

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

CIVIL REVISION NO. 5570 OF 2002

In the matter of:

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

And

Adhir Rahman Chowdhury and others

... Petitioners

-Versus-

Parimol Kanti Chowdhury being dead his heirs and successors- Ashutush Chowdhury and others

... Opposite parties

Mr. Mohammad Ibrahim, Advocate

... For the petitioners.

Ms. Arfan Sultana, Advocate with

Ms. Rumpa Kayasthagir, Advocate

...For the opposite party

Nos.1(Ka)-1(Gha).

Heard on 14.07.2026 and Judgment on 22.07.2026.

S M Kuddus Zaman, J:

On an application under Section 115(1) of the Code of Civil Procedure, 1908 this Rule was issued calling upon the opposite party Nos.1 and 2 to show cause as to why the impugned judgment and decree dated 21.05.2002 passed by the learned Additional District Judge, 2nd Court Chattogram in Other Appeal No.17 of 1997 should not be set aside and/or such other or further or orders as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs instituted above suit for partition of 24.42 acres land appertaining to 20 separate R. S. Khatians seeking a separate saham for $337\frac{10}{36}$ satangsha alleging that above property belonged to Banga Chandra who died leaving two daughters namely Sorojoni and Surabala and Sorojoni died leaving three sons namely Shanti Pada, Shudir and Ranjit and Surabala died leaving two sons namely Mrinal and Arbindu as heirs. On amicable partition among three brothers Shanti Pada, Shudir and Ranjit above property of Shorojoni was owned and possessed by Ranjit alone and the plaintiff purchased above $337\frac{10}{36}$ satangsha land from Ranjit by four separate registered kabla deeds dated 23.06.1980, 23.06.1980, 03.07.1980 and 08.07.1980 and possessing the same. But above properties have not been partitioned by meets and bounds and the defendants refused to effect an amicable partition.

Defendant Nos.4 and 5 contested above suit by filing a joint written statement alleging that above property of Banga Chandra was sold in auction and defendant Nos.4 and 5 purchased above land from the auction purchasers by registered kabla deed and possessing above land. During his lifetime Banga Chandra transferred his properties by a will but the plaintiffs concealed the existence of above

will and filed this false suit although they do not have any right, title, interest and possession in above property.

At trial plaintiffs examined three witnesses and defendants examined nine. Plaintiffs and defendants also produced several documents which were marked as Exhibits.

On consideration of the facts and circumstances of the case and evidence on record the learned Sub-ordinate Judge dismissed above suit holding that the plaintiffs having failed to produce the deed of will executed by Banga Chandra. Above suit for partition was not tenable in law.

Being aggrieved by above judgment and decree of the trial Court above plaintiffs as appellants preferred Other Appeal No.17 of 1997 to the District Judge, Chattogram which was heard by the learned Additional District Judge who allowed the appeal, set aside the judgment and decree of the trial Court and remanded above suit for retrial holding that the suit was bad for defect of parties and the plaintiffs did not produce all relevant R. S. Khatians and some registered kabla deeds.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below respondent Nos.4 and 5 as petitioners moved to this Court with this Civil Revisional application

under Section 115(1) of the Code of Civil Procedure, 1908 and obtained this Rule.

Mr. Mohammad Ibrahim, learned Advocate for the petitioners submits that the opposite parties as plaintiffs filed above suit for partition and they were required to implead all the co-sharers of above ejmali property as defendants and produce all relevant Khatians and documents. But they could not produce those either in the trial Court or in the Court of Appeal. As such the learned Judges of appeal Courts below rightly found that the suit was not maintainable for being bad for defect of parties. But the learned Additional District Judge most illegally set aside the lawful judgment of the trial Court and sent the suit for retrial providing an opportunity to the plaintiffs to fill up the lecunas which is not tenable in law.

On the other hand Ms. Arfan Sultana, learned Advocate for opposite party Nos.1(Ka) - 1(Gha) concedes that at the time of drafting of the plaintiffs due to lack of legal skill of the appointed Advocate of the plaintiffs all the co-sharers of the ejmali property were not impleaded as defendants and all R. S. Khatians could not be produced at trial. But a suit for partition should not be dismissed on procedural grounds and the learned Judge of the Court of Appeal below rightly set aside the erroneous judgment and decree of the trial

Court and remanded the suit for retrial which calls for no interference. The learned Advocate further submits that the plaintiffs did not mention in the plaint of any deed of will executed by their ancestor Banga Chandra. It was a claim of defendant Nos.4 and 5 who could not produce any deed of will at trial. But the learned Judge of the trial Court most illegally dismissed the suit for plaintiffs failure to produce above deed of will which is not tenable in law.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that disputed land originally belonged to Banga Chandra and relevant R. S. Khatians was correctly prepared in his name. It is not disputed that above Banga Chandra died leaving two daughters namely Sorojoni and Surabala and Sorojoni died leaving three sons namely Shanti Pada, Sudir and Ranjit and Surabala died leaving two sons Mrinal and Arabindo as heirs. It has been alleged by the plaintiffs that by amicable partition among three brothers namely Shanti Pada, Sudir and Ranjit all property of Sorojoni was owned, held and possessed by Ranjint alone. The learned Judge of the Court of Appeal below rightly held that above claim against Shanti Pada and Sudir by the plaintiffs should have been made in front of above Shanti Pada and Sudir or their heirs after impleading them as

defendants in above suit. But the plaintiffs did not implead them in above suit as defendants.

The plaintiffs did not produce all R. S. Khatians of above joint properties nor they produced all their kabla deeds. Since the plaintiffs claimed title in the property of Sorojoni by way of purchase from her son Ranjit by several registered kabla deeds the plaintiffs were required to produce all registered kabla deeds at trial.

Defendant Nos.4 and 5 although claimed that the property of Banga Chandra was sold in auction and they purchased above land from above auction purchaser by registered kabla deeds but above defendants could not produce any document in support of above auction sale of the property of Banga Chandra. The registered kabla deed produced by above defendants prove that they purchased land from Mrinal and Arabindo two sons of Surobala daughter of Banga Chandra.

As mentioned above in the plaint as well as in the schedule to the plaint the plaintiffs have described the disputed properties by mentioning R. S. Khatians which are in fact C. S. Khatians for Chattogram. Above suit was filed in 1992 and the learned Advocate for the petitioners submitted that before filing of above suit the B. S. Khatian for above properties were finally published. In a suit for partition the plaintiffs are required to implead all co-sharers as

defendants and bring every piece of joint properties into hotchpotch of the suit. To ensure proper identification of the ejmali property the plaintiffs must mention the latest record of rights of the ejmali property on the date of filing of the suit. The trial Court shall scrutinize the latest record of rights to ensure that total ejmali property has been brought into the suit and all co-sharers have been impleaded as defendants. As mentioned above the plaintiffs did not mention the relevant S. A. Khatian and B. S. Khatian of above properties in the plaint nor produced above khatians at trial .

The cause of action of a suit for partition is recurring which continues and remains alive until the ejmali property is finally partitioned by meets and bounds. As such the ends of justice demands that every suit for partition be finally determined on merit in presence of all co-sharers and taking into account total ejmali properties. A suit for partition should not be dismissed on the procedural ground, such as, for defect of parties or for not bring into hotchpotch of the suit each and every piece of joint properties. The plaintiffs should be given an opportunity to make up above deficiencies so that the suit for partition can be settled once for all in accordance with law.

In above view of the facts and circumstances of the case and materials on record we are unable to find any illegality or irregularity

in the impugned judgment and decree passed by the learned Additional District Judge nor we find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

The learned Judge of the trial Court is directed to dispose of above suit for partition on merit in accordance with law within a period of one year from the date of receipt of this order.

However, there is no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER