the predecessor of defendant 37 had earlier claimed 65 decimals of land the arbitration agreement concerned 51 decimals of land. The document does not disclose what happened to the remaining 14 decimals or why the claim was reduced from 65 decimals to 51 decimals. This unexplained discrepancy is a material aspect of the matter.

The appellate Court however appears to have proceeded on the basis that by virtue of the solenama and the registered arbitration agreement marked as Exhibit-4 the heirs of defendant 37 accepted 26 decimals of land out of the 65 decimals claimed earlier and relinquished the remaining 39 decimals in favour of the plaintiffs. The appellate Court further held that the plaintiffs-appellant were entitled to 25 decimals of land on the basis of the said arbitration agreement.

In my view the reasoning of the appellate Court on this aspect is not free from ambiguity. Nevertheless Exhibit-4 clearly supports the position that 51 decimals of land were the subject matter of the subsequent arrangement and under the arrangement 26 decimals were to go to the heirs of defendant 37 and the remaining 25 decimals were to go to the plaintiffs. I therefore accept Exhibit-4 for this limited purpose and allot 25 decimals of land to the plaintiffs on the basis thereof.

This acceptance of Exhibit-4 shall however be subject to the following condition. If defendants 37-Ka and 37-Gha who did not sign the solenama subsequently establish their lawful title and seek saham in respect of their legitimate share within the period permissible in law upon payment of the requisite court fees and upon production of the necessary documents before the competent Court any saham found lawfully due to them shall be adjusted from the saham allotted to the plaintiffs and/or defendants 37-Kha, 37-Ga and 37(Umma)-37(Ta). No portion of such lawful share shall however be deducted from the saham allotted to any other defendant.

In view of the foregoing discussion the plaintiffs are entitled to an additional 25 decimals of land on the basis of Exhibit-4. Consequently their total saham shall be 92.6748 decimals instead of the saham allotted to them by the trial Court.

The saham allotted to the other defendants by the trial Court shall remain unchanged. The present petitioners namely defendants 24-28 and 88 shall also retain and have their separate saham in respect of 28 decimals of land as found and allotted to them by the trial Court.

For the reasons stated above the judgment and decree passed by the appellate Court are hereby set aside. The judgment and decree of the trial Court dated 28.09.2011 are modified to the extent that the plaintiffs shall be entitled to a total saham of 92.6748 decimals of land. The respective saham already allotted to the other defendants by the trial Court shall remain unchanged.

Accordingly the partial preliminary decree for partition shall stand modified to the above extent. The remaining land shall remain as the residuary land according to the final calculation of the shares in the suit.

The claim of defendants 24-28 and 88 for a separate saham in respect of 28 decimals of land is hereby confirmed.

Accordingly the Rule is made absolute.

The order of stay passed by this Court stands vacated.

Let a copy of this judgment be communicated to the Courts below forthwith and the Lower Courts' Records be sent down at once.

Md. Ali Reza, J: