

District-Gopalganj

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Civil Revision No. 1985 of 2018

Ashutosh Majumder and another
..... Petitioners

Versus

Paritosh Majumder and others
.....Opposite parties

Mr.Ziaur Rashid Tipu for

Mr.Sanjib Kumar Biswas, Advocates

.....For the petitioners

Mr. Md. Delowar Hossain Khan, Advocate

.... For the opposite party No.1

Present:

Mr. Justice Gobinda Chandra Tagore

Heard on: 30.04.2024, 09.05.2024, and
Judgment on:12.05.2024.

1. In this Civil Revision, the Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the impugned judgment and decree dated 22.03.2017 (decree signed on 28.03.2017) passed by the learned Joint District Judge, 1st Court, Gopalganj in Title Appeal No.54 of 2015 affirming the judgment and decree dated 01.12.2014 (decree signed on 06.01.2015) passed by the learned Assistant Judge, Kotalipara, Gopalgonjin Title Suit No.51 of 2009, decreeing the suit in part in preliminary form should not be set aside and/or why such other or further

order or orders as to this Court may seem fit and proper, shall not be passed.

Pending the hearing of the Rule, the operation of the impugned judgment and decree passed by the Appellate Court was stayed initially for 3(three) months. Subsequently, the period of stay was extended from time to time.

2. The petitioners as plaintiffs instituted Title Suit No.51 of 2009 in the Court of Learned Assistant Judge, Kotalipara, Gopalganj for partition of the suit property described in the schedule to the plaint.
3. The plaintiffs' case, in short, is that the land measuring 9.19 acres appertaining to R.S. Khatian No.47, S.A. Khatian No.61 described in schedule-1 to the plaint; the land measuring 3.13 acres appertaining to R.S. Khatian No.51, S.A. Khatian No.65 described in schedule-2 to the plaint; the land measuring 3.90 acres appertaining to R.S. Khatian No.49, S.A. Khatian No.63 described in schedule-3 to the plaint and the land measuring 8.11 acres appertaining to R.S. Khatian No.211, S.A. Khatian No.239 described in schedule-4 to the plaint originally belonged to Nagarbashi and Sakhicharan to the extent of 4 annas each and

each of Nadia Chand, Adhar Chand, Laxmi Kanta, and Jitendra were the owners to the extent of 2 annas. Accordingly, their names were properly recorded in the R.S. Khatian. While Adhar Chand was the owner of 2 annas shares measuring 1.14 acres of land died leaving behind three sons, Surendra, Rajbihari, and Sadananda. Thus, each of them inherited 38 decimals of land. Surendra died leaving behind the plaintiff as his only heir. Accordingly, the plaintiffs inherited 38 decimals of land. Nagarbashi being the owner of 4 annas shares to the extent of $2.29\frac{1}{2}$ of land died leaving behind four sons, Gopal, Jogesh, Anil, and Sushil. Accordingly, they inherited their father's property. Anil died leaving behind two sons, Ajoy and Anup. Anup transferred $14\frac{1}{2}$ decimals of land vide registered kabala deed No.520 dated 29.01.2002 and Ajoy also transferred $14\frac{1}{2}$ decimals of land by registered kabala deed No.419 dated 22.01.2002 to plaintiff No.1. Accordingly, they made delivery of possession. Adhar Chand while the owner of 2 annas shares measuring $14\frac{1}{2}$ decimals of land transferred the same by registered kabala deed No.4083 dated 24.08.1981 to the mother of

plaintiff No.2 and her mother died leaving behind her as the only heir. R.S. recorded tenant, Jitendra transferred $64\frac{3}{4}$ decimals of land by registered kabala deed No.2279 dated 05.10.1993 to plaintiff No.1. Rajbihari, son of Adhar Chand also transferred 13 decimals of land by registered kabala dated 15.12.1980 to plaintiff No.1. Dhiren, one out of two sons of Gopal who was the son of Nagarbashi sold $10\frac{1}{2}$ decimals of land to plaintiff No.1 by registered kabala deed dated 16.11.1999. Thus, the plaintiffs owned by inheritance and purchased in total $169\frac{1}{4}$ decimals of land. The owners of the property measuring 14.13 acres of land described in schedule-2 were possessed their share. The plaintiffs inherited 59 decimals of land described in schedule-2 and he also purchased 14 decimals of land vide registered Kabala deed No.5546 dated 15.12.1980, 34 decimals of land vide registered kabala deed No.2279 dated 05.01.1993, 6 decimals of land vide registered kabala deed No.4083 dated 24.08.1981, $10\frac{1}{2}$ decimals of land vide registered kabala deed No.520 dated 29.01.2002, 52 decimals of land vide registered kabala deed No.725 dated 25.01.1980,

26 decimals of land vide registered kabala deed No.3709 dated 01.09.1986, $33\frac{1}{2}$ decimals of land vide registered kabala deed No.1134 dated 12.03.2002 and 78 decimals of land vide registered kabala deed No.2776 dated 04.03.1975 and thus, plaintiff No.1 has been in possession in total 3.13 acres of land by way of inheritance and purchase. Both Nagarbashi and Sakhicharan were the owners of 8 annas share measuring 3.90 acres of land appertaining to R.S. Khatian No.49 described in schedule-3 to the plaint. Accordingly, during the S.A. operation, the land was recorded in the names of the four sons of Nagarbashi and two sons of Sakhicharan. Dhiren, one of the heirs of Nagarbashi transferred $24\frac{1}{2}$ decimals of land vide registered kabala deed No.3402 dated 16.11.1999 and Anup transferred 24 decimals of land vide registered kabala deed No.1134 dated 12.03.2002 to plaintiff No.1 and thus, plaintiff No.1 is the owner in possession of $48\frac{1}{2}$ decimals of land out of the property described in schedule-3. The land measuring 8.11 acres appertaining to R.S. Khatian No.221, S.A. Khatian No. 239 described in schedule-4 belonged

to Nadiar Chand, Adhar Chand, Laxmi Kanta, and Jitendra to the extent of 2 annas i.e. 2.02 acres of land each. Nadiar Chand died leaving behind three sons, Sharat, Bhudeb, and Naren. Accordingly, they inherited the property of Nadiar Chand. Adhar Chand died leaving behind three sons, Suren, Rajbihari, and Premananda. Sharat, one of the sons of Nadiar Chand and Premananda, one of the sons of Adhar Chand jointly sold 1.04 acres of land from R.S. Khatian No.221, S.A. Khatian No.239 to Jatish, Ananda, Mohananda, Sadananda and Gobinda, all are sons of Jogendra Majumder vide registered kabala deed No.154 dated 04.01.1975. Naren/Narendra, son of Nadiar Chand sold 65 decimals of land from the same khatian vide registered kabala deed No.155 to the said five brothers namely, Jatish and others. The plaintiff, grandson of Adhar Chand through his son, Surendra sold 1.04 acres of land from the same plot which he acquired by inheritance and purchase to the said five brothers and their mother, Bogola Sundari vide registered kabala deed No.2251 dated 21.03.1980. Subsequently, Bogola Sundari died leaving behind her five sons namely, Jatish and others. One of

the five brothers of Jatish and others namely, Sadananda died unmarried. Accordingly, his property devolved on the other four brothers. Jatish, Ananda, and Mohananda jointly sold $2.04\frac{3}{4}$ acres of land to plaintiff Nos.1 and 2 vide registered kabala deed No.216 dated 20.01.2003. Thus, the plaintiffs claim 7.21 acres of land out of the said four khatians. However, in the prayer portion, the plaintiffs prayed for saham in respect of $7.35\frac{1}{2}$ acres of land out of the said four khatians.

4. Defendant Nos.1-4 contested the suit by filing a written statement. Their specific case is that the R.S. Khatian in respect of the land described in schedule-1 to the plaint was rightly prepared. The R.S. recorded tenant, Nagarbashi died leaving behind four sons as stated in the plaint. Sakhicharan died leaving behind two sons, Adhar Chand died leaving behind three sons, and Laxmi Kanta also died leaving behind three sons, Debendra, Nokul, and Ratan. Surendra, one of the sons of Adhar Chand died leaving behind plaintiff No.1. Accordingly, S.A. Khatian No.61 was rightly prepared. S.A. recorded tenant, Rajbihari, son of

Adhar Chand died leaving behind two sons, Pijush and Radhika Ranjan Majumder, who are defendant Nos.3 and 4 while, Premananda died leaving behind two sons, Paritosh and Khokan who are defendant Nos.1 and 2. Debendra, Nokul, and Ratan, three sons of Laxmi Kanta were killed during the war of liberation while all of them were unmarried. Accordingly, their property devolved to the heirs and successive heirs of Adhar Chand and Nadiar Chand. Thus, Premananda got 38 decimals of land by way of inheritance and $19\frac{1}{2}$ decimals of land from the heirs of Laxmi Kanta in total, $57\frac{1}{2}$ decimals of land. Similarly, both Rajbihari and Suren, the father of the plaintiff got $57\frac{1}{2}$ decimals of land. Thus, defendant Nos.1-4 as the heirs of Premananda and Rajbihari got 1.58 acres of land out of the property described in schedule-1. It is false that Premananda, father of defendant Nos.1 and 2 sold 14 decimals of land by registered kabala deed No.4083 dated 24.08.1981 to plaintiff No.1 or Narayani Bairagi and Rajbihari, father of defendant Nos.3 and 4 sold 13 decimals of land out of 38 decimals of land to schedule-1 and some other land to

plaintiff No.1. Since both Rajbihari and Premananda were killed during the war of liberation in 1971, it was quite impossible to execute the kabala deeds thereafter. Accordingly, those kabala deeds have been created by false personation. Both the said kabala deeds are collusive and without any consideration. Accordingly, the plaintiffs do not own and possess any land based on the said two deeds. Adhar Chand died leaving behind his three sons while he was possessing 4 annas share i.e. 1.77 acres of land described in schedule-2. Accordingly, each of his sons got 59 decimals of land. Thus, each of defendant Nos.1-4 got 1.18 acres of land in the said jama by way of inheritance. Similarly, three sons of Laxmi Kanta got 4 annas share i.e. 1.77 acres of land but, all of them were killed unmarried in the war of liberation. Accordingly, the heirs of Adhar Chand and his successive heirs each got $88\frac{1}{2}$ decimals of land. Hence, defendant Nos.1-4 got 59 decimals of land as per their share therein to the extent of $\frac{2}{3}$, and thus, the defendants got in total $(1.18 + 59) = 1.77$ acres of land. The recorded tenant Jitendra sold 25 decimals of land vide registered

kabala deed No.725 dated 25.01.1980, 52 decimals of land vide registered kabala deed No.3709 dated 01.09.1986 and 34 decimals of land vide registered kabala deed No.2279 dated 06.01.1983 to plaintiff No.1. After selling the said land, there remained 66 decimals of land and 8 annas share thereof was devolved on the heirs of Adhar Chand. Accordingly, defendant Nos.1-4 got 22 decimals of land as per their share $\frac{2}{3}$ therein. Accordingly, defendant Nos.1-4 got in total $(1.77 + 0.22) = 1.99$ acres of land from schedule-2. The claim of the plaintiffs that Premananda and Rajendra alias Rajbihari, son of Adhar Chand sold 1.18 acres of land vide registered kabala deed No.2776 dated 04.03.1975 is also false because both of them died during the war of liberation in 1971. Accordingly, the same has been created falsely upon false personation. The land measuring 8.11 acres described in schedule-4 equally i.e. to the extent of 4 annas belonged to Nadiar Chand, Adhar Chand, Laxmi Kanta, and Jitendra and thus, each of them got $2.02\frac{1}{2}$ acres of land. Then, Adhar Chand died leaving behind three sons. Accordingly, each of his sons got $67\frac{1}{2}$

decimals of land. Accordingly, defendant Nos.1-4 as the heirs of Premananda and Rajbihari got in total $(67\frac{1}{2} + 67\frac{1}{2}) = 1.35$ acres of land. On the other hand, the share of Laxmi Kanta or that of their sons to the extent of $2.02\frac{1}{2}$ acres of land was devolved on the heirs and successive heirs of Nadiar Chand and Adhar Chand. As per the successive heirs of Adhar Chand, defendant Nos.1-4 got their share to the extent of $\frac{2}{3}$ i.e. 67 decimals of land out of $1.01\frac{1}{4}$ acres of land. Thus, defendant Nos.1-4 got in a total of 2.02 acres of land out of that jama. It is also false that Sharat and Premananda, son of Adhar Chand jointly sold 1.04 acres of land by registered kabala deed No.154 dated 04.01.1975 to the five sons i.e. Jatish and others because, Premananda was killed during the war of liberation in 1971 and thereby, the plaintiffs did not acquire any right, title, and interest. The defendants do not claim any land described in schedule-3. Thus, defendant Nos.1-4 claimed 1.15 acres of land out of schedule-1, 1.199 acres of land out of schedule-2, $2.02\frac{1}{2}$ acres of land out of schedule-4 and $6\frac{1}{2}$ decimals of land out of schedule-5 i.e. in total

5.23 acres of land. Though the property appertaining to R.S. Khatian No.39 and S.A. Khatian No.37 is the joint properties of both the plaintiffs and defendants, the plaintiffs did not bring those properties in hotchpot and not the other co-sharers of that very Jama have been made any party to the suit and thus, the suit for partition suffers from hotchpot and defect of parties. If the plaintiffs get any share, in that case, the defendants also claim for their separate share.

5. Though defendant Nos.14-18 submitted a separate written statement, they did not ultimately contest the suit.
6. During the trial, the plaintiffs examined as many as 5(five) witnesses while defendant Nos.1-4 examined 2(two) witnesses and both the parties exhibited some documents which were marked as exhibits 1-4 series and Ka-Kha series respectively.
7. After hearing both the parties, the Trial Court by the judgment and decree dated 01.12.2014 (decree signed on 06.01.2015) decreed the suit in part upon allocating $6.29\frac{3}{4}$ acres of land in favour of the plaintiffs and 2.29 acres of land in

favour of defendant Nos.1-4 subject to payment of Court fee within 60(sixty) days in default, the judgment and preliminary decree allocating saham in favour of defendant Nos.1-4 would be deemed not to have been granted.

8. Against the judgment and decree of the Trial Court, the plaintiffs preferred Title Appeal No.54 of 2015 in the Court of Learned District Judge, Gopalgonj. The appeal was transferred to the 1st Court of Learned Joint District Judge, Gopalgonj for its disposal. The Court of Appeal below after hearing both the parties by the judgment and decree dated 22.03.2017 (decree signed on 28.03.2017) dismissed the appeal and thereby, affirmed the judgment and preliminary decree of the Trial Court.
9. Against the judgment and decree of the Court of Appeal below, the plaintiff-appellants filed the instant Civil Revision as petitioners. They obtained the Rule and the interim order of stay.
10. Having placed the Civil Revision, Mr. Ziaur Rashid Tipu, learned Advocate for Mr. Sanjib Kumar Biswas, learned Advocate for the petitioners submits that both the Courts below failed to consider that the plaintiffs have been

able to prove the existence of a registered kabala deed No.2776 dated 04.03.1975. Accordingly, both the Courts below committed errors of law resulting in errors in the decree occasioning failure of justice by not allocating saham in respect of the said kabala property measuring 78 decimals of land.

- 11.** On the other hand, Mr. Md. Delowar Hossain Khan, learned Advocate for the defendant-respondent-opposite parties submits that it has been proved even by calling for the Volume Book of Kabala deed No.2776 dated 04.03.1975 that there is no name of the transferor and the transferees and accordingly, both the Courts below rightly held that the plaintiffs could not prove the said kabala deed and thus, there being no legal infirmity in the judgment and decree of affirmance, the Rule is liable to be discharged.
- 12.** I have perused the Civil Revision application along with the records of the Courts below and heard the learned Advocates from both sides.
- 13.** The primary dispute in this Civil Revision centres around whether the plaintiff-appellant-petitioners are entitled to an additional 78 decimals of land based on the registered Kabala

Deed No. 2776 dated 04.03.1975. The petitioners assert that this deed supports their claim to the extra land, while the opposite parties argue that the deed is invalid due to the absence of the transferor's and transferees' names and other particulars.

- 14.** The Trial Court initially found that the kabala deed in question lacked the necessary details, specifically the names of the transferor and transferees, which led the Court to disregard the deed as evidence for allocating the additional 78 decimals of land to the plaintiffs. This decision was challenged in the Appellate Court, which took further steps to verify the details by examining the Volume Book from the Sub-Registry office. The Court examined Md. Ayub Ali Khan, the carrier of the Volume Book, who confirmed the absence of the required names and other particulars in the Kabala Deed. Based on this evidence, the Appellate Court upheld the Trial Court's decision, dismissing the appeal due to the lack of merit in the plaintiffs' claim regarding the disputed deed.

- 15.** I have perused the deposition of the Volume Book career. The relevant portion of his examination in chief runs as under:

“০৪/৩/৭৫ তারিখের ২৭৭৬ নং কবলার ভলিয়ম নং ৩৪, পৃষ্ঠা ৪৭-৪৯ নং দলিলের দাতা ও গ্রহীতার নাম উল্লেখ নেই। তবে দাতার স্বাক্ষরের জায়গায় স্বাক্ষর আছে। আর টিপ স্বাক্ষরের জায়গায় দাতাদের নাম আছে। ”

The above deposition suggests that the pages of the Volume Book concerning Kabala Deed No.2776 were intact, as evidenced by the presence of entries on pages 47-49. There was no indication that page 46 was missing, nor that any pages were torn away. However, the critical issue with the kabala deed was its lack of essential details—the names of the transferor and transferees—rendering it invalid despite the physical integrity of the Volume Book pages. This lack of necessary information in the deed itself prevents it from being considered a legitimate document of transfer.

- 16.** The plaintiff-petitioners further claimed to have sold 1.04 acres of land to Jatish and his brothers through two registered kabala deeds dated 21.03.1980. The land in question was part of R.S. Khatian No.221 and S.A. Khatian No.239. However, the plaintiffs, as the heirs of Adhar Chand, actually owned and possessed only 67

decimals of land from these khatians. Despite this, they sold 1.04 acres, exceeding their rightful share by 37 decimals. The legal issue here is that the plaintiffs did not have the saleable interest for the excess 37 decimals of land. Consequently, when Jatish and his brothers purchased the land, they did not acquire valid title to those 37 decimals due to the plaintiffs' lack of ownership. Similarly, when the plaintiffs repurchased the land, including the excess portion, they also did not gain valid title to the 37 decimals they initially did not own.

17. In such facts and circumstances, I do not find any legal infirmity in the concurrent findings and observations of both the Courts below. Accordingly, I also do not find any merit in the Rule.
18. Hence, the Rule is discharged.
19. The interim order of stay is hereby recalled and vacated.
20. However, there would be no order as to costs.
21. Send down the records of the Courts below immediately.