

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No.54 of 2011

IN THE MATTER OF :

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

-And-

In the Matter of:

Manik Molla and others

.....Petitioners

-Versus-

Md. Layek Sheikh and others

.....Opposite parties

None appears

Judgment on: 06.01.2022

By this Rule the opposite party Nos. 1-7 was asked to show cause as to why the judgment and decree complained of in the petition moved in the court should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

The defendant-appellant-petitioners filed this Civil Revision challenging the judgment and decree dated 10.02.2010 passed by the Additional District Judge, Gopalganj in Title Appeal No. 34 of 2004 allowing the appeal and setting aside the judgment and decree dated 29.06.2004 passed by the Joint District Judge, 1st Court, Gopalganj in Title Suit No. 10 of 2004 decreeing the suit.

Brief facts for disposal of this Rule is that the plaintiff-respondent-opposite parties filed Title Suit No. 10 of 2004 before the Senior Assistant Judge, Moksudpur, Gopalganj stating inter-alia that the land measuring 0.63 acre in R.S. Khatian No. 35 and 1.29 acre in

R.S. Khatian No. 102 and 0.34 acre in R.S. Khatian No. 103 measuring in total 2.26 acres of land is the suit land for which the plaintiff claimed partition. The said land was recorded in the name of Mokbul Khondker as 8 anna, Maju Khatun as 4 anna, Hossen and Mochon as 2 anna each and they respectively got 1.13 acres, 0.56 $\frac{1}{2}$ acres, 0.28 $\frac{1}{4}$ and 0.28 $\frac{1}{4}$ acres of land. After the death of said Mokbul his wife Khodeja Begum got .14 acres, his three daughters namely Foyjunnesa, Karimunnesa and Rahimunnesa each got .25 acres and his sister Maju Khatun got 0.24 acres of land. Thus Maju Khatun had .56 $\frac{1}{2}$ acres of land by her own and got .24 acres from her brother Mokbul Hossain. Thus Maju Khatun in total got 0.80 $\frac{1}{2}$ acres of land. Then Maju Khatun transferred her total land to Kafiluddin, the father of the plaintiff no.1 and Barik Sheikh, father of the plaintiff Nos. 2-7 by four separate deed of kobala being No. 4288, 4290, 4291 and 4292 all dated 21.12.1950. Thereafter Foyjunnesa, the daughter of Mokbul Khondker sold her .25 acres of land to Barik Sheikh, father of plaintiff Nos. 2-7 and to the plaintiff No. 1 by deed of kobala being No. 224 dated 11.01.1954. Then wife of Mokbul Khandker namely Khodeja Begum sold .05 $\frac{1}{2}$ and .02 acres of land by two deeds of kobala being No. 1628 dated 09.03.1959 and deed No. 1632 dated 29.03.1959 to the predecessor of plaintiff Nos. 2-7 Barik Sheikh. This Khodeja Begum also transferred her rest .08 acres of land to the predecessor of plaintiff no.1, Kafiluddin and a deed was prepared but as she was ill she could not register the same but delivered the possession and accordingly during S.A. survey those lands were recorded in the name of Kafiluddin. Another daughter of Mokbul Khondker namely Karimunnesa sold her share of land to Kafiluddin by two separate deed of kobala being No. 5435 dated 08.09.1959 measuring .12 acres and by deed No. 5441 dated 08.09.1959 measuring .15 acres. In the

said deeds Karimunnessa's son Motaleb was shown as a seller also. R.S. recorded tenant Hossen transferred his land to Abdul Zabber Molla by a patta deed being No. 1495 dated 27.03.1951. That Abdul Zabber sold .29 acres to the plaintiff No. 1 on 07.12.1957 by a registered deed being No. 5084. After the death of Kafiluddin and his wife Mohazan Khatun their two sons namely plaintiff no.1 and Barik Sheikh became the owners of those land and after the death of Barik Sheikh defendant Nos. 2-7 became the owners of the portion of Barik Sheikh. Thus the plaintiff Nos. 1-7 are owning and possessing in total $1.72 \frac{3}{4}$ acres of land. The defendants are in possession of rest quantum of suit land measuring $.53 \frac{1}{4}$ acres of land by purchase from Mochon and Rahimunnessa. But in the latest survey some lands have been wrongly recorded in the names of the defendants and on the strength of wrong record the defendants are claiming the lands. On the demand of the plaintiffs for partition of the suit land the defendants denied the same hence the plaintiffs filed this suit for partition.

The defendant-appellant-petitioner Nos. 2, 3 and 5 contested the suit by filing joint written statements. Their case is that the land measuring 2.26 acres in R.S. Khatian Nos. 35,102 and 103 were rightly recorded in the names of Mokbul Khondker as 8 ana share, Maju Khatun as 4 ana share, Hossen and Mochon as 2 ana share each. After the death of said Mokbul Khondker his sister Maju Khatun got .24 acres thus Maju Khatun became the owner and possessor of $.80 \frac{1}{2}$ acres of land. Out of that land Maju Khatun sold .59 acres on 21.12.1950 by Kobala deed No. 4288 and .23 acres of land by another deed of kobala being No. 4292 to Kafiluddin Sheikh, father of the plaintiff no.1. Said Kafiluddin sold .24 acres of land on 07.12.1966 by a deed of kobala to the predecessors of the present defendant Nos. 1-5 namely Abdur Rashid and Golenur Begum.

Hossen and Mochon having right and title in .56 ½ acres of land transferred .33 acres from R.S. Khatian No. 102 and .09 acres from R.S. Khatian No. 103 and .16 acres from RS khatian no.35 and thus in total .58 acres of land to Abdul Majid and Abdul Zabber Molla by a patta deed being No. 1495 on 27.03.1951. Abdul Majid sold his part measuring .29 ½ acres of land to the father of the defendants namely Abdur Rashid on 18.02.1959 by kobala deed No. 1474. The daughter of Mokbul Khondkar namely Rahimunnesa sold .16 acres from R.S. khatian No. 102 and .04¼ acres from R.S. khatain No. 103 and .08¼ acres from RS khatian no.35 thus in total 28½ acres of land to the father of the defendants namely Abdur Rashid and mother Golenur Begum on 18.02.1959 by deed of kobala being No. 1475. That Golenur Begum sold .13 acres of land to one Imam Uddin on 25.06.1962 by kobala deed No. 2078. The heirs of Imam Uddin sold the said land on 30.12.1963 to the mother of the defendants namely Golenur Begum by kobala deed No. 812 dated 08.12.1964. In the S.A. khatian No. 152 published in the name of Motaleb Mia .04 acres were recorded which was the land of R.S. Khatian No. 103. Motaleb Mia sold those .04 acres of land to Abdur Rashid, the father of the defendants by a deed of kobala being No. 1188 dated 28.03.1988. The plaintiffs filed the suit with false statement without any cause of action which is barred by non-joinder of parties and hence the suit is liable to be dismissed.

The plaintiffs examined 1 witness namely plaintiff No. 1 and produced some documents which have been marked and exhibited in support of their case. On the other hand the defendants examined 2 witnesses namely defendant No. 3 and another and produced some documents which have also been marked and exhibited in support of their case. After conclusion of trial the learned Joint District Judge on elaborate discussions considering the documents

and submissions of the parties decreed the suit in favour of the plaintiffs giving them 1.48 $\frac{3}{4}$ acres of land as their Saham (share).

Against that judgment and decree passed by the trial court the defendants preferred Title Appeal No. 34 of 2004 before the learned District Judge, Gopalganj which was ultimately heard and disposed of by the Additional District Judge, Gopalganj by his impugned judgment and decree dated 10.02.2010. The lower appellate court though allowed the appeal by setting aside the judgment and decree passed by the trial court but after elaborate discussions and considering the documents of both the parties also gave Saham (share) to the plaintiffs measuring 1.42 $\frac{1}{4}$ acres of land.

Being aggrieved by and dissatisfied with the said judgment and decree the defendant-appellants preferred this revision and obtained the Rule. When this matter was taken up for hearing, which is appearing in the list for a couple of days, no one appears to support or oppose the Rule. Since it is a Civil Revision of 2011, I am inclined to dispose of this Rule.

I have perused the revisional application along with the annexures, the Lower Court records including the plaint, written statements, the depositions of the parties and the exhibited documents.

It is the admitted position of both the parties that the disputed land measuring 2.26 acres recorded in R.S. Khatian Nos. 102, 103 and 35 (Exhibit-1, 1-Ka and 1-Kha) belonged to Mokbul Khondker as 8 ana share, Maju Khatun as 4 ana, Hossen and Mochon as 2. ana share each. It is also admitted position that after the death of Mokbul Khondker his sister Maju Khatun got .24 acres of land from Mokbul Khonoker and as such she got .56 $\frac{1}{2}$ acres of her own and .24 acres from her brother Mokbul Khondker thus in total .80 $\frac{1}{2}$ acres of land. It appears from 4 exhibited deeds being Nos. 4288,

4290, 4291 and 4292 all dated 21.05.1950 (Exhibit-3-Cha, 3-Chha, 3-Ja and 3-Jha) that Maju Khatun sold out her entire property to Kafiluddin and Barik Sheikh, the predecessors of the plaintiff No. 1 and plaintiff Nos. 2-7 respectively. It further appears that Foyzunnesa, the daughter of R.S. recorded tenant Mokbul Khondker, sold .25 acres of land to the predecessor of the plaintiff no.1 on 11.05.1964 by a registered deed. It further transpired from record that Khodeja Khatun by tow deeds of kobala both dated 10.03.1949 sold .05 ½ and .02 acres of land to the plaintiff Nos. 2-7. Thereafter Korimunnesa another daughter of R.S. recorded tenant Mokbul Khondker sold .27 acres of land to the predecessor of the plaintiffs by 2(two) separate deeds both dated 08.09.1959. But it appears that Korimunnesa acquired .25 acres of land as heirs of Mokbul Khondker. So the plaintiffs by the above 2 deeds both dated 08.09.1959 acquired only .25 acres of land. It further appears that Hossen Sheikh/Molla sold .29 acres of land to one Abdul Zabber and said Abdul Zabber transferred the same to the predecessor of the plaintiffs by a registered deed dated 07.12.1957. But as Hossen was owner of only 28 ¼ acres of land, by this deed the plaintiff acquired only .28 ¼ acres of land thus the plaintiffs in total acquired (.80 ½ + .25+ .07 ½ +.25+.28 ¼) = 1.66 ¼ acres of land. The defendants claimed that Kafiluddin sold .24 acres of land to the predecessor of the defendants by a registered deed dated 07.12.1966 (Exhibit-Kha-3). Though the plaintiffs did not admit the execution of that deed but it is a registered deed which was acted upon and has been exhibited and marked; so Kafiluddin, the predecessor of the plaintiff no.1 sold .24 acres of land to the predecessor of the defendants. Thus at present the plaintiffs has the title of only (1.66 ¼ - .24) = 1.42 ¼ acres of land.

Regarding .08 acres of land under R.S. Khatian No. 102 which was claimed by the plaintiffs by way of purchase from Khodeza Begum, wife of Mokbul Khondker but the plaintiffs could not prove it by producing that document or adducing evidence. Moreover, Khodeza had title of only $.6\frac{1}{2}$ acres after transfer of $.7\frac{1}{2}$ acre to the predecessor of plaintiff out of her .14 acres of land. Though it has been recorded in the name of Kofiluddin in S.A. Khatian No. 45 but since the plaintiffs could not prove their title they are not entitled to get saham of those lands.

Now, how far the defendants could prove their case may be examined though they did not pray their Saham. It has already been discussed that Kafiluddin sold .24 acres of land to the predecessors of the defendants by a registered deed being no.3803 dated 07.12.1966 (Exhibit-Kha-3) from RS Khatian Nos. 102, 103 and 35. The defendants further claimed .04 acres of land from Motaleb by Kobala deed No. 1188 dated 28.03.1988 in R.S. Khatian No. 103 which has been recorded in the name of Motaleb, son of Korimunnesa has no basis as that Korimunnesa sold out her entire property earlier by two separate deeds both dated 08.09.1959 to the predecessor of plaintiffs which I have already discussed above. Thus the defendants by the Kobala deed No. 1188 dated 28.03.1988 executed by said Motaleb did not acquire any title. The defendants further claimed that their predecessor Abdur Rashid purchased $.29\frac{1}{2}$ acres of land from Abdul Majid Molla by a deed of kobala being no. 1474 dated 18.02.1959 (Exhibit-Kha-4). But Abdul Majid Molla and Abdul Jabber got $.56\frac{1}{2}$ acres of land as equal share from Hossen and Mochon through patta deed being no.1495 dated 27.03.1951 though .59 acres were shown to be transferred. So, Adul Majid could only sold $.28\frac{1}{4}$ acres of land. Thus defendants got $.28\frac{1}{4}$ acres of land from Abdul Majid. Moreover, Abdur Rashid and

Golenur, the predecessors of defendants acquired title of .25 acres of land from Rahimunnessa, daughter of Mokbul Khondker by a deed of kobala being no.1475 dated 18.02.1959.

In the facts and circumstances discussed above I find that the learned Judge of the Lower appellate Court did not commit any error of law thus this Rule has no substance hence it is destined to fail.

In the result the Rule is **discharged**. However, without any order as to cost.

Send down the Lower Court Record along with a copy of this judgment at once.