

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 179 of 2019

Niranjan Sarder and others

..... Petitioners

-Versus-

Kartik Sarder and others

..... Opposite-Parties

Mr. Sabyasachi Mondal, Advocate with

Mr. Raju Sen, Advocate

... For the Petitioners

Mr. Sk. Atiar Rahman, Advocate

Judgment on 17.08.2025

In this revision Rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and decree dated 22.10.2018 passed by the learned Additional District Judge, 1st Court, Khulna in Title Appeal No. 183 of 2017 dismissing the appeal and affirming the judgment and decree dated 23.08.2017 (decree signed on 30.08.2017) passed by the learned Joint District Judge, 4th Court, Khulna in Title Suit No. 1894 of 2008 decreeing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the predecessor of opposite party Nos. 1 and 2 instituted Title Suit No. 1894

of 2008 against the petitioner and other opposite parties, as defendants for a decree of partition contending, inter alia, that the suit land appertaining to C.S. Khatian No. 62 measuring 11.84 acres were owned and possessed by Gobinda Chandra Sarder and C.S. record stands published in his name. He mortgaged 4.41 acres and 1.47 acres respectively to Jogendra Nath Mondal on 22.11.1939 and 02.07.1940 respectively, on the condition of returning the land, accordingly, he took back the suit land from Jogendra. Gobinda Chandra Sarder died before 1963 leaving behind 2 sons, father of the plaintiff Monoranjan Sarder and Rasomoy Sarder and after the death of Gobinda Chandra Sarder the original deed was kept preserved in the custody of Rasomoy, father of defendant Nos. 1-7 that is why the certified copy of the kabala dated 22.12.1939 and 02.07.1940 was produced before the trial court. The plaintiffs are in possession of 2.49 acres of land by paying rents to the Government and by rearing fishes and by producing crops for more than twelve years. R.S. khatian No. 61 and S.A. khatian No. 91 wrongly prepared in the name of Jogendra who had no title and interest in the suit property. R.S. and S.A. record though not prepared in the names of the predecessor of the plaintiff and the defendant Nos. 1-7, their title, possession and enjoyment was not hampered. The

defendant Nos. 1-7 obtained a decree on 27.08.2001 in Title Suit No. 74 of 2000 which is not binding upon the plaintiffs as they were not made party in that suit. Decree obtained in that suit is collusive, mala fide and fabricated. The plaintiffs are in possession of the suit land in ejmali with the defendant Nos. 1-7. For the convenience of possession and enjoyment the plaintiffs demanded partition of the suit property amicably, but the defendant Nos. 1-7 refused to partition the property claiming title in the suit land, hence, the present suit for partition.

The petitioners, as defendant Nos. 1-7, contested the suit by filing written statement denying all the material allegations made in the plaint contending inter alia, that 11.84 acres of land was owned and possessed by Gabinda Chandra Sarder out of which 4.41 acres and 1.47 acres were mortgaged to one Jogendra Mondal vide Patta No. 65899 dated 22.11.1939 and Patta No. 4677 dated 02.07.1940 on the condition to return the same. Thereafter he died leaving behind 2(two) sons Rasomoy Sarder and father of Manoranjan Sarder. Said Jogendra Mondal died leaving behind 4(four) sons namely Purnendu, Shukhendu, Ranendu and Gopendu Mondal. Father of defendant Nos. 1-7 redeemed the said mortgage by paying all loans, resultantly, Jogendra Mondal had no title in

the suit property and both the original deeds have been kept in the custody of the petitioners. They are in possession of the suit land by paying rent, but erroneously the property in question stands recorded in the name of Jogendra Mondal in S.A. khatian. Father of the defendants filed Title Suit No. 561 of 1975 praying for a decree of title and correction of khatian. The suit was subsequently transferred to another court and renumbered as Title Suit No. 34 of 1980. Sons of Jogendra Mondal contested the suit which was decreed against them. Rasomoy got his name mutated in the S.A. khatian for entire 11.84 acres land vide Mutation Case No. 10 of 1994-95. Gobinda Chandra Sarder gave another Patta deed No. 4477 dated 12.11.1945 to one Shadhon Chandra Mistry, after his death, his son Fulchand Mistry returned the deed dated 12.11.1945. Fulchand Mistry died leaving behind 3(three) sons Bhaboranjana, Chitto Ranjan and Manoj Mistry. Father of the defendants made a partition deed among his 7(seven) sons on 15.01.1995. The defendants filed Title Suit No. 74 of 2000 for a decree of partition in that case they obtained preliminary decree, thereafter got final decree on 06.04.2005. The plaintiffs did not challenge the judgment and decree dated 27.01.2001 and 06.04.2005 and as such,

the plaintiffs are not entitled to have only partition without challenging the decree passed in Title Suit No. 74 of 2000.

The defendant No. 11 contested the suit by filing separate written statement and he admitted the entire facts of the case and he also stated that the sons of Rasomoy Sarder transferred .33 acres of land to him by deed No. 354 dated 30.01.2002 and he prayed for saham of .33 acres of land.

The trial court framed 6(six) issues for adjudication of the case. Both the parties examined witnesses as PWs and DWs and filed documents in support of their calim which were marked as exhibits. After hearing the trial court decreed the suit against the defendants Nos. 1-7 and giving saham for 2.94 acres of land to the plaintiffs vide judgment dated 23.08.2017.

Against the judgment and decree of the trial court the petitioners as appellant preferred Title Appeal No. 183 of 2017 before the District Judge, Khulna which was heard and disposed of by Additional District Judge, 1st Court, Khulna who after hearing by the judgment dated 22.10.2018 dismissed the appeal affirming the judgment and decree of the

trial court. At this juncture, the petitioners moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Sabyasachi Mondal with Mr. Raju Sen, learned Advocates appearing for the petitioners submit that the suit property belonged to Gobinda Chandra Sarder who during his life time mortgaged 4.41 acres land by registered deed dated 22.11.1939 and 1.49 acres by registered deed dated 02.07.1940 to his brother-in-law Jogendra Nath Mondal. Gobinda Chandra Sarder died leaving son Rasomoy Sarder and grandson Manoranjan Sarder son of predeceased son Debendra Nath Sarder. After death of Gobinda Chandra Sarder, Rasomoy Sarder redeemed the suit property from Jogendra Nath Mondal by paying loan money and taking back both the original deeds from the heirs of Jogendra Nath Mondal.

He submits that though Jogendra Nath Mondal had no right, title and interest in the suit property, S.A. Khatian wrongly recorded in his name, consequently, Rasomoy Sarder filed Title Suit No. 561 of 1975, subsequently, renumbered as Title Suit No. 34 of 1980 for correction of record and declaration of title which was decreed on 18.11.1980. Thereafter, Rasomoy Sarder got his name mutated in the khatian by filing

Mutation Case No. 10/1994-95. Against the judgment and decree of the trial court, heirs of Jogendra Nath Mondal and the plaintiff Rasomoy Sarder preferred two appeals before the District Judge. Appeal of Rasomoy Sarder was disallowed and appeal of Jogendra Nath Mondal was allowed, then Rasomoy Sarder preferred Civil Revision Nos. 5040 and 5041 both of 1991. In both the revisions it was settled that the Rasomoy is entitled to get 5.88 acres of land out of 11.84 acres and heirs of Jogendra Nath Mondal are entitled to get 5.92 acres.

The plaintiff in suit, Monoranjan Sarder is grandson of Gobinda Chandra Sarder and son of Debendra Nath Sarder who is not entitled to get half of the suit land by inheritance. The petitioners predecessor after obtaining decree upto the High Court Division gifted the entire property to his seven sons predecessor of the petitioners who after getting property from Rasomoy Sarder filed Title Suit No. 74 of 2000 in the Court of Joint District Judge, 4th Court, Khulna for a decree of partition which was decreed on compromise and the petitioners have been possessing the same.

He submits that right from Gobinda Chandra Sarder his another son Debendra Nath Sarder did not take any step for redeeming the property

from mortgage or filed suit for correction of S.A. khatian. All those steps were taken by Rasomoy Sarder spending huge amount of money for redeeming the property as well as for filing the suit, appeal and then revision upto the High Court Division, as such, Rasomoy Sarder solely acquired the property. Jogendra Nath Mondal has had no right, title and interest as claimed by the petitioners.

He finally argued that where the judgment of the civil court upto the High Court Division sustained in the name of Rasomoy Sarder, Jogendra Nath Mondal cannot claim title in the property and Monoranjan Sarder is not a co-sharer, as such, the suit is liable to be dismissed. The trial court while decreeing the suit giving saham to the plaintiffs and the appellate court affirming the same failed to find that the property solely belonged to Rasomoy Sarder who in his turn gifted entire property in favour of his sons. Moreover, Gobindra Chandra Sarder by a registered patta No. 4477 dated 12.11.1945 transferred entire land measuring 11.84 acres in favour of one Sadhan Chandra Mistry. Said Rasomoy Sarder got a registered Na-dabi patra from the heirs of Sadhan Chandra Mistry who relinquished their claim in favour of Rasomoy Sarder, as such, in one hand Monoranjan Sarder inherited no property from Gobinda Chandra

Sarder and on the other hand Gobinda Chandra Sarder transferred entire property to Sadhan Chandra Mistry in the year 1945, as such, Gobinda had no title in the property to be inherited by Monoranjan Sarder. For want of co-sharership in the property, the suit for partition itself is not maintainable, but both the courts below failed to appreciate the fact in its true perspective, as such, the trial court as well as the appellate court committed illegality and error of law in the decision occasioning failure of justice.

Mr. Sk. Atiar Rahman, learned Advocate appearing for the opposite parties submits that admittedly 11.84 acres of land under C.S. Khatian No. 62, Plot No. 38 belonged to Gobinda Chandra Sarder, who by registered Patta dated 22.11.1939 dated 02.07.1940 mortgaged 5.88 acres of land and sold 5.92 acres land to his brother-in-law Jogendra Nath Mondal. During his life time he redeemed the mortgage property measuring 5.88 acres and died leaving son Rasomoy Sarder and grandson Monoranjan Sarder. According to Hindu Law of inheritance both Rasomoy Sarder and Monoranjan Sarder equally inherited the suit property.

He submits that S.A. khatian wrongly recorded in the name of Jogendra Nath Mondal against which Rasomoy Sarder filed Title Suit No.

34 of 1980 which was decreed in part. From the said judgment two appeals were preferred by the plaintiff and defendant wherein plaintiff's appeal was dismissed and defendant's appeal was allowed, then the plaintiff Rasomoy Sarder filed two Civil Revision Nos. 5040 and 5041 both of the year 1991 in which it was decided that Gobinda Chandra Sarder redeemed the property under two deeds dated 22.11.1939 and 02.07.1940 measuring 5.88 acres and remaining 5.92 acres was sold to Jogendra Nath Mondal .

He submits that because of filing Title Suit No. 34 of 1980 against wrong S.A. record by Rasomoy Sarder and by subsequent na-dabi patra from heirs of Sadhan Chandra Mistry, Rasomoy Sarder acquired title in the property as per his share inherited from Gobinda Chandra Sarder, but by the decree passed in Title Suit No. 34 of 1980 and na-dabi patra obtained from the heirs of Sadhan Chandra Mistry, Rasomoy Sarder or his heirs, the defendants cannot claim more than half share in the suit property.

He submits that the trial court rightly held that Gobinda Chandra Sarder during his life time redeemed the property from mortgage, as admitted by Rasomoy Sarder in the plaint of Title Suit No. 34 of 1980. In

the instant case, plea of payment of loan to the Jogendra Nath Mondal and redemption of the property from Jogendra Nath Mondal's heirs is not at all believable.

He argued that both the courts below while decreeing the suit held that in earlier Title Suit No. 34 of 1980 upto High Court Division it was settled that Gobinda Chandra Sarder redeemed 5.88 acres land from mortgage. Rasomoy Sarder or other heirs of Gobinda Chandra Sarder is entitled to get said quantum of land. Rasomoy Sarder on the basis of decree passed in Title Suit No. 34 of 1980 and on the basis of na-dabi parta obtained from the heirs of Sadhan Chand Mistry in the year 1985 claimed entire 11.82 acres of land ignoring the judgment and decree passed in Title Suit No. 34 of 1980, wherein, Gobinda Chandra Sarder's title settled as 5.88 acres. Moreover, Rasomoy made a gift in favour of his son gifting 11.84 acres wherein, he has no title beyond 5.88 acres. Heirs of Rasomoy Sarder by filing Title Suit No. 74 of 2000 got the property partitioned by filing solenama and prepared khatian in their names without making Monoranjana Sarder party in the suit as son of Debendra Nath Sarder who inherited half share of the property left by Gobinda Chandra Sarder as grandson. The trial court as well as the appellate court

rightly decreed the suit finding that Monoranjana as grandson of Gobinda Chandra Sarder is entitled to get half share of the property, as such, both the courts below committed no illegality or error of law in the decision occasioning failure of justice.

He submits that where in the civil revision it was settled that Gobinda Chandra Sarder was entitled to get only 5.88 acres, by obtaining subsequent na-dabi patra from heirs of Sadhan Chandra Mistry, Rasomoy Sarder acquired no title, as na-dabi patra does not create any title in favour of the person to whom it is made. In support of his submissions he has referred to the case of *Tara Mohan Barman vs. Ananda Mohan Barman and others* reported in **48 DLR 226**.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree of both the courts below.

Both the parties admitted that the property measuring 11.84 acres under C.S. Khatian No. 62, Plot No. 38 originally belonged to Gobinda Chandra Sarder as korfa right. Gobinda Chandra Sarder during his life

time mortgaged 5.88 acres and sold 5.92 acres land to his brother-in-law, Jogendra Nath Mondal. Subsequently Gobinda Chandra Sarder got back the property measuring 5.88 acres which was transferred by registered deed dated 22.11.1939 and 02.07.1940 by taking back original deed from Jogendra Nath Mondal. S.A. Khatian No. 91 wrongly recorded in the name of Jogendra Nath Mondal. Gobinda Chandra Sarder died leaving son Rasomoy Sarder and Monoranjan Sarder grandson by predeceased son Debendra Nath Sarder. Since S.A. khatian wrongly recorded in the name of Jogendra Nath Mondal, Rasomoy Sarder as plaintiff filed Title Suit No. 34 of 1980 in the Court of Sub-Judge, Additional Court, Khulna against sons of Jogendra Nath Mondal, as defendant Nos. 1-4, along with others for declaration of title in the property measuring 11.84 acres. The suit was contested by defendant Nos. 8-18. Defendant No. 7 wife of Jogendra Nath Mondal though filed written statement ultimately did not contest the suit.

The government, as defendant No. 6, filed written statement, but did not contest. The trial court after hearing, by its judgment and decree dated 18.11.1980 decreed the suit in favour of plaintiff Rasomoy Sarder. Thereafter, defendant No. 8 Mansur Ali preferred Title Appeal No. 328 of

1980, defendant No. 18 Enamul Haque preferred Title Appeal No. 329 of 1980 before the District Judge claiming them as purchasers of a portion of the property from heirs of Jogendra Nath Mondal. The appellate court allowed both the appeals finding title of the defendant Nos. 1-4 in 5.92 acres land purchased by their father Jogendra Nath Mondal and modified the judgment and decree of the trial court finding title of the plaintiff Rasomoy Sarder in 5.88 acres land. Against the judgment and decree of the appellate court, Rasomoy Sarder filed Civil Revision Nos. 5040 and 5041 both of the year 1991 before this Court. In both the revisions this Court also found that Gobinda Chandra Sarder redeemed 5.88 acres of land from Jogendra Nath Mondal, but 5.92 acres land was sold to Jogendra Nath Mondal as the plaintiff could not produce original deed showing redemption of the same. Consequently, in Civil Revision No. 5040 of 1991 rule was discharged and rule in Civil Revision No. 5041 of 1991 was made absolute, finding title in 5.88 acres. Thereafter, as claimed by the petitioner, Rasomoy Sarder, subsequently, came to know that Gobinda Chandra Sarder by a registered patta dated 12.11.1945 sold entire 11.84 acres land to one Sadhan Chandra Mistry and then he obtained a na-dabi patra from the heirs of Sadhan Chandra Mistry on

22.05.1985. Resultantly, Rasomoy Sarder claimed to be owner of entire 11.84 acres land ignoring the judgment and decree passed by the High Court Division in earlier Title Suit No. 34 of 1980. By obtaining na-dabi patra from the heirs of Sadhan Chandra Mistry, Rasomoy Sarder has given a gobye to earlier claim of 5.88 acres. On the basis of na-dabi patra he subsequently gifted entire property in favour of his sons on 15.01.1995. After obtaining deed of gift from Rasomoy Sarder his heirs filed Title Suit No. 74 of 2000 for a decree of partition before the Sub-Judge, 4th Court, Khunla which was decreed in preliminary form on 27.01.2001 on compromise and thereafter final decree was made on 06.04.2005 distributing entire 11.58 acres of land among all the brothers. Present plaintiff Monoranjana Sarder claiming himself as grandson of Gobinda Chandra Sarder filed the instant suit for a decree of partition claiming half share in the property.

He claims that as per judgment passed by the court in earlier Title Suit No. 34 of 1980, Gobinda Chandra Sarder had title in 5.88 acres land in which half of the share inherited by Monoranjana Sarder as grandson of Gobinda Chandra Sarder. The trial court after hearing decreed the suit finding that Gobinda Chandra Sarder died leaving son Rasomoy Sarder

and grandson Monoranjan. Since the property as admitted by both the parties belonged to Gobinda Chandra Sarder, there was no earthly reason for claiming the entire property by only son Rasomoy Sarder excluding Monoranjan Sarder from the suit land. The defendants in suit preferred Title Appeal No. 183 of 2017, the appellate court also disallowed the appeal affirming the judgment and decree of the trial court.

Now the question before this Court whether Rasomoy Sarder as one of the sons of Gobinda Chandra Sarder by filing suit for declaration of title against wrong S.A. khatian as plaintiff and subsequently by obtaining a na-dabi patra from the heirs of Sadhan Chandra Mistry exclusively acquired title in the suit property left by his father Gobinda Chandra Sarder. It is admitted fact that Gobinda Chandra Sarder during his life time transferred entire property to his brother-in-law Jogendra Nath Mondal, on the oral assurance that if Gobinda Chandra Sarder repaid the consideration money to Jogendra Nath Mondal he will return the property to him. Accordingly, Gobinda Chandra Sarder repaid the loan money to Jogendra Nath Mondal and took back the property, but in the instant suit and in the earlier Title Suit No. 34 of 1980 Rasomoy Sarder could produce only two registered deeds in original out of three deeds covering

5.88 acres only, but could not produce another original deed of transfer made by Gobinda Chandra Sarder in favour of Jogendra Nath Mondal for 5.92 acres. Consequently, in earlier suit this Court in Civil Revision Nos. 5040 and 5041 both of the year 1991 held that since Rasomoy Sarder could not produce another sale deed dated 18.05.1946 for 5.92 acres showing redemption of land it has been finally settled that Gobinda Chandra Sarder had title in 5.88 acres only. In the earlier suit patta dated 12.11.1945 alleged to have been executed by Gobinda Chandra Sarder in favour of one Sadhan Chandra Mistry were not brought in record. Where it is admitted that the suit property was mortgaged to Jogendra Nath Mondal by Gobinda Chandra Sarder and Gobinda Chandra Sarder redeemed the mortgage by taking back original deeds from Jogendra Nath Mondal, the suit property absolutely belonged to Gobinda Chandra Sarder. Because of filing a suit by Rasomoy Sarder challenging wrong S.A. khatian and obtaining a decree in his favour and subsequently by obtaining a na-dabi patra from the heirs of Sadhan Chandra Mistry on 22.05.1985 he as one of the son of Gobinda Chandra Sarder got the decree against wrong record of right in the name of Jogendra Nath Mondal and

for that reason he cannot claim to be an exclusive owner of the property ousting or excluding the other heirs of Gobinda Chandra Sarder.

If some property mortgaged by predecessor of the plaintiff and after his death one of the heirs got the same released from mortgage, he himself cannot claim as exclusive owner of the entire property excluding other heirs as per law of inheritance. In the event of redemption of property by one of the heirs the title will go to all the heirs according to their share. In the instant case also Rasomoy Sarder though filed a suit for declaration of title against heirs of Jogendra Nath Mondal, the decree whatever have been passed by the court cannot entitle Rasomoy Sarder alone to be exclusive owner of the property, as such, Monoranjan Sarder as grandson of Gobinda Chandra Sarder inherited half share of the property left by Gobinda Chandra Sarder. Accordingly, the trial court as well as appellate court rightly held that Monoranjan Sarder one of the heirs of Gobinda Chandra Sarder is entitled to get half share measuring 2.94 acres by way of inheritance.

From perusal of both the judgment passed by both the courts below, I find no illegality or error of law in the decision occasioning failure of justice.

Taking into consideration of the above, I find no merit in the Rule as well as in the submissions of the learned Advocate for the petitioners calling for interference by this Court.

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

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.