Bench:
Mr. Justice Bhishmadev Chakrabortty

Civil Rule No. 452(Review) of 2009

Abdul Bashir being dead his heirs:
Ayesha Bewa and others ..... petitioners
-Versus-
Md. Fazlul Haque Miah and others
..... opposite parties

No one appears for the petitioners

Mr. Kamal Hossain, Advocate
..... for opposite party 1

Judgment on 25.06.2025

This Rule at the instance of the heirs of defendant 8 was issued calling upon opposite party 1 to show cause as to why the judgment and order of a single bench of this division passed in Civil Revision No. 3147 of 2000 on 25.03.2009 discharging the Rule should not be reviewed and/or such other or further order or orders passed to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in brief, are that opposite party 1 of this Rule instituted Partition Suit No. 38 of 1985 in the Court of Assistant Judge, Basail, Tangail praying for partition of the suit land claiming his *saham* to the extent of .3150 acres out of 1.83 acres described in the schedule to the plaint. He stated in the plaint that Azim Sheikh was the original owner of the schedule suit land and record was prepared in his name. He died leaving behind 4 sons and 1 daughter who sold out 1.20 acres therefrom to Abdus Samad. Out of it government acquired .04 acres and he sold out

remaining 1.16 acres to the plaintiff and defendants 1-7 through a registered *kabala* dated 04.10.1974. The plaintiff got his share of .145 acres therefrom. The heirs of Azim further sold remaining .63 acres to Rai Sundari. During her position and enjoyment Rai died leaving behind 2 sons Debendra Mohan and Jogendra Mohan. Thus each son got .315 acres share. Jogandra died leaving behind his 2 sons Sukumar and Madan. The plaintiff purchased .17 acres from Sukumar on 16.12.197 through a registered *kabala*. In this way he totally got .315 acres land and prayed for *saham* to that extent.

Defendants 1-7 appeared in the suit and filed written statement admitting the fact made in the plaint. They claimed that out of purchased 1.16 acres their share is 1.015 acres and they finally prayed for *saham* of it.

Defendant 8 contested the suit by filing written statement contending that Rai Sundari who had .63 acres of land died leaving behind sons Debendra and Jogendra as heirs and they inherited the land. Jogendra died leaving behind 2 sons Sukumar and Madan. Sukumar and Madan enjoyed the suit property in *ejmali*. By amicable partition Madan and Debandra enjoyed the aforesaid .63 acres and they sold it to defendant 8 through *kabala* dated 03.06.1968 and he has been possessing the same. The suit is bad for effect of parties and *hotch potch*. He, therefore, prayed for dismissal of the suit.

On pleadings the trial Court framed 5 issues. In the trial, the plaintiff examined 2 witnesses while the contesting defendant examined 3. The documents of plaintiff were exhibits-1-4 and the documents of defendant 8 were exhibit-Ka series. However, the Assistant Judge decreed the suit in part allocating share to the plaintiff measuring .145 acres and 1.015 acres to defendants 1-7. Being aggrieved by the plaintiff preferred appeal before the District Judge, Tangail. The Joint District Judge, Court 2, Tangail heard the said appeal on transfer. The appellate Court allowed the appeal and allocated *saham* of .3025 acres to the plaintiff, 1.015 acres to defendants 1-7 and .475 acres to defendant 8.

Defendant 8 then moved in this Court challenging it and obtained Rule in Civil Revision No. 314 of 2000. The Rule issued in the aforesaid revision was made absolute by a single bench of this division on 25.03.2009. The petitioners feeling aggrieved filed this review application and obtained Rule on 28.06.2009. The Rule was discharged by a bench of this division on 25.01.2012 on point of maintainability. However, the petitioners then moved to the appellate division in Civil Petition for Leave to Appeal No. 2564 of 2012. The appellate division disposed of the leave petition holding that the review petition was maintainable and directed this division to dispose of the Rule on merit on setting aside the judgment and order of discharging this Rule.

No one appears for the petitioners. Although it is found that after the death of the learned Advocate for the petitioners a notice under form N-10 was issued and served upon them. The suit was instituted in the year 1985 and the Rule issued in the review petition has been pending before this Court for last 16 years. Therefore, it is taken up for disposal on merit upon hearing the learned Advocate for opposite party 1.

Mr. Md. Kamal Hossain, learned Advocate for opposite party 1 submits that the Court of appeal below on detailed discussion allowed the appeal and allocated *saham* to all of the parties. The revision was filed against the judgment and decree of the appellate Court and the Rule was discharged on merit. In discharging the Rule the High Court division gone through the materials on record, the grounds taken in the revisional application and considered the submissions of the learned Advocate for the petitioners. He then refers to the provisions of Order 47 Rules 1 and 2 of the Code of Civil Procedure (the Code) and submits that a Court has limited scope to review its own judgment and decree. A Court can review its own judgment if a new fact is discovered which could not be detected earlier and if any error is found in the judgment on the naked eye. In the review application no such ground has been taken. Therefore, the judgment passed by a bench of this division cannot be reviewed. Mr. Hossain then submits that the judgment passed by the High Court division is a full and

complete judgment and there is no ground of its review. The Rule, therefore, having no merit would be discharged.

I have considered the submissions of the learned Advocate for opposite party 1 and gone through the review petition particularity the grounds taken therein and other materials on record.

It is found that in the suit the plaintiff prayed for *saham* of.315 acres out of 1.83 acres described in the schedule to the plaint. He claimed .145 acres out of 1.16 acres through *kabala* dated 04.10.1974 from Abdus Samad and .17 acres from Sukumar Saha, heir of Rai Sundari through *kabala* dated 16.12.1977. The trial Court gave him *saham* of 14.5 acres only. But on appeal the appellate Court assessed evidence of the parties both oral an documentary and found that Sukumar had share of .1575 acres as heirs of Jogendra and as such by the deed dated 16.12.1977 he sold only .1575 acres to the plaintiff. Therefore, the plaintiff was entitled to get share to the extent of (.1457+.1575)=.3025 acres. The appellate Court held that although defendant 8 (petitioners' predecessor) alleged to have been purchased .63 acres from Debendra and Madan, the heirs of Rai Sundari, but they had no saleable interest in respect of the total share. Because Sukumar had share there of .1575 acres who sold it to the plaintiff. The above defendant also failed to prove the case of amicable petition among the heirs of Rai Sundari and that Madan and Debandra used to possess that part in ejmali. However, the appellate Court allocated share to petitioners' predecessor of .4725 acres. The appellate Court

on hairpin analysis of the evidence of witnesses as well as the documents submitted by the parties allocated the shares. A single bench of this division discharged the Rule issued at instance of defendant 8 in the revision. In disposing the revision this division discussed the claim of the parties and addressed the submissions made by the learned Advocate by the petitioners. This division found that the judgment and decree passed by the appellate Court is a proper judgment and as such affirmed the same and upheld the share allocated by the appellate Court.

I have gone through the review application filed by the petitioners of the revision and the grounds taken therein. The review application has been filed under Order 47 rule 1 of the Code. On going through the provisions of section 114 and Order of 47 Rules 1 and 2 of the Code, I find that this Division has limited scope to review its own judgment. The aforesaid provisions of the Code provides that a Court can review its own judgment only on two counts (i) if any new fact is discovered which could not be detected earlier on due diligence of the parties and (ii) if on naked eye any error is found in the judgment for which the decision taken by the Court could have been otherwise. In the cases of General Manager Postal Insurance, Eestern Region, Dhaka and another vs. ABM Abu Taher, 29 BLD (AD) 56; Awlad Ali Sheikh and others vs. Bangladesh represented by Deputy Commissioner, Gopalganj, 7 ADC 121; Rupesh Ranjan Dey and another vs. Md. Abdur Razzak and others, 8 ADC 512; Abdul

Mannan Akand vs. Lutfar Rahman and 14 BLT (AD) 211; Md. Abdur Rashid Akand and others vs. Raisuddin and others, 16 MLR (AD) 63 and Farmacy Khatun vs. Md. Yeasin Degree College and others, 12 BLC 762, the proposition of law as aforesaid has been settled. The *ratio* laid in the aforesaid cases goes against the petitioners. On going though the grounds taken in the review petition, I do not find that the instant application for review comes within the meaning of aforesaid provisions of the law of the Code. The grounds have been taken as if this is a revisional application filed against the judgment and decree of the appellate Court. The petitioners hopelessly failed to make out any case to review the judgment passed by a bench of this division.

Therefore, I find no substance in this Rule. Accordingly, the Rule is discharged. No order as to costs. The order of stay stands vacated.

Communicate this judgment and send down the lower Court records.

***Rajib***