

District-Shariatpur.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 3735 of 2018.

Abul Kashem alias Bishai Majhi and another.

----- Plaintiffs-Appellants-Petitioners.

-Versus-

Abdur Rashid Majhi and others.

----- Defendants-Respondents-Opposite Parties.

Mr. Md. Khalilur Rahman, Advocate with

Mr. Md. Rashedul Islam, Advocates

----- For the Plaintiffs-Appellants-Petitioners.

Mr. Mirza Salahuddin Ahmed, Advocate with

Ms. Helena Begum Chaina, Advocate

Ms. Sabina Yeasmin Nila, Advocate and

Mr. Mirza Ziauddin Ahmed, Advocates

--- For the Defendants-Respondents-Opposite Parties.

Heard On: 7th Day of July 2025.

And

Judgment Delivered On: 14th Day of July 2025

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 15.10.2018 passed by the learned Additional District Judge, Shariatpur in Title Appeal No. 113 of 2016, affirming the judgment and decree dated 31.08.2016 and 07.09.2016 respectively passed by the learned Senior Assistant Judge in Title Suit No. 97 of 2013 dismissing the suit for pre-emption (Huq Shufa), 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 petitioners instituted the suit for pre-emption on 01.09.2013 under Mohammedan Law, claiming co-sharership in the case land, which had been transferred by their sister (Opposite Party No. 2) to Opposite Party No. 1 through registered sale deed No. 1776 dated 20.06.2013. The petitioners allege that they first came to know about the sale on 03.08.2013 from one Nuru Madbor, and they made the Talab-e-Muwathibat on 05.08.2013, the same day they also applied for a certified copy of the deed. They further claim to have performed Talab-e-Ishhad before the purchaser (Opposite Party No. 1) in presence of Abdur Rob Madbor and Monnaf Bepari.

The trial court dismissed the suit, holding: (i) that Talab-e-Muwathibat was not made “immediately” as required under Mohammedan Law; and (ii) that Talab-e-Ishhad was not proved through admissible and competent evidence. The appellate court affirmed this decision.

Mr. Md. Khalilur Rahman, learned Advocate for the petitioners, argued that the petitioners are admittedly co-sharers and that their actions following knowledge of the sale were prompt and consistent with the requirements of law. He urged a reasonable and contextual interpretation of the standard of “immediacy,” particularly in view of contemporary practices and procedural steps involved in asserting the claim. He further submitted that although the two named witnesses to Talab-e-Ishhad were not examined at trial, the petitioners filed an application under Order XLI Rule 27 CPC before the appellate court to adduce their evidence. However, that application was merely “kept on record” without any speaking order, despite the court proceeding to hear and dispose of the appeal. He relied on an unreported decision in CP No. 4608 of 2018, where the Appellate Division emphasized that any application filed before the court must be disposed of-either by

allowing, rejecting, or otherwise determining it and cannot simply be ignored.

In reply, Mr. Mirza Salahuddin Ahmed, learned Advocate appearing for the purchaser (Opposite Party No. 1), submitted that the appellate court cannot admit additional evidence unless the conditions under Order XLI Rule 27 are satisfied. He argued that since the petitioners neither filed any application before the trial court to adduce the said witnesses nor was any such request rejected, the appellate court was under no obligation to entertain fresh evidence intended to cure defects in the petitioner's case. He contended that by participating in the subsequent hearings without insisting on a decision regarding their application, the petitioners effectively waived it. He cited decisions reported in *16 BLD (AD) 251*; *11 BLC (AD) 186*; *22 BLT (HCD) 207*; and *BCR 1983 (HCD) 152* in support of his contentions.

From the appellate record, it appears that the petitioners filed an application under Order XLI Rule 27 CPC on 27.09.2018 seeking to adduce additional evidence through Abdur Rob Madbor and Monnaf Bepari. The learned appellate court passed Order No. 16 on the same day, merely stating that the application was "kept on record." The appeal was then heard with participation from both parties on 08.10.2018, and the impugned judgment was delivered thereafter.

The expression "kept on record" implies acknowledgment of the application's filing, yet the court neither considered it nor assigned any reason for disregarding it. This procedural handling is inconsistent with the mandate of Order XLI Rule 27(2) CPC, which requires that the appellate court must record reasons for admission or refusal of additional evidence when invoked under this provision.

By failing to dispose of the application in any manner, whether by allowing, rejecting, or recording reasons for its irrelevance, the appellate court committed a material procedural error. Courts are duty-bound to address and determine all applications that are formally moved and pursued before them, especially those that have a direct bearing on the appeal's adjudication.

Where an application is filed under Order XLI Rule 27 of the Code of Civil Procedure for taking additional evidence, the appellate court is obliged to dispose of it in a manner it thinks fit, either by allowing it, rejecting it, or recording reasons for its non-consideration. The discretion vested in the appellate court under Rule 27(1)(b) is subject to the procedural mandate under Rule 27(2), which requires the court to record its decision with reasons. Merely "keeping the application on record" without addressing it at all amounts to a procedural impropriety. The appellate court cannot bypass or ignore such an application, especially where it has been formally pressed. Failure to discharge this duty vitiates the appellate judgment, as it frustrates the right of the party to have its application judicially disposed of.

Accordingly, **the Rule is made absolute.**

The judgment and decree dated 15.10.2018 passed by the learned Additional District Judge, Shariatpur in Title Appeal No. 113 of 2016 are hereby set aside.

The matter is remanded to the learned appellate court for a fresh hearing. The court shall first decide the petitioners' application under Order XLI Rule 27 CPC by a reasoned order and thereafter proceed to hear and dispose of the appeal on merit in accordance with law. The entire process shall be completed expeditiously, preferably within three (3) months from the date of receipt of the record and this judgment.

The decree of the trial court shall remain suspended pending fresh disposal of the appeal.

There shall be no order as to costs.

Let the Lower Court Records be sent back at once along with this judgment to the courts concerned for necessary action.

(Justice Md. Toufiq Inam)

Ashraf /ABO.