

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

Present:

Mr. Justice Md. Ziaul Haque

Civil Revision No. 2328 of 2009

Debasish Shaha and another

.....Defendant-Appellant-Petitioners.

-Versus-

Khatemon Bibi being died of his heirs

Md. Shamsul Haque and others

....Plaintiff-Respondents -Opposite-Parties.

Mr. Ekramul Haque, Advocate with

Mr. A.Z.M. Morshed Al Mamun with

Mr. Golam Subhan Chowdhury, Advocates

....For the petitioners

Mr. Md. Belal Hossain, Advocate

..... For the opposite parties

Heard on 29.10.2025, 11-11-2025 and  
Judgment on 13.11.2025.

“Bismillahir Rahmanir Rahim (In the name of Allah, the most merciful and the most magnificent.)”

This Rule was issued at the instance of the defendant Nos. 128-130 as well as appellant Nos. 21-23 against the judgment and decree dated 29-01-2009 passed by the learned Additional District Judge, Bogura in Partition Appeal No. 129 of 1991 affirming and modifying the decree dated 11-06-1991 passed by the learned Assistant Judge, Dhonote, Bogura in Partition Suit No. 276 of 1984 decreeing the suit in the preliminary form.

The relevant facts for disposal of the Rule are in short that, the suit land belonged to Nazu Mondal and Karimbox Mondal in equal shares and

Nazu Mondal died leaving behind his son Ashim and wife Shovan Bewa and subsequently Shovan Bewa died and Ashim became the only heir of Nazu Mondal. Ashim while possessing and enjoying the suit land died leaving behind his wife i.e. Defendant No. 5 and 4 sons who are defendant Nos. 6-9 and 5 daughters. One of the heir Jabitan died leaving behind the defendant Nos. 12-14 as heirs and they became owners of the suit land to the extent of their shares. Elahi Bauso died leaving behind the defendant No. 15-19 as legal heirs. Shara died leaving behind the defendant No. 21-24 and Alimuddin died leaving behind Defendant Nos. 20-25. Amicha died leaving behind the defendant Nos. 26-30; details descriptions of other co-sharers have been given in the plaint, which are not necessary for disposal of the Rule. The plaintiffs are the legal heir of Jabbar Mondal along with the defendant Nos. 1-4. The suit land claims to be ejmali property and no formal partition was taken place between the co-sharers and the plaintiffs became owner of 1.79 acre of land by way of inheritance and further purchased 1.23 acre of land from different persons and thus the shares of the plaintiffs stood upto 3.02 acres. The defendants denied amicable partition as per assertion made by the plaintiffs in the cause of action clause and therefore, filed the suit for partition claiming 3.02 acres of land acquired by inheritance and by purchase.

The defendant Nos. 62 and 65 contested the suit by filing joint written statements. The defendant Nos. 128-130 contested the suit stating interalia that Bindu Bashini purchased 61 decimals of land from the

defendant Nos. 1 and 2 vide Sub-kabala deed No. 1051 dated 09-03-1959. From Golam Rahman and Asam Uddin Mondal, who are recorded owners and the said deed covered R.S. Khatian No. 1467 comprising R.S. Plot No. 1730.

The plaintiffs adduced evidence by examining 3 witnesses i.e. P.W. Nos. 1, 2 and 3 and the defendant No. 31 adduced evidence through D.W.6 in support of the written statements filed by defendant Nos. 128-130.

Upon hearing the parties and considering the evidence on record, the learned Trial Court below decreed the suit in the preliminary form vide judgment and decree dated 11-06-1991 giving shaham to the plaintiffs to the extent of 179.50 decimals acquired by inheritance and the rest portion covered by kabala deed / deeds has not been decreed. The learned trial court below has failed to give shaham to the defendant Nos. 128-130.

Being aggrieved by the said judgment and decree, the defendant Nos. 62-65 and 74 alongwith defendant Nos. 128-130 preferred partition Appeal No. 129 of 1991 before the learned District Judge, Bogura. The appeal was transferred to the learned Additional District Judge, 2<sup>nd</sup> Court, Bogura for hearing and disposal.

During pendency of the appeal, the defendant Nos. 128-130 being appellant Nos. 21-23 filed an application for allowing them to adduce additional evidence under Order 41 Rule 27 of the Code of Civil Procedure and produced their title deeds bearing deed No. 1051 dated 09-03-1959 and

deed No. 517 dated 18-03-1977 alongwith other supporting documents. The learned Court of Appeal below allowed the application and recorded Additional evidence of the appellant Nos. 21-23 and recorded evidence of Sree Debashis Shaha, which have been marked as Exhibit Nos. Tha(a) – Tha(b) and Tha 1, 2 and 3 series particularly the kabala deeds alongwith khatian and rent receipt etc. as evident from Annexure-A, B and C to the revisional application.

The learned Court of Appeal below allowed the appeal giving shaham to the appellant Nos. 62-65 and 74; but kept silent about allotment of shaham to the defendant Nos. 120-130 corresponding to appellant Nos. 21-23 and there is no reflection of the evidence adduced by the said appellants in support of their claims as shown in Exhibit No. Tha series vide judgment and decree dated 29-01-2009.

Being aggrieved by the said judgment and decree of the court of appeal below dated 29-01-2009, the petitioners moved before this court and obtained the instant Rule.

During issuance of the Rule, this court passed an interim order staying operation of the judgment and decree dated 29-01-2009 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Bogura in partition Appeal No. 129 of 1991.

Heard the learned Advocate for the petitioners and the opposite parties. Mr. Md. Ekramul Haque appeared with Mr. A.Z.M. Morshed Al

Mamun for the petitioner. The learned Advocate for the petitioners submits that despite all evidence available in the record, the learned court of appeal below has miserably failed to allot Shaham to the petitioners and there is no reflection of such documents as well as evidence in the body of the judgment and there is total non application of judicial mind. He further submits that the petitioners are co-sharer by purchase and the plaintiff or other defendants have not raised any objection against the legacy of Bindu Bashini or his son or the present claimants who has acquired title by the aforesaid deeds as referred above.

He further submits that the petitioners are lawful owners in possession of the claimed land measuring 30 decimals and paid up to date rent and taxes to the government and the title deed alongwith the rent receipts have been marked as Exhibit No. Tha series; whereas the learned Court of Appeal below has ignored the propositions and failed to allot any shaham to the petitioners on misconception of law and there is serious miscarriage of justice and the petitioners have been deprived from getting their shaham; although the petitioners are entitled to get such shaham of 30 decimals of land in Plot Nos. 1730.

At the time of hearing of the Rule, the learned Advocate for the opposite parties Mr. Md. Belal Hossain frankly submits that the plaintiffs i.e. opposite party Nos. 1 and 2 are satisfied with the decree of the trial court as well as the court of appeal below and they have no objection in allotment of shaham to the present petitioners, who are in possession of

their claimed land by way of purchase and there is no dispute between the petitioners and the opposite party Nos. 1 and 2.

He further submits that some other defendants obtained shaham from the court of appeal below and they have not raised any objection and they are satisfied.

Only the crux point of the case are that- “whether the defendant Nos. 21-23 corresponding to appellant Nos. 21-23 as well as the petitioners are entitled to get their respective shaham over 30 decimals of land by way of purchase as reflected in Exhibit Nos. Tha series.

Considering the facts and circumstances of the case and on perusal of the evidence on record, this court doth opine that the learned court of appeal below has not applied his judicial mind while disposal of the appeal; although the appellate court allowed additional evidence and recorded evidence and the documents in support of the claim, which have been marked as Exhibit No. Tha series. The petitioners also produced the rent receipts paid to the Government which shows prima facie evidence of possession and co-lateral evidence of title as per the decision of the Apex Court reported in 35 DLR (SC) 216. The petitioners have been able to prove their title over their claimed land to the extent of 30 decimals in C.S. Plot No. 1730.

Considering the facts and circumstances, the Rule deserves merit and the judgment and decree of the court of appeal below requires interference.

In view of the above, the Rule is made absolute and the judgment and decree of the learned court of appeal below as well as the decree of the learned trial court below are modified and the petitioners are allowed shaham to the extent of 30 decimals of land as specified in their deed (Exhibit No. Tha(1)). The learned Courts below are directed to modify the judgment and decree in the light of this decision; so that the decree can be executed effectively. The learned trial Court below is further directed to appoint an Advocate Commissioner giving shaham of the respective claimants in view of the above decision and the learned Advocate commissioner will submit a report by making dole and sketch map of the suit land giving respective shahams to the parties including the petitioners within 2(two) months without any further delay and the learned Trial Court below will proceed for execution of the case and same shall be disposed of within further period of 6(six) months without any fail.

The Rule is made absolute without any order as to cost with the above modification and direction.

Send down the L. C. Records at once.

(Justice Md. Ziaul Haque)