

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

**Civil Revision No. 4366 of 2015**

**In the matter of:**

Md. Abul Kalam Azad.

...Petitioner.

**-Vs-**

Md. Umed Ali Pra and others.

....Opposite parties.

**Present**

Mr. Justice Mamnoon Rahman

Mr. Md. Yousuf Ali, Adv. with

Mr. Md. Uzzal Hossain, Adv.

...For the petitioner.

Mr. Md. Shahadat Tanveer, Adv.

...For the opposite parties.

Heard on: **15.01.2025 & 26.01.2025**

**And**

Judgment on: **The 24<sup>th</sup> February, 2025**

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 30.06.2015 passed by the learned Additional District Judge, Natore in Title Appeal No. 96 of 2010 reversing the judgment and decree dated 15.04.2010 passed by the learned Assistant Judge, Singra, Natore in Other Class Suit No. 71 of 1999, should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The short facts relevant for the disposal of the instant rule, is that, the petitioner as plaintiff instituted Other Class Suit No. 71 of 1999 in the court of Assistant Judge, Singra, Natore for partition stating *inter-alia* that land measuring 4 decimals, out of 8 decimals in R.S plot

Nos. 136 and 8 decimals in R.S Plot No. 139 was recorded in R.S Khatian No. 45 in Mouza- Hat Singra in the name of Tipu Garia and the rest 4 decimals land R. S Plot No. 139 was recorded in the names of Volanath Das and Satya Charan Das in R.S Khatian No. 67. While they were conducting the title and possession in the manner as stated above, Volanath expired and devolved his share to his 2 sons as being legal heirs namely Narayan Chandra and Bishwanath Das. Under that circumstances, Satya Charan Das, 2 decimals and Narayan Chandra Das and others 2 decimals from R.S Plot No. 139 transferred to the plaintiff vide registered Kabala Deed No. 15350 dated 02.11.1983 and registered Kabala Deed No. 13147 dated 15.11.1994 respectively. The plaintiff got delivery of the possession of his purchased land and mutated the land in his own name. He has been continuing the title and possession of the suit land since then by erecting pucca house and grocering shop. Subsequently Tipu Garia transferred land measuring 8 decimals from his share remained in R.S Plot No. 136 & R.S Plot No. 139 to the defendant No. 1 who late on sold out land measuring two and half decimals to the defendant No. 03 and by this way the parties in the suit are enjoying the title and possession of the suit land. The suit land is not demarcated among the parties by metes and bounds. The defendant No. 1 for the 1<sup>st</sup> time on 28.01.1999 declared that though 8 decimals is recorded in R.S plot No. 139, physically there remains 7.25 decimals land in R.S Plot No. 139 and therefore the plaintiff would get only 3.61 decimals land in the suit land and the defendant No. 1 further threatened that he would dispossess the plaintiff from the rest land and

would erect pucca building thereon. Then the plaintiff for the first time came to know about the inconsistent situation as to the quantum of land between the record in R.S Khatian and the physical possession. The plaintiff approached to the defendants for amicable separate Saham in the suit land which was denied by the defendants. The plaintiff is entitled to get the separate saham of land measuring 4 decimals and therefore the plaintiff filed the suit for partition in the court Assistant Judge, Natore.

The defendant No. 1 entered appearance by filing written statement denying all the material allegations made in the plaint. The case of the defendant No. 1 in short, is that, suit land of the R.S Plot Nos. 136 and 139 were in S.A plot no. 87. Total land measuring 56 decimals was recorded in the name of Ramdas Lalin S.A plot no. 87. He was later on expired leaving behind 2 sons namely Parilal Das and Krishno Lal Das. They transferred land measuring 12 decimals to Tipu Gorla, 3 decimal to Naray Gorla, 3 decimal to Tunku Garia, and 2 decimal to Pachu Gopal and 3 decimal to Sukumar Das in total of 23 Hectals out of 56 decimals of the spot on different dates. Subsequently the rest of the land measuring 33 was equally divided between the two brothers Pari Lal Das and Krishno Lal Das. Thereafter Pari Lal died leaving behind one son Schacindranath Das and he inherited land measuring 1615 decimal in the aforesaid plot and during his life time transferred land measuring 10 decimal to Narayan Garia. After the death of Schacindra nath Das, his 4 sons namely Sita nath Das, Sontosh Kumar Das, Ranojit Kumar Das and Sanjit Kumar Das got the rest 6%

decimals land by way of inheritance. On the other hand Krishna Lal Das expired leaving behind 2 sons namely Volanath Das and Satya Charan Das and accordingly they inherited land measuring 16% decimals. When they were enjoying title and possession in their part transferred land measuring 12% to Montaz Ali Master and 2 decimals to Abed Ali As such Volanath Das and Satya Charan Das had title and possession only in rest 2 decimals land in the said plot. Thereafter Volanath expired leaving behind 2 sons Narayan Chandra Das and Bishow Nath Das and Satya Charan Das expired leaving behind 6 sons namely Santu, Montu, Mintu, Kakalu, Shubu and Shisto. All the co sharers of the suit property were enjoying title and possession in their respective share but in S.A operation Volanath got record in the suit land more than his share in the said S.A plot no. 87 and due to the wrong record, Sitha Nath Das and others (sons of Schchindra Nath Das) filed other classes suit No. 668 of 1984 and the suit was finally decreed in favor of the plaintiffs for separate saham of land measuring 6 ½ decimals. That Land measuring 12 decimals was duly recorded in R.S plot nos. 136 and 139 in respective R.S Khatian no. 45 & 47 in name of Tipu Garia who later on transferred land measuring 8 decimals to mad Ali the defendant No. 1) vide registered Kabala Deed No. 1468 dated 1 vide 21.03.1973 but at the time of execution of the aforesaid Kabala Deed, erroneously the plot was mentioned S.A Plot 86 instead of NO. 1 87 in the deed and ultimately the defendant was constrained to file other classes suit No. 636 of 1984 for rectification of the deed and eventually the matter was taken up by the High Court Division in Civil

revision No. 2846 of 1984. During pendency of the civil revision, the heirs of Tipu Goria executed a Nadabi Deed being No. 11092 dated 28.10.1998 in favor of the defendant no. 1. Apart from above, Tipu Goria transferred land measuring 4 decimals to the defendant No. 2 from the R.S Plot No. 136. While the defendant No. 1 was enjoying his right, title and possession in his share of land measuring 8 decimals R.S plot no. 136 & 139, transferred land measuring 2½ decimal to the defendant no. 3 and as such the defendant has outstanding title and possession in land measuring 5% decimals in those plots. Although land measuring 8 decimal exists in R.S Plot no. 139, there remains physically only 7 decimals. Pari Lal Das and Krishno Lal Das transferred land measuring 4 decimal to Tipu Garia and there remained only 3 decimal land. Narayan Garia purchased from Schacindra and thereafter Naray Garia sold out 10 decimal to Haripado Shaha and Narayan Chandra Kundu who are enjoying title and possession in 2 decimal in R.S Plot no. 139 and as such 1 decimal land was in possession of Volanath Gong. Although Sattya Charan Das gong have executed deeds in favor of the plaintiff, he is entitled to land measuring 1 decimal or 2 decimal in suit plot. The defendant further claimed that the suit should be dismissed because as the entire land measuring 56 decimals of S.A Plot has not been included in the schedule of the plaintiff.

During trial the court framed as many as four Issues. Both the parties, namely plaintiff and defendant adduced evidences both oral and documentary. The trial court proceeded with the suit and after hearing

the parties, considering the facts and circumstances, evidences, both oral and documentary the trial court decreed the suit in preliminary form. Being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the trial court the defendant preferred Title Appeal No. 96 of 2010 in the court of District Judge, Natore and the same was heard and disposed of by the Additional District Judge, Natore who vide the judgment and decree dated 30<sup>th</sup> June, 2015 allowed the appeal and thereby sent the case back on remand to the trial court. Being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the lower appellate court the petitioner moved before this court and obtained the present rule.

Mr. Md. Yousuf Ali, the learned counsel appearing on behalf of the petitioner submits that the trial court on vivid discussion of the facts and circumstances, evidence and materials on record, decreed the suit which requires no interference by this court. He submits that the trial court by vivid discussion of the evidence came to a clear conclusion regarding right, title and possession over the property in question by the plaintiff and as such the trial court has rightly decreed the suit in favour of the plaintiff. He further submits that in the trial court the defendant miserably failed to prove that the plaintiff has no title, right or possession over the suit property. The learned counsel further submits that the trial court disposed of all the Issues with well reasoning based on oral and documentary evidence.

Mr. Md. Shahadat Tanveer, the learned counsel appearing on behalf of the opposite party vehemently opposes the rule. He submits

that the lower appellate court on proper appreciation of the facts and circumstances, evidence and materials on record has rightly sent the case back on remand which is liable to be maintained for ends of justice. The learned counsel filed written submissions and submits that admittedly there was a case in between the parties in a different suit being Title Suit No. 668 of 1984 and the lower appellate court has rightly pointed out that the trial court miserably failed to discuss and consider the judgment and decree passed in that suit and such non-consideration amounts to misreading and affecting the ultimate decision of the trial court. He further submits that the vendor of the present petitioner-plaintiffs were party in that suit and they did not get any Saham and as such they cannot claim for further Saham in a different suit. Hence, the learned counsel prays for discharging the rule with cost.

I have heard the learned Advocates for the petitioner as well as opposite party. I have perused the impugned judgment and decree passed by the trial court as well as lower appellate court, revisional court, grounds taken thereon, necessary papers and documents annexed herewith as well as L.C. Records.

On perusal of the same, it transpires that the present petitioner as plaintiff instituted the suit for partition claiming 4 decimals of land impleading the opposite party and others as defendants. It further transpires that during trial the plaintiffs adduced two oral evidences and also documentary evidences which were marked as exhibits. The defendant No. 1 also contested and adduced one oral evidence as well

as certain documentary evidences which were also marked as exhibits. The trial court framed as many as four Issues regarding maintainability, non-joinder of parties, whether the plaintiff has right and title and whether they are entitled to get a decree of partition. It transpires that the trial court vividly discussed the facts and circumstances and came to a conclusion that the plaintiffs proved their right and title in the suit property by adducing sufficient oral and documentary evidences. It is a clear finding of the trial court that the plaintiff established their chain of ownership by all the relevant documents as well as also possession of the suit property. Regarding a previous suit as submitted by the defendant the trial court also considered a Commission Report adduced in Title Suit No. 668 of 1984 and came to a conclusion which runs as follows;

বিবাদীর দাখিলী ৬৬৮/৮৪ অঃ প্রঃ মোকদ্দমার কমিশন প্রতিবেদন হইতে দেখা যায় বাদী হাল ১৩৫, ১৩৭ নং খতিয়ান হইতে ৬ নং বিবাদী R.S ১৩৭, ১৩৮ নং খতিয়ান হইতে ৭ নং বিবাদী R.S ১৩৭, ১৩৮ এবং  $\frac{১৩৭}{১৫২}$  নং খতিয়ান হইতে এবং টিপু গড়িয়া R.S. ১৩৬ দাগের এবং R.S. ১৩৯ দাগের সম্পত্তি বাবদ পৃথক ছাহাম প্রাপ্ত হইয়াছে। টিপু গড়িয়া উক্ত দাগদ্বয় অর্থাৎ নালিশী দাগদ্বয় হইতে .০৮ শতাংশ বাবদ পৃথক ছাহাম প্রাপ্ত হয়। স্বীকৃত মতেই টিপু গড়িয়া তপশীল ভূমি মধ্যে ১৩৬ দাগের ০৮ শতাংশ এবং ১৩৯ দাগের ০৪ শতাংশ ভূমি মধ্যে ১৩৬ দাগের ০৪ শতাংশ ২ নং বিবাদী বরাবর হস্তান্তর করে এবং বাকী ০৮ শতাংশ এই মোকদ্দমার ১ নং বিবাদী বরাবর হস্তান্তর করিয়াছে। ১নং বিবাদী তাহার ০৮ শতাংশ মধ্যে  $\frac{১}{৪}$  শতাংশ ৩নং বিবাদী বরাবর হস্তান্তর করিয়াছে।



এখন D.W ১ তাহার জেরায় স্বীকার করিয়াছে যে, বাদী তাহার পূর্ব দিকে নালিশী সম্পত্তি দখল করে। এই বিবাদী জেরায় আরও স্বীকার করিয়াছে ০২/১১/৮৩ ইং তারিখের ১৫৩৫০ নং দলিল মূলে এবং গত ১৫/১১/৯৪ ইংরেজী তারিখের ১৩১৪৭ নং দলিল মূলে বাদী বরাবর সত্য চরন ও নারায়ন চন্দ্র দিং হস্তান্তর করিয়াছে এবং সেখানে বাদীর দোকান ঘর রয়েছে।

একই জেরাতে বিবাদী D.W. ১ আরও স্বীকার করিয়াছে যে, সে ১৩৬ দাগের পূর্বে এবং ১৩৯ দাগের পশ্চিমাংশে দখল করিতেছে। সুতরাং তাহার পূর্বে বাদীর দখল বলিতে ১৩৯ দাগের তাহার দখলের পর পূর্বের দখল ইঙ্গিত করিতেছে। সুতরাং নালিশী সম্পত্তিতে বাদীর স্বত্ব দখল প্রমানিত।

So, it transpires that the trial court came to a conclusion that the plaintiff has exclusive right and title in the suit property. Regarding the plot in question the trial court further held as follows;

বাদী দাবীকৃত তপশীল দাগ হইল হাল ১৩৬ এবং ১৩৯ নং দাগ যাহাতে বাদী এবং বিবাদীগণের স্বত্ব দখল রহিয়াছে মর্মে প্রমানিত হইয়াছে। বিবাদী হরিপদ সাহা এবং নারায়ন চন্দ্র কুন্ডুর খরিদা ১০শতাংশ মধ্যে .০২ শতাংশ ১৩৯ দাগের উত্তরাংশ হইতে দখল ভোগ করিতেছে মর্মে দাবী করিলেও তাহা প্রমান করে নাই আবার বিবাদী যে, ৬৬৮/৮৪ অঃ প্রঃ মোকদ্দমার সাহায়ে চূড়ান্ত প্রতিবেদন দাখিল করিয়াছে উহার Shatch map হইতে দেখা যায় যে, ১৬ নং বিবাদী অর্থাৎ টিপু গড়িয়া ১৩৯ নং দাগের লম্বালম্বিভাবে পশ্চিমাংশ বাবদ সহাম প্রাপ্ত হইয়াছে। সুতরাং বিবাদীর উক্ত দাবী বিশ্বাস যোগ্য নয়।

It transpires that during trial the court allowed local inspection and also considered the report which was accepted by Order No. 47 dated 19.10.2004 and the trial court further held as follows;

উক্ত কমিশন প্রতিবেদন হইতে ইহা পষ্ট যে হাল ১৩৬ এবং ১৩৯ নং দাগদ্বয়ের মোট ১৬ শতাংশ সম্পত্তি থাকিলেও

১৩৬দাগে ১৩৯ নং দাগ অপেক্ষা বেশী রহিয়াছে। যে হেতু এই বিবাদী বাদীর খরিদা দলিল মূলে স্বত্ব দখল স্বীকার করে এবং এই দুই দাগে বাদী বিবাদীর অংশ সুনির্দিষ্ট ভাবে উল্লেখ রহিয়াছে এবং এই দুই দাগে অন্য কাহারো অংশ পরিলক্ষিত হয় না।

So, it transpires that the trial court on vivid discussion of the facts and circumstances decreed the suit. On meticulous perusal of the judgment and decree passed by the lower appellate court it transpires that though the lower appellate court came to a conclusion regarding the right, title and possession of the plaintiffs but raises a question regarding non-consideration of the judgment passed in Title Suit No. 668 of 1984. The main findings of the lower appellate court based upon the said judgment in a previous suit and the contention of the lower appellate court is that if the trial court considered the same the result of the suit would be based upon Common Hotch Potch and other issues. The lower appellate court further stated that since there is a decree in a previous partition suit regarding the self-same property it would be wise to send the case back on remand. But on meticulous perusal of the papers and documents, it transpires that especially from the judgment and decree passed by the lower appellate court that the property does not attract in the present suit in hand as much as it has been mentioned earlier that the trial court not only considered the decision of the previous suit but also considered the report submitted by the defendant adduced in the previous suit. Since the plaintiff-petitioners proved their right, title and possession in the suit property with all means I am of the

view that the judgment and decree passed by the trial court is liable to be maintained for ends of justice.

Hence, the instant rule is made absolute. The impugned judgment and decree passed by the lower appellate court is hereby set aside and the judgment and decree passed by the trial court is hereby affirmed.

Send down the L.C. Records to the concerned court below with a copy of the judgment, at once.

(Mamnoon Rahman,J:)

*Emdad.B.O.*