

In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)

Present:

**Mr. Justice Muhammad Abdul Hafiz**

**CIVIL REVISION NO. 3139 OF 2005**

Md. Ali and others  
Defendants-Appellants-Petitioners  
Versus

Anwara Begum and others  
Plaintiffs-Respondents-Opposite parties

No one appears  
for the defendant-appellants-petitioners

Mr. Md. Saifur Rahman, Advocate  
for the plaintiffs-respondents-opposite party  
Nos. 1-3, 5-6 and 14.

**Judgment on 17.5.2022**

This Rule was issued calling upon the opposite party Nos. 1-19 to show cause as to why the impugned Judgment and Decree dated 17.3.2005 passed by the learned Additional District Judge, 3<sup>rd</sup> Court, Chittagong in Other Appeal No. 13 of 1985 dismissing the Appeal and thereby affirming those dated 27.11.1984 passed by the learned Subordinate Judge now Joint District Judge, Patiya, Chittagong in Other Suit No. 35 of 1982 decreeing the suit should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The predecessor of the opposite party Nos. 1-6 namely Abdur Rashid as plaintiff No. 1 and the predecessor of the opposite party Nos. 7-14 namely Abdul Kader as plaintiff No. 2 instituted

present Suit on 21.6.1974 in the 2<sup>nd</sup> Court of learned Sub-ordinate Judge now Joint District Judge, Chittagong being Partition Suit No. 52 of 1974 for partition of the suit land and the said suit subsequently was transferred to the Court of Sub-ordinate Judge, Patiya now Joint District Judge, Chittagong wherein it was renumbered as Partition Suit No. 35 of 1985.

The facts of the plaintiff's Case in short is that the suit land described in the Schedule Ka to the plaint originally belonged to Bakar Ali who died leaving Jan Ali and Mokbul Ali and both of them inherited the land in question left by Bakar Ali in equal share and C.S. Khatian was prepared in their names. The land of Schedule Kha belonged to Jan Ali alone and C.S. Khatian was prepared in his name correctly and during preparation of R.S. Khatian some of female heirs of Jan Ali and Mokbul Ali were left out and thereafter Jan Ali died leaving one wife Misirjan and two sons namely Ershad Ali and Ansar Ali and five daughters namely Jobeda Khatun, Amir Khatun, Mayur Jan, Safia Khatun and Abeda Khatun and Ansar Ali died leaving his mother Misir Jan and wife Hakimun Nessa and three sons namely Alauddin, Toraf Uddin and defendant No. 1 Siddique Ahamed and one daughter Moslema Khatun, defendant No. 2 Abeda Khatun thereafter died in unmarried status leaving behind mother Misirjan, one brother Ershad Ali and above mentioned 4 sisters and Jobeda Khatun died leaving mother Misir Jan and one son Ali Ahmed defendant No. 3

and thereafter Misir Jan died leaving son Erahad Ali and three daughters namely Amir Khatun, Mayur Jan and Safia Khatun and Ershad Ali died leaving one wife Sayera Khatun and two sons namely Abdur Rashid and Abdul Kader, plaintiff Nos. 1-2 and three daughters defendant Nos. 20-21 and Gulsona Khatun who died leaving mother Sayera Khatun and husband Lal Meah and two brothers and two sisters above mentioned and Sayera Khatun died leaving two sons plaintiffs Nos. 20-21 and Lal Meah died leaving defendant Nos. 16-19 and Amir Khatun died leaving behind one daughter defendant No. 4 and other heirs described in para 4 of the plaint and Alauddin son of Ansar Ali died leaving behind mother Hakima Nessa and two brothers Toras Uddin and defendant No. 1 and one sister defendant No. 2 and Toras Uddin died leaving mother Hakima Nessa and wife Madan Jan and one son Raja Mia and Raja Mia died leaving mother Madam Jan and defendant Nos. 1-2 who are the father's brother and sister and Madan Jan remarried with the defendant No. 2 after the death of her husband Torab Uddin and later she died leaving defendant No. 1 as her husband and defendant Nos. 12-15 who are sons and thereafter Hakima Nessa widow of Ansar Ali died leaving son and daughter the defendant Nos. 1-2 respectively and in this way the plaintiffs and the defendant Nos. 1-21 and 41-42 inherited the properties left by Jan Ali and Mokbul Ali died leaving the defendant Nos. 22-40

and 43-72. The further case of the plaintiff is that Ershad Ali predecessor of the plaintiff sold .40 Sataks of land during his life time, out of serial No. 8-10 of Ka schedule land to one Kala Meah who again sold the said land to defendant Nos. 36-38 by different kabala and the defendant No. 39 also purchased some land from the defendant No. 1 and Sufia Khatun and Mayur Jan gifted their entire share measuring an area of 2.02 acres or five Kanies out of the suit land described in Schedule Ka and Kha to the plaintiff No. 1 by registered deed of gift dated 15.7.1957 and delivered possession in favour of the plaintiff No. 1 and the defendant No. 16-19 also gave up their entire interest in the land of Schedule Ka and Kha in favour of the plaintiff Nos. 1-2 and the plaintiff Nos. 1-2 are entitled to get 0.12 Sataks, out of ka Schedule land and .38 Sataks out of Kha schedule land way of inheritance, Amir Khatun  $0.04\frac{3}{4}$  - Sataks out of Schedule Ka land and  $19\frac{1}{4}$  Sataks out of Kha Schedule land and 1.58 Sataks out of Kha schedule land by gift and Mayur Jan and defendant No. 41 and in total the plaintiffs are entitled to get  $0.72\frac{3}{4}$  Sataks land out of Ka schedule land and  $2.53\frac{1}{4}$  Sataks out of Kha schedule land and the suit land in Joint possession of the plaintiffs and other co-sharer and there is no Partition by mets and bounds and the plaintiffs Nos. 1 and 2 and their mother and sister as plaintiffs filed a partition suit in the same

Court being Partition Suit No. 09 of 1958 but on the assurance of defendant No. 1 who was only contesting defendant of that suit for amicable partition. The plaintiffs did not proceed with that suit which was allowed to be dismissed for default and the defendant No. 1 got a deed of partition prepared and drawn up according to his sweet will between the plaintiffs and the defendant No.1 without joining other plaintiffs and defendants and so-called deed of partition dated 21.08.1959 persuaded the plaintiff No. 1 by false representation to execute the said deed of partition and the said so-called deed of partition dated 21.08.1959 is neither legal nor binding upon the plaintiffs or any other co-sharers and the plaintiffs demanded partition from the defendants but they declined to do the same and hence the present suit for partition.

The defendant No. 1 and the defendant Nos. 12-14 contested the suit by filing a written statement denying all the material allegations contending, inter alia, that the suit is not maintainable in its present form, and there is no cause of action to file the suit and the suit is barred by limitation and also barred by the doctrine of res-judicata. The Ka Schedule land belonged to Ansar Ali and Ershad Ali in equal share and the Kha Schedule land is not the self acquired lands of Jan Ali and as such Jan Ali's daughter did not inherit any property in the Ka Schedule land and the deed of gift executed by the daughter of Jan Ali was not acted upon and it is

mere document procured by practicing fraud and all the co-sharers in the suit land amicably partitioned themselves and in this regard a partition deed was executed and registered on 21.08.1959 and the plaintiffs are possessing their share as the heirs of Ershad Ali in pursuance of partition deed dated 21.08.1959 and thus they prayed for dismissal of the suit.

The defendant No. 2 also contested the suit by filing a written statement contending that the share of the tenant Ansar Ali developed upon the defendant Nos. 1 and 2 and the defendant No. 2 has been possessing 1 Kari 10 Gondas of land of both the Schedules and the defendant No. 2 prayed for Shaham for her share subject to payment of required Court fees.

The defendant Nos. 20-21 also filed a separate written statement contending that Ershad Ali and Ansar Ali had four annas share each in the Ka Schedule land and 4 annas share each in the Kha schedule land and Ershad Ali died leaving behind wife Shyera, two sons plaintiffs Nos. 1 and 2 and three daughters including the defendant Nos. 20 and 21 and Gulsona Khatun died leaving mother Shayera and husband Lal Meah and two brothers plaintiffs Nos. 1 and 2 and these defendants as sisters and Lal Meah died leaving defendant Nos. 16 and 19 who entrusted their share in favour of the plaintiffs and the defendants Nos. 20 and 21 and in this way the defendant Nos. 20 and 21 are entitled to get 3

kanis of land in the suit schedule and they also claimed shaham subject to payment of required Court fees .

On the other hand the defendant Nos. 41 and 42 filed a separate suit being Other Suit No. 5 of 1984 for declaration that the deed of gift dated 15.7.57 is forged, fraudulent stating that Maiyur Jan and Sufia, daughters of Jan Ali was inherited their share from their father in the Schedule land and Maiyur Jan died leaving husband Khulyya Meah and Khulyya Meah died leaving daughters Nur Begum and Anwara Begum and brother Sayed Ahmed and Sufia Khatun died leaving heirs namely Kala Meah, Selena Khatun and Majema Khatun and they have been possessing the land left by the aforesaid predecessor and there are no grounds to give 5 Kanis 1 Gonda of land to the plaintiff No. 1 and Maijur Jan and Sufia Khatun never executed the alleged deed of gift on 15.07.1957 and the said deed of gift is illegall, fraudulent and not acted upon and they never got possession of the gifted land by virtue of alleged deed of gift dated 15.07.1957 and they have no knowledge about the alleged deed of gift and after received of summons of Partition Suit No.35 of 1982 they came to know about the fraudulent deed of gift and as such they instituted the present suit for deceleration as stated above.

The aforesaid suits were heard analogously and the Trial Court decreed the present Partition Suit No.35 of 1982 and

dismissed the Other Suit No.5 of 1984 by its Judgment and Decree dated 27.11.1984. Against the aforesaid Judgment and Decree the present petitioners who were defendant Nos. 12 to 14 have preferred Title Appeal No.13 of 1985 before the learned District Judge, Chittagong and on the other hand the plaintiffs of Other Suit No. 5 of 1984 did not prefer any appeal against the Judgment and Decree dated 27.11.1984. The aforesaid Title Appeal No.13 of 1985 was transferred to the Court of learned Additional District Judge, 3<sup>rd</sup> Court, Chittagong for disposal and the learned Additional District Judge, 3<sup>rd</sup> Court, Chittagong vide his Judgment and Decree dated 17.03.2005 dismissed the appeal and affirming the Judgment and Decree of the Trial Court and thus the defendants-appellants as petitioners moved this application under section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

No one appears on behalf of the defendant-appellants-petitioners to press the Rule.

Mr. Md. Saifur Rahman, the learned Advocate on behalf of the plaintiffs-opposite party Nos. 1-3, 5-6 and 14, submits that both the Courts below rightly found that the suit is maintainable and not hit by the doctrine of res-judicata as because admittedly deceased plaintiff Nos. 1-2 along with their mother and sister brought Partition Suit No. 9 of 1968 which was dismissed for default and



all co-sharers were not party of that suit and no issue was decided regarding the partition of the parties and subsequent Partition Suit No. 35 of 1982 was properly filed by the opposite parties as plaintiffs and admittedly partition deed dated 21.8.1959 Exhibit-A between Abdur Rashid and Siddique Ahmmed and all the co-sharers are in possession of the suit land as ejmali property. He further submits that D.W. 1 Md. Ali has deposed on behalf of the defendants of Partition Suit No. 35 of 1982 and the plaintiffs of Other Suit No. 5 of 1984 admits that they possess 8 Kanies of land but he also deposed that the plaintiffs possess 7 Kanies 14 Gondas land which is also plaintiffs' claim excluding .20 decimals of land is proved. The plaintiffs have also specifically asserted in the plaint that from R.S. record in respect of the land Ka and Kha schedule some of the females heirs of Jan Ali and Moqbul Ali were wrongly omitted in R.S. Khatian (Exhibit-C series) and the defendants failed to adduce any evidence to prove the wrong entry in the R.S. Khatian so it is established that C. S. record in respect of the suit land is correct, Jan Ali died leaving behind widow Misirjan, 02 (two) sons Ershad Ali and Ansar Ali and 5 (five) daughters Jobeda Khatoon, Amir Khatoon, Monnujan, Sufia Khatoon and proforma defendant 41 Abeda Khatoon and the Court of Appeal below found that in the R.S. record the female heirs of Jan Ali and Moqbul Ali were wrongly omitted. He next submits that the

plaintiffs claim that deceased plaintiff No. 1 Abdur Rashid got .44 decimals of Ka schedule land and .58 decimals of land in Kha schedule by Gifted from Moyurjan and Sufia Khatoon (proforma defendant No. 41) dated 15.7.1957 which was challenged by the Other Suit No. 5 of 1984 on 05.2.1984 which did not come properly before the Court within 3 (three) years from 15.7.1957. Therefore exhibit- 2 is a valid document and no way of legally challenge. On the other hand P.W. 1 Abdus Sattar deposed in support of the Exhibit-2 and also delivery of the possession and P.W. 3 and 4 also strongly corroborated to the P.W. 1, therefore, both the Courts below rightly award Saham of the plaintiffs  $72\frac{3}{4}$  decimals land out of Ka schedule and  $2.53\frac{1}{4}$  decimals of land of Kha schedule but admittedly the plaintiffs also is in possession of the schedule Ga. He lastly submits that the Trial Court after properly discussion denied to give Saham of defendant No. 2 and defendant Nos. 20-21 and dismissed the Other Suit No. 5 of 1984 and rightly decreed the Partition Suit No. 35 of 1982 and the learned Court of Appeal below elaborate finding a decision on consideration of evidences, materials of record rightly affirmed the Trial Court's judgment and decree and rightly dismissed the Appeal against the contesting defendants and ex-parte against the rest. In support of his submissions he has referred to the Case of

Safaruddin Bhuiyan Vs. Zahirul Huq reported in 73 DLR (AD) 361.

Heard the learned Advocates for the opposite party Nos. 1-14 and perused the record.

The plaintiffs instituted the instant suit for partition. Upon perusing the material evidence on record both the Courts below came to the concurrent findings of facts that the plaintiffs-opposite parties are entitled to get a decree in the suit. There is no misreading or non-consideration of evidence by the Courts below. The defendant-petitioner could not point out any misreading and non-consideration of the evidence on record. In the above circumstances, this Court cannot interfere with the concurrent findings of facts.

Contending the facts and circumstances of the Case, I find no substance in this Rule, rather I find substance in the submissions of the learned Advocate for the plaintiff-opposite party Nos. 1-3, 5-6 and 14.

**Accordingly, the Rule is discharged without any order as to costs.**

The impugned Judgment and Decree dated 17.3.2005 passed by the learned Additional District Judge, 3<sup>rd</sup> Court, Chittagong in Other Appeal No. 13 of 1985 dismissing the Appeal and thereby affirming those dated 27.11.1984 passed by the learned

Subordinate Judge now Joint District Judge, Patiya, Chittagong in  
Other Suit No. 35 of 1982 is hereby up-held.

The Order of Stay granted earlier by this Court is hereby  
vacated.

Send down the lower Courts record with a copy of this  
Judgment to the Courts below at once.