

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 527 of 2018

Keshi Ram Barman

..... Petitioner.

-Versus-

Polash Chandra Roy (minor) and others

.....Opposite parties.

None appears.

.....For the petitioner.

Mr. Md. Humayun Kabir, Adv.

.....For the Opposite parties

Heard and judgment on 4<sup>th</sup> February, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and decree dated 07.07.2015 passed by the Joint District Judge, Nilphamari in Title Appeal No. 117 of 2009 affirming those dated 16.11.2009 passed in Other

Class Suit No. 65 of 2007 decreeing the suit should not be set aside.

Opposite party as plaintiff filed the above suit for partition.

Plaint case in short, inter alia, is that the suit was filed by the plaintiff against the defendants claiming total land of 2.50 acres of land in preliminary decree by filing a plaint contending that one Krishna Das Barman was the owner of 'ka' scheduled land. Who left his last breathing leaving his three sons Surendranath Barman, Dharmanarayan Barman, and Faiya Barman, who inherited and possessed and enjoyed the land. The land of lot No.2 of 'ka' schedule belonged to Surendronath and accordingly C.S. and S.A. record has been published after his name. He also possessed and enjoyed 1/3 of 'ka' schedule. Surendranath has no son at all and lastly at his old age being anxious of his next world or earth took one Rabindranath as his adopted son on religious ceremonies and functions. Surendranath Barman in his lifetime has also transferred .94¼ acres of land on 27.03.1986 by a kabala deed being No. 4434. Lastly Surendranath left his life leaving his adopted son Robindronath Barma and two daughters Moneshawri and Shantibala. Robindronath performed

of Surendranath and his wife when died. Thereafter Robindranath being owner and proprietor of the estate left by Surendranath had been in possession and enjoyment and once he died leaving his minor son Polash Chandra Roy, who has given the duty for field record of the land he has been possessing and enjoying upon the other heirs but they defrauded him not recording his name in the field record and in this consequence plaintiffs mother demanded partition of the land on 01.09.2007 from other tenants who refused the demand and that let the plaintiff to initiate this suit for partition.

Petitioner as defendant contested the suit by filing written statement, denying the plaint case, alleging, inter alia, that Surendranath Barman left his last leaving his two daughter i.e. Moneswari and Shantibala, who got the estate of Surendranath Roy as per Hindu Doyavaga Law. And Robindranath Barman was maid servant in his house and Robindronath Barman had not been taken in adoption ceremonially as per Hindu religious scriptures. He was merely brought up in Surendronath's family as maid servant and non plaintiff party lives at Bhopal's house. Defendants also stated that plaintiff's mother filed a suit being No. 388/98 and

failed to prove that plaintiff's father had been adopted son of Surendranath Barman. In fact Surendranath's two daughter's namely Maneswori Bala and Shantibala got the estate in lifetime. Maneswori's two sons names Atul Chandra Barman and Robindranath Barman and Shantibala's two sons Rammahan Barman and Binod Barman being successor and Robindranath Barman, who transferred .10 decimals of land to the defendant No.1 on 24.04.1997 by a kabala deed being No. 2340. Chittoram Roy, son of Keshiram Ray purchased  $.15 \frac{1}{5}$  decimals of land on 25.05.96 by a registered kabala deed being No. 4649 and after the death of Surendranath Barman, Keshiram Barman has been living in his homestead and at last field record has been published after the name of the defendants. Plaintiff filed the instant suit creating forged document. Thus he prayed for dismissal of the suit.

The Assistant Judge by the judgment and decree dated 16.11.2009 decreeing the suit on contest.

Challenging the said judgment and decree, defendant petitioner preferred Title Appeal No. 117 of 2009 before the Court of District Judge, Nilphamari, which was heard on transfer by the

Joint District Judge, Nilphamari, who by the impugned judgment and decree dated 07.07.2015 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and decree, defendant petitioner obtained the instant rule.

Although the matter is moving in the list for several days mentioning the name of the learned advocate appearing for the petitioner and finally posted in the list for delivering judgment but no one appears to press the rule.

Mr. Md. Humayun Kabir, the learned Advocate appearing for the opposite parties, on the other hand drawing my attention to the judgment of the court below submits that in the suit for partition filed by the plaintiff opposite party both the courts below concurrently found that petitioner predecessors Rabindranath was the adopted son of Surendranath and at the time of taking adoption although religious performance was done, which was proved in court as per section 32 of the Evidence Act and concurrently held that plaintiff is the adopted son of Surendranath Barman and inherited the property as per Hindu Law and thus rightly decreed

the suit concurrently in favour of the plaintiff. In the said concurrent judgment since there is nothing to show that it was in any way contains any misreading or non-reading of the evidence, the rule contains no merits it may be discharged.

Heard the learned advocate and perused the lower courts record and the impugned judgment.

This is a suit for partition. Admittedly suit property was belonged to Surendranath Barman. Plaintiff claimed that Rabindranath is the adopted son of Surendranath Barman, who had no male children and had only two daughters Moneshwri and Shantibala and had a estate. In the absence of male successor, he adopted Robindronath as his adopted son, who inherited the property as per Hindu Law. After the death of Robindronath plaintiff Polash Chandra Roy, who inherited this property.

On the other hand defendant claimed that Robindronath was not the adopted son of Surendranath Barman, he was a maid servant. After the death of Surendranath, his two daughters Moneshawri and Shantibala got the property for their life time. Subsequently defendant purchased the property from the heirs of

son of Shantibala and Moneshawri vide different registered sale deed. Plaintiffs claim is false and defendants claimed for dismissal of the suit.

Both the party although tried to establish their case by adducing evidences but the court below concurrently found that the document, fact and circumstances, shows that it is considerable and reliable for deceased Surendranath Barman to adopt a son to setup relief of his name, "Pumg", plaintiff submitted document vide Ext.3 as a relevant fact to prove the plaintiff case. This document shown as is relevant one to support the claim of the plaintiff and such fact of adopting relation under section 32(5)(6) of the Evidence Act is very related to such fact of relationship, while it is proved:

"When the statement relates to the existence of any relationship (by blood, marriage or adoption) between persons as to whose relationship (by blood, marriage or adoption) the person making the statement had special means of knowledge, and when the statement

was made before the question in dispute was raised.”

And thus held that as it is proved by section 32 of the Evidence Act as relevant fact this very document submitted by the plaintiff party vide exhibit-3, the submission reached as evidence of adoption of the predecessor plaintiff by deceased Surendranath Barman.

This concurrent finding since contains no misreading or non-reading of the evidence and is affirmed by the appellate court and in the revisional application there is nothing to contradict the findings, I am of the opinion that there is nothing to interfere in the said concurrent finding, the rule contains no merits to interfere with. Since the plaintiff has succeeded to prove by adducing sufficient evidence that he is the successor of the Surendranath Barman as his adopted son and accordingly inherited the property as per Hindu Law and accordingly both the court below settled his share by the impugned judgment.

I do not find any merit in the rule.



In the result, the Rule is discharged and the judgment and decree passed by the court below is hereby affirmed.

Send down the Lower Court Records and communicate the judgment at once.