

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No. 557 of 2021

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Ruqua Huq alias Rani and others

... Defendant-Respondent-Petitioners

-Versus –

Md. Habibur Rahman and others

...Plaintiff-Appellant-Opposite Parties

Mr. Mohammad Mehdi Hasan, Advocate with

Mr. Mohammad Kamal Hossain, Advocate

....For the petitioners

Mr. Md. Mainul Islam, Advocate with

Mr. Robiul Hasan Romio, Advocate

...For the Opposite Parties

Heard on 10.08.2023, 24.08.2023
and Judgment on 29.08.2023

Md. Kamrul Hossain Mollah, J:

On an application by the petitioner, under section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite parties No.1-56 to show cause as to why the judgment and decree dated 26.11.2020(decree signed on 03.12.2020) passed by the learned Additional

District Judge, 2nd Court, Narayanganj partly allowing the Civil Appeal No.98 of 2015 and thereby modify the judgment and decree dated 04.08.2015 (decree signed on 13.08.2015) passed by the learned Additional Joint District Judge, Narayanganj in Civil Suit No.02 of 2012 decreeing the suit in part should not be set-aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court stayed the operation of the judgment and decree dated 26.11.2020 (decree signed on 03.12.2020) passed by the learned Additional District Judge, 2nd Court, Narayanganj partly allowing the Civil Appeal No.98 of 2015 for a period of 06(six) months from date and directed the parties to maintain status-quo in respect of possession and position of the suit land for a period of 06(six) months from date.

Facts necessary for disposal of the Rule, in short, are that the plaintiff filed the suit for partition. Total 58 decimal of the suit land in C.S Khatian No. 29, C.S plot No. 129, in Deobough Mouza of Narayanganj was originally belonged to Danu Bepari. But instead of 58 decimal of land wrongly recorded 25 decimals in the name of Danu Bepari who died leaving behind three sons Bakar Ali, Khowaz Ali, Wahed Ali and two daughters Misribibi and Azimonbibi as his legal heirs and each son became owner of 4.a share and each daughter become owner 2 annas share of the suit land. Abdul Gani, one of deceased son died before 15 (Fifteen) years of his father of Danu Bepari's death but in the C.S. khatian wrongfully recorded in the name of two sons of Abdul Gani namely Abdul

Barek and Abdul Based became the owner each son 2 annas share of the suit land, but Abdul Barek and Abdul Based are not owner at all. The defendants No. 1-6 are the heirs of Abdul Barek and defendants No. 7-12 are the heirs of Abdul Based. After the death of Bakhar Ali his two sons defendants No. 13-14 and one daughter defendant No. 15 inherit his share of property. On the death of Khowaz Ali his heirs defendants No. 16-21 and the defendants No. 22-25 are co-shares in the suit land by purchase. The Wahid Ali four annas transferred by executing registered wasiwat nama on 11.02.1963 in favour of his two sons Shahed Ali and Badruddin. After that Badaruddin transferred his share by safkabla deed No. 6363 to Nannu Miah on 26.09.66, also his brother shahed Ali on 30.08.1968 sold his share by saf Kabala deed No. 5876 to plaintiff Khalilur Rahaman, also Nannu Mia transferred by executing safkabala deed No.3547 to plaintiff No.1 and defendant No.9, Mujubur Rahaman, on 14.04.1970 and the plaintiff No.1, in respect of Wahed Ali four annas share became owner as a purchase Two annas + One anna and in total three annas share of $10\frac{7}{8}$ decimals as ajmali property. Misri bibi died leaving behind three sons Hazrat Ali, Akali and Kalu and they are inherit her two annas share, who sold two annas share to five sons of Azimon Bibi, Abdul Mazid, Omar Khan, Noor Mohammad, Belal and Mangal Mia whom share increase to four annas, as a inheritance two annas and by purchase two annas. Consequently, each of the son's of Azimon Bibi share 16 gonda. Abdul Mazid behind two sons-Nim Ali, Abdul Mannan and three daughters-Shuvatara, Durga, and Joyitra to inherit his share of property in ejmali

possession. Thus, Billal Miah son of Azimon Bibi and Abdul Mannan son of Abdul Mazid while was in ejmali possession of $3\frac{3}{8}$ decimals and transferred to the plaintiff No. 1, on 22. 11.1969 by registered safkabala deed No. 8885. Abdul Mazid son Omar chand is owned 16 gonda and left behind three sons Mohor Chand, Kala chand and Alam Chand and 7 daughters defendants No. 26, 27, 28, 29,30, 31 and 39, each son inherit $2\frac{6}{13}$ and each daughter $1\frac{3}{13}$ became the owner of the suit land in ejmali possession. Moohor Chand, Kala Chand and Alam Chand transferred their shares to the plaintiff No.1 by executing the registered saf-kabala deed on 18.12.1969 and Nim Ali son of A. Mazi, Shuvatara and Durga his daughters inherit $9\frac{4}{7}$ gonda share in ejmali possession and Mongal Miah, Son of Aziman share a portion from 16 gondas and his share to Noor Mohammad by safkabala deed on 09.04.1976 and Noor Md, also sold his share 03 decimal to the plaintiff No.2 and also, after that Mongol Miah on 29.03.1987 by registered safkabala deed transferred .01 decimal to plaintiff No.2. The predecessor of defendants No.9 (Ka) -16 Khowaz Ali sold out 6.25 decimal out of 14.50 decimal by registered safkabala deed No.734 on 25.02.1931 and after the death of Khowaz Ali his son Abdul wahab, and three daughters, Sabeda, Abeda and Karful became the owner of his rest share. After that Abdul Wahab,s Son, defendant No.16 Chand Miah, daughter Rezia Khatun, Feroza Khatun and Arzu Khatun on 26.09.1962 transferred 06 decimals by registered safkabala deed No.5218 to Nurunnessa and Abdul Wahab,s daughter Shahnaz Begum transferred 0.50

decimal land to plaintiff No.1, Khalilur Rahman on 01.08.2000 by registered gift deed No. 2536. By the said transfer heirs of Khowaz Ali lost their right or title and possession over the suit land. While Zabeda was in possession of her purchase 6.25 decimal of the suit land, leaving behind three sons Ulfat Munsif, Liakut Hossain and Habibur Rahman and each son is owned 0.0208 decimal. Habibur Rahman became the owner of 0.0208 decimal and his wife Nurulessa became the owner of 06 decimals of land by purchase, in total they became the owner 0.0808 decimal land and leaving behind four daughters Mumtaz Begum, Sufia Begum, Sakila Akter and Lucy Begum and they transferred 08 decimals of land on 27.04.1992 by awajbadal deed No.1960 to plaintiff No.1 Khalilur Rahaman and Sahar Banu. Accordingly Plaintiff No. 1 became the owner of 22.50 decimals of land as of purchaser and plaintiff No.2 became the owner .04 decimal of land as purchaser. The plaintiffs requested the defendants to partition suit land to give their share by meant and bound but the defendant denied to partition of the suit land. Hence plaintiffs file the suit for partition.

The defendants-respondents-petitioners No.1-9(Ka)-9(Cha), defendants-Appellant-Opposite parties No.10(Ka)-10(Cha), 16 and defendants-respondents No.23(Kha)-23(Gha), 23(Cha)-23(Ta) and 26 appeared in the suit and contested the same by filling written statement denying all the material allegations of the plaint and in actual facts they stated inter alia that the defendants respondents and petitioners No.1-9(Ka)-9(Cha) stated that 58 decimal of the suit land in C.S Khatian No. 29 .C.S plot No. 129, in Deobagh Moura, Narayanganj was originally belonged to

Danu Bepari before the C.S record who died leaving behind his four sons Bakar Ali, Khowaz Ali, Wahed Ali and Abdul Gani as his legal heirs, each son became owner 14.50 decimal of the land. Before C.S record Abdul Gani died leaving behind his two sons Abdul Berek and Abdul based and each son became the owner of 2 annas share of the suit land an area of 7.25 decimals. In C.S record Baker Ali Khowaz Ali, Wahed Ali each of them became owner of 4. annas share, Berek and Abdul based each became owner of 2 annas share and C.S record was correctly recorded. Abdul Based left four sons, the defendants No.1-4 and a daughter defendant No.5 Kandani bibi and they are the heirs of Abdul Based an area of land 7.25 decimals and the defendant No.2 Amir Hossain died leaving behind a wife, two sons and three daughters, the defendant No. 2(Ka)- 2(Cha). After the death of defendant No.3 Ahmed Ali left a son defendants No. 3 (Ka), Fayeze Ahmed and five daughters defendant No.3(Kha)-3(Cha) who are Meharun Nesa, Shefali Begum, Muktara Begum, Nazma Begum and Asma Begum and they are inherited his share of property. On the death of defendant No.5, Kandani Bibi, leaving behind Six sons, defendant No. 5(Ka)- 5(Cha) Nowab Ali, Darag ali, Kalu Miah, Malu Miah, Raja Miah, Abdul Miah and Rahima Khan her heirs and the defendants No.1/2 (Ka)- (Cha)/3(Ka)- 3(Cha)/4/5(Ka)-5(Cha) and they are enjoying ejmali possession an area of 7.25 decimal land by paying municipality tax with separate holdings, as heirs of Abdul Based by constructing boundary in the north side, south side and east side, west side built four tin shed houses who are enjoying their share without any trouble and they are entitled for chaham of said partition of land and Bakhar Ali transferred 06 decimals out of 14.50 of

the suit land on 30.11.34 to Hafizuddin by executing the registered safkabila deed No.4122 to Hafizuddin but Hafizddin with the help of deed writer fraudulent by inserted out of 24 decimals sold out 12 decimals. After the death of Hafizudddin leaving behind a son and daughter Banu Bibi who constructed the building with boundary wall and paying holdings tax, also in possession of 06 decimal, and they are name was correctly recoded in the S.A Khatian No.153, Dag No.217, an area of land 06 decimal and R.S Khatian No. 299, Dag No. 250 and the measure of land 06 decimals. Bakhar Ali while was in possession of 0850 decimal of the remain share out of 14.50 decimal leaving behind two sons Shah Alam, Sahabuddin and two daughters Karimon Nesa and Chalimon Nesa who sold the suit land on 01.06.1938 by safkabila registered deed No. 2214 to defendants predecessor Abdul Barek with the proper consideration of 06 decimals and Abdul Barek became the owner 7.25 decimals as a inheritance and as a purchaseger from the Bakahar Ali 6.00 decimal in total 13.25 decimals, and after that Bakhar Ali on 08.09.1961 transferred 08 decimal land to the defendants predecessor Mujibur Rahman by sale deed No. 5614, 5615 and defendant No. 7 Mafizul and Defendant No. 8 Sirajul son of late Banu by registered safkabila deed No.5616 of the suit land transferred 4.00 decimal land. Another son of Danu Wahad Ali while was in possession of 14.50 decimal leaving behind two sons Sahed Ali, Badar Uddin and two daughters Tafurenessa and Daulatan Nesa, each son became the owner 04.83 decimal and each daughter 02.41 decimal but as a mutual agreement of the brothers sisters, Badruddin and Tafurun Nesa became the owner of the suit land 10 decimal and Badruddin and Tafurun Nesa transferred 10

decimal on 26.09.1966 by registered sale deed No.6363 to shah Alam's son Nannu Miah and after that Nannu Miah on 14.04.1970 transferred 10 decimal by registered sale deed No. 3547 to Defendants predecessor Mujibur Rahaman and Mujibur Rahaman leaving behind Sons and daughters Defendants No. 9(Ka)-9(Umma) and wife 9 (Cha). Abdul Berek transferred 8.00 decimal out of 13.25 decimal to son Mujibar and grandson defendants No. 7 & 8 of the suit land 04 decimal out of 13.25 decimal and remain 01.25 decimal, after that Abdul Berek died and leaving behind son Mujibar, grandson defendant No.7 & 8 and four daughters, each son became the owner of 00.31 decimal, Mafijul and Sirajul each of them got 15.50 decimal and each daughter got 15.50 decimal. Another son of Danu Khowaz Ali became the owner of the suit land 14.50 decimal and leaving behind a son Abdul Wahab and five daughters Karpurnesa Bibi, Abeda Khatun, chabeda Khatun, Kuti Bibi and Zabeda. Khatun, Abdul wahab became the owner 04.14 decimal and each daughter 02.07 decimal. Abdul Wahab leaving behind a son Chand Miah who become the owner 04.14 decimal of the Suitland. Chand Miah transferred 04.14 decimal of the suit land to Habibur Rahman and his wife Nurun Nahar who became the owner in total $(04.14+02.07)=06.21$ decimal and Nurun Nahar died, leaving behind husband Habibur Rahaman and four daughters Mumtaj Begum, Safia Begum, and Lucy Begum who executed the awajbadal deed with the Khalilur Rahaman and Mujibur Rahaman, wife Sharbanu. Sahar banu leaving behind defendants No. 9 (Ka)-9 (Umma) and defendant No. 22 who became the owner of the suit land in total $(08.00+10.00+03.10+00.31)=21.41$ decimals and possessing in ejmali

possession. The defendants No. 7 & 8 became the owner o4.00 decimal of land and defendant No. 7 became the owner of 02.00 decimal as a purchase and heir as a grandson of Abdul Barek 00.1550 in total 02.1550 decimals and the defendant No.8 Sirajul Islam became the owner 02.00 decimal by purchase and heirs as a grandson of Abdul Barek 00.1550 decimal and purchase from plaintiff No. 1 Khalilur Rahman 00.64 decimal. and Sirajul Islam leaving behind defendant No, 8(Ka)-8 (Gha), in the following way defendant No. 7 and Defendant No. 8 (Ka)-(Gha) became the owner 27.950 decimal.

The defendants-Appellants-Opposite parties No. 10(ka) to 10 (Cha) appeared in the suit and contested the same by filling written statement denying all the material allegations of the plaint and in actual facts they stated inter alia that Defendants No. 10(Ka)-10(Cha) stated that 58 decimal of the suit land in C.S Khatian No.29, C.S plot No. 129 in Deobough Mouza, was originally belonged to Danu Bepari and instead of 58 decimal wrongfully recorded 25 decimal who died leaving his three sons Bakar Ali, Khowaz Ali, Wahed Ali and two daughters Misribibi and Azimonbibi as his legal heirs, each son became owner 4. Annas share and each daughter 2 annas share of the suit land, Abdul Gani, one of his son deceased 15 (Fifteen) years earlier than his father of Danu Bepari but in the C.S record wrongfully recorded in the name of Abdul Barek and Abdul based who became the owner each son 2 annas share of the suit land but Abdul Barek and Abdul based are not owner at all, also wrongfully did not record in the name of Danu Bepari's two daughters name Misribibi and

Azimonbibi as his legal heirs. Bakhar Ali transferred 12 decimals out of 14.50 decimals, dated 30.11.1934 by registered safkabra deed No.4122 to Hafizuddin and after the death of Hafizuddin leaving behind a son Abdul Karim and a daughter Nurbanu, after that Abdul karim leaving behind six sons Azizur Rahaman, Mizanur Rahman, Nurul Huq, Asaduzzaman, Moniruzzaman, Emdadul Huq, one daughter Sifat Ara and wife Farida Karim. Nur Banu transferred her share by oral gift to her Nephew, brother Abdul Karim six sons, one daughter and wife who is staying in America permanently and also on 25.06.1996, Khalilur Rahman transferred his share .0132 decimal from the suit land C.S plot No. 129, S.A Plot No. 218 by registered safkabra deed No. 2221. In the above mentioned any defendant opposite party No. 10(ka)-10(Cha) become the owner of .1332 decimals of land.

The defendants-Appellants-Opposite parties Number 25-28 appeared in the suit and contested the same by filling written statement denying all the material allegations of the plaint and in actual facts they stated inter alia Defendant No. 16 stated that 58 decimal of the suit land in C.S Khatian No. 29 C.S plot No. 129, was originally belonged to Danu Bepari who died leaving behind his four sons Bakar Ali, Khowaz Ali, Wahed Ali and Abdul Gani as his legal heirs, Abdul Gani, one of his son deceased 15 (Fifteen) years earlier of C.S record leaving behind two sons Abdul Barek and Abdul Based, each son became owner 4. Annas share and Abdul Barek 2 annas and Abdul Based 2 annas share of the suit land. Danu Bepari does not have any daughter. Khowaz Ali in the share of 4 annas became the owner of

14.50 decimal, after the death of Khowaz Ali leaving behind a son wahab Bepari, after the death of Wahab Bepari leaving behind Defendant No. 16, Chand Miah Bepari, three daughters defendant No. 20, Rezia Khatun, Defendant No. 21 Feroza and Abuza, as a mutual agreement defendant No. 16 became the owner of the suit 10 decimal and each daughter became the owner 1.50 decimal, the Chand Miah transferred 06 decimal on 26.02.1962 by registered safkabra deed No. 5218. The defendant No. 16 became the owner 8.5 decimals of the suit land and he claim chaham 8.50 decimal of the land. The defendants-Appellants-Opposite parties No.30-49 appeared in the suit and contested the same by filling written statement denying all the material allegations of the plaint and in actual facts they stated inter alia that the defendants No.23(Kha)-23(Gha), 23 (Cha)-23(Ta) and defendant No.26, stated that 58 decimals of the suit land in C.S Khatian No.29, C.S plot No.129, was originally belonged to Danu Bepari who died leaving behind his four sons Bakar Ali, Khowaz Ali, Wahed Ali and Abdul Gani and two daughters Misri Bibi and Azimonnesa as his legal heirs, Abdul Gani, one of his son deceased 15 (Fifteen) years earlier of C.S record leaving behind two sons Abdul Barek and Abdul Based, each son became owner 4. Annas share and Abdul Barek 2 annas and Abdul Based 2 annas share of the suit land. Khowaz Ali in the share of 4 annas became the owner of 14.50 decimal, Khowaz Ali transferred 6.25 decimals by safkabra deed No. 734 dated 25.02.1931 to his daughter Zubeda Khatun after the death of Khowaz Ali leaving behind a son Wahab Bepari and five daughters Zaubeda Khatun, Shabeda Khatun, Abeda Khatun, Karpun Nesa

and Kutti Bibi, also each son became the owner 0152 $\frac{6}{7}$ decimal and each daughter became the owner 0076 $\frac{3}{7}$ decimal, Zubeda Khatun became the owner by purchase and from her father , in total 0701 $\frac{3}{7}$ decimal, Zubeda Khatun leaving behind three sons Ulfat, Liakut Hossain and Habibur Rahaman, each son became the owner 02.33 $\frac{17}{21}$ decimals land, Habibur Rahman became the owner as a inheritance of her mother and his wife purchased 015.26 $\frac{26}{7}$ decimal out of that 03.57 $\frac{103}{126}$ decimal .Ulfat transferred 03.57 $\frac{103}{126}$ decimal by registered safkabda deed No.4973 on 26.03.1976 to defendant No.23 Liakut who is the predecessor of defendant No.23Kha)-23(Gha), 23 (Cha)-23(Ta) defendant No.26 after the death of the defendant No.23 his successor became the owner 08.60 $\frac{10}{1963}$ decimals land and claim their chaham for 08.60 $\frac{10}{63}$ decimals of land.

After hearing the learned Additional Joint District Judge, Narayanganj passed the Judgment and decree dated 04.08.2015 mentioning that the plaintiff proved their right, title and interest in the 10 $\frac{7}{8}$ decimals of the suit property, due to that plaintiff is entitled for partial primary decree of the partition, also defendants No. 1-9(Ka)-9(Cha) is owned 28.25 decimals, defendants No. 23(Kha)-23(Gha), 23(Cha)-23 (Ta) and 26 is owned 0860 $\frac{10}{63}$ decimal and defendants No.10 (Ka)-10 (Cha) and defendants No.16 failed to prove right, title and interest in the suit property.

Being aggrieved by dissatisfied with the judgment and decreed dated 04.08.2015 the plaintiff-opposite parties filed Civil Appeal No. 98 of 2015 to the learned District Judge Narayangonj and there after hearing both the parties the learned Additional District Judge, 2nd Court, Narayangonj passed the judgment and decree dated 26.11.2020 allowing the appeal partly and modify the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with the judgment and decree dated 26.11.2020 passed by the learned Additional District Judge, 2nd Court, Narayangonj in Civil Appeal No.98 of 2015, the petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and stay.

Mr. Md. Kamal Hossain, the learned Advocate appearing for the petitioners submits that the learned trial Court also make it crystal clear by explanation that the defendants No.1-5 became the owner 7.25 decimals as a heirs of Abdul Barek, the defendants No.7 and 8 became the owner 04.00 decimal of the suit land by registered safkabladeedNo.5616 on 08.09.1961, as a inheritance of the remain out of 1.25 became owner .626 in total 4.65 also the defendant No.8 Serajul Huq by executing the registered safkabladeed No.2222 on 25.06.1996 which was filed as a Firisti Form, but the lawyer of trial Court failed to exhibit the registered safe kabla deed No.2222 and the measure of land is registered safe kabla deed No.2222, defendants No.9(Ka)-9(Cha) became the owner as a inheritance of Mujibur Rahman that the Mujibur Rahman became the owner 08.00 decimals as a purchase by safe kabla registered deed No.5614 and 5615 from Abdul Barek, also purchase 05.00 decimal of land by registered safe kabla deed

No.6363 dated 14.04.1970 from Nannu Miah, also father as a heirs of Abdul Barek remain share .625 and Mujibur Rahman mother Sahar Banu executed awaj badal deed with plaintiff No.1 Khalilur Rahman and Shahr Banu Became the owner 3.105 decimal. As Defendant No.9(Ka)-9(Cha) became the owner of 16.775 decimal of land inheritance of Shahr Banu and Mujibur Rahman and defendants No.1-9(Ka)-9(Cha) in total became the owner 28.05 decimals of the land.

He further submits that the learned Appellate Court misunderstood by considering the Chaham that defendants No.1-5 became the owner 7.25 decimals of land as a heirs of Based, the defendants No.7 and 8 by purchase 1.75 decimals, the defendants No.9(Ka)-9(Cha) defendant Saharbanu became owner in total 23.31 decimals of land. The plaintiffs became the owner of 12.24 decimals and also defendants No.10(Ka)-10(Cha) became the owner of 13.32 decimals. Bakar Ali transferred 06 (six) decimals of the suit land to Hafizuddin by executing the registered deed No.4122, and accordingly S.A. khatian 153 , S.A. plot No.217 was recorded in the name of Hafizuddin, and also for the same land R.S. Khatian No.299, R.S. Plot No.250 recorded in the name of Hafizuddin. Thereafter Hafizuddin heirs mutated their name about the suit land 06(six) decimal and paying tax to the Narayanganj City Corporation. The defendants No. 7 and 8 mutated their name for the suit land and also paying the tax to the Narayanganj City Corporation regularly. The defendant No.7 constructed the building by taking permission from Rajdhani Unnayan Kartipakkha (RAJUK) on 01.07.1987 and defendant No.8 also constructed the building by taking permission from Rajdhani

Unnayan Kartipakkha (RAJUK) on 30.04.1994 and also paying holding tax to Narayanganj City Corporation.

He next submits that out of 14.50 decimal Bakhar Ali sold out 06(six) decimals of suit land to Hafizuddin and 8.50 decimals, as remain, Hafizuddin died leaving behind two sons Shah Alam, Shabuddin and two daughters Karimon Nesa, Chalimon Nesa. Shah Alam and other on 01.06.1938 transferred 06(six) decimals of land to the defendant ancestor Abdul Barek. Abdul Barek. became the owner of 7.25 decimals as a inheritance and 06(six) decimals by purchase and in total Abdul Barek became the owner of 13.25 decimals, land, after that Abdul Barek transferred 08 decimals to defendants predecessor Mujibur Rahman and .04 decimals land to defendant No. 7 and 8 and others by registered deed No.5614, and registered deed No. 5615 respectively dated on 08.09.1961.

The learned Advocate for the petitioners lastly submits that the learned trial Court as well as the learned Appellate Court failed to discuss the evidences on record and the law and facts of the case passed the impugned judgment without giving cogent reason and findings as provided under the stipulated Rules and law as well as the Code of Civil Procedure and thus both the Courts below committed error of law in the impugned decisions occasioning failure of justice. Accordingly, he prays for making the Rule absolute.

Mr. Md. Mainul Islam, the learned Advocate appearing for the opposite parties submits that the opposite parties filed the Civil Suit No.230 of 1976 on 17.09.1976, to 2nd Sub-Judge Court, Dhaka praying partition, which was renumbered in Civil Suit No.49 of 1981 on 04.02.1981 in 2nd

Sub-Judge Court, Narayanganj and Civil Suit No.02 of 2012 was filed on 08.01.2012 in Joint District Judge Court, Narayanganj, the said suit was decreed in part by the judgment and decree dated 04.08.2015 by learned Additional Joint District Judge, Narayanganj in Civil Suit No.02 of 2012, the plaintiff-opposite parties proved their right, title and interest in the $10\frac{7}{8}$ decimals of the suit land, due to that the opposite parties are entitled for partial primary decree of the partition, also defendants No.1-9(Ka)-9(Cha) are owned 28.25 decimals, defendants No.23(Kha)-23(Gha), 23(Cha)-23(Ta) and 26 are owned 08.60 $\frac{10}{63}$ decimals and defendants NO.10(Ka)-10(Cha) and defendants No.16 failed to prove right, title and interest in the suit property with contest against the defendants No.1-9(Ka)-9(Cha), 10(Ka)-10(Cha), 16, 23(Kha)-23(Gha), 23(Cha)-23(Ta) and 26 and without contest against the defendant No.11-22,24-25 and 25-34, being aggrieved by the judgment and decree the plaintiff filed Appeal No.98 of 2015, defendants No.10(Ka)-10(Gha) filed Civil Appeal No.100 of 2015 and defendant No.16 filed Civil Appeal No. 100 of 2015 before the learned District Judge, Narayanganj. After hearing the learned Additional District Judge, 2nd Court, Narayanganj by passing his judgment and decree dated 26.11.2020 dismissed the Civil Appeal No.94 of 2015, partly allowed the Civil Appeal No.98 of 2015 and allowed the Civil Appeal No.100 of 2015 modifying the judgment and decree of the trial Court, which is maintainable in the eye of law. Accordingly, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of the Court's below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

It appears from the record that, added about the plaintiffs share the defendants No.1-9(Ka)-9(Cha) claim that C.S recorded tenant Dhanu Bepari died leaving behind four sons Abdul Gani, Bakhar Ali, Khwaz Ali and Ohad Ali and they got 14.50 decimals of land. Then, before the C.S survey, Abdul Gani died leaving two sons Abdul Barek and Abdul Bached as heirs in his estate and C.S records was prepared in the names of the Abdul Barek and Abdul Bached. Thereafter CS recorded tenant Abdul Bached died leaving four sons and one daughter as heirs while being owner and occupiers of 7.25 decimals of land. Thus, the defendants No. 1-5 are jointly occupying 7.25 decimals of land in suit land in Ejmali in the middle of the southern part of suit Dag as the heirs of Abdul Bached. The municipality has been collecting municipal tax in different ways by opening the holding of the said land. There is no dispute is claimed by the plaintiff, defendants No.10(Ka)-10(Cha) or defendant no.16 as defendants No.1-9(Ka)-9(Cha). Therefore, the fact that 7.25 decimals of land out of 58 decimals of former 129 dags claimed by defendants No. 1-5 on ancestral lines is admitted and which proved by filing of the C.S. Khatian. The C.S recorded tenant owner, Bakhar Ali, sold 6 decimals out of 14.50 decimals of land at Nalishi Dag to Habij Uddin Sheikh by original deed dated 30.11.1934. But Habij Uddin's deed writer added 24 decimals of land received by Bakhar Ali in the deed and shows sold 12 decimals land. Then this defendant claimed that when Habiz Uddin purchased 6 decimal land

from the C.S. record owner Bakhar Ali, the said 6 decimal land in the name of Habiz Uddin was marked as RS 250 as house land and RS 299. No. Khatian is recorded in pure form. Bakhar Ali died leaving two sons Shah Alam, Sahabuddin, two daughters Karimon Nescha, Salimon Nescha as heirs while remaining the owner occupier of the 8.50 decimals of land. They sold 6 decimals of land to Abdul Barek, the predecessor of these defendants, on the basis of Deed No. 2214 dated 01.06.1934 by which they from his father's inheritance. But 12 decimals land is written by mistake in the said deed. The defendants No.10(Ka)-10(Cha) filed deed No. 4122 dated 30.11.1934 in Court which is marked as Exhibit 'Gha'. On perusal of the deed shows that in this deed, Bakhar Ali Bepari transferred 12 decimals of land to Habij Uddin as the donor himself. Since it is admitted by the defendants No. 1-9(Ka)-9(Cha) that Bakhar Ali was the owner of 14.50 decimals of land at 129 dag, therefore, he can sell 12 decimals of land as the rightful owner of 14.50 decimals of land. The defendants No. 1-9(Ka)-9(Cha) on the one hand admitted the deed marked as Exhibit D and on the other hand denied the 12 decimals land sold on the basis of this deed and established their position as inconsistent. Moreover, the deed No.4122 dated 30.11.1934 marked as Exhibit 'Gha' is an original deed, which is 85 years old. The deed No.2214 dated 01.06.1938 filed on behalf of defendants No. 1-9(Ka)-9(Cha) exhibit Ga(1) which is registered after the deed which marked as Exhibit 'Gha' and the deed Exhibit Gha itself is recorded C.S.by the owner of record Bakhar Ali. On the other hand, the deed marked Exhibit Ga(1) claimed by the defendants No. 1-9(Ka)-9(Cha)

was executed by the heirs of Bakhar Ali. In this case, the deed executed by Bakhar Ali during his lifetime had a salable interest of Bakhar Ali in the land sold by him after selling 12 decimals out of the 14.50 decimals of land owned by him to Habij Uddin and the remaining 2.50 decimals of land belonged to the heirs of Bakhar Ali. The Court held that there was an interest, because records alone can never be the basis of ownership and ownership between documents and records. The defendants No. 1-9(a)-9(f) cannot claim that Habiz Uddin's deed is not executed because 6 decimals of land are recorded in the name of Habiz Uddin. The C.S. record owner Ohed Ali died as owner occupier of 14.50 decimals land at suit Daga leaving two sons Shahed Ali and Badruddin and two daughters Tafuran Necha and Daulatan Necha as heirs which has been admitted by the plaintiff and already proved by the plaintiff through documentary evidence. That, Ohed Ali transferred his possession of 14.50 decimals land to his two sons on the basis of registered title deed, although 20 decimal lands were mentioned in the deed. But the said deed has been decided to attract 14.50 decimals land originally owned by Ohed Ali. Ohed Ali's son Badruddin and daughter Tafiran Necha and Daulat Necha together sold 10 decimals land to Nannu Mia under deed No. 6363 dated 26.09.1966 and the said fact is admitted by the plaintiff. But since the Asiyatnama deed has been proved and it has already been decided that in fact Badr Uddin had salable interest in 7.25 decimals of land. Therefore, it is decided that he actually sold 7.25 decimals of land to Nannu vide Deed No. 6363 dated 26.09.1966. Thereafter, Nannu Mia sold his purchased land to Mujibur Rahman, the predecessor of the defendants, based on deed No. 3547 dated 14.04.1970.

This deed was admitted by the plaintiff. It appears to the Court that Mujibur Rahman was the owner and occupier of 8 decimals from Abdul Barek and 3.62 decimals of land from Nannu Mia, and in this way he acquired total 11.62 decimals of land. Mujibur Rahman died leaving defendant Nos. 9(Ka)-9(Cha) as heirs. Therefore, defendants Nos. 9(Ka)-9(Cha) are the owners and occupants of 11.62 decimals of land by inheritance from father and husband. The defendant Nos. 7-8 Mofizul and Serazul are owners and occupiers of 1.75 decimals of land purchased from Abdul Barek through deed No. 5616 dated 8.9.1961. The defendant No.9(Cha), Shohor Banu and Plaintiff Khalilur Rahman received possession of 5.38 decimals of land of Nalishi Dag from Mumtaz and others on the basis of exchange deed marked as Exhibit-12 discussed while giving decision in civil appeal case No. 98/15. On the basis of the said deed, the Shahara Banu and the plaintiff Khalilur Rahman both received 2.69 decimals of land in suit Dag. Therefore, the Shorhor Banu, defendant No. 9(Cha) got 2.69 decimals of land in suit Dag on the basis of Awaz Badol. Thus, the defendants No.1-5 is owners and occupier of 7.25 decimals of land as the heir of Abdul Based, the defendants No. 7-8 are owners of 1.75 decimals of land by purchased, the defendant No. 9(Ka)-9(Cha) are owner and occupier of 11.62 decimals of land as the heir of Mujibur Rahman and the defendant 9(Cha) Shohor Banu is owner of 2.69 decimals of land through Ewaz Badol and they are the owners and occupier of 23.31 decimals of land. Therefore, the defendants No. 1-9(Ka)-9(Cha) is entitled to 23.31 decimals of land in suit Dag. But the learned trial court without properly analyzing the documentary evidence and discussing the

admissible-dismissal issues with the plea of the plaintiff in a consistent and comparative manner passed the judgment and decree dated 04.08.2015 by awarding the additional land as Saham to the defendants No. 1-9(Ka)-9(Cha), which is not proper in accordance with law and the portion of the Saham awarded to these defendants is liable to be modified.

Considering the above facts and circumstances, I find that the Additional District Judge, 2nd Court, Narayanganj rightly passed the judgment and decree dated 26.11.2020 is maintainable in the eye of law and I do not find any substance to interference into the said judgment and order and I find substance in the submission of the learned Advocate for the opposite parties.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and decree dated 26.11.2020 passed by the learned Additional District Judge, 2nd Court, Narayanganj in Civil Appeal No.98 of 2015 allowing the appeal and thereby modifying the judgment and decree dated 04.08.2015 passed by the learned Additional Joint District Judge, Narayanganj in Civil Suit No.02 of 2012 decreeing the suit in part is hereby upheld and confirmed.

The order of stay and status-quo granted by this Court at the time of issuance of the Rule is hereby recalled and vacated.

Send down the L.C.R and a copy of this judgment and order to the concerned Court below at once.