

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.5925 OF 2022.

Yasmin and others.

..... Defendant-Petitioners.

-VERSUS-

Kolim Ullah and others

..... Plaintiff-Opposite parties.

Mr. Abul Kalam Chowdhury, Senior Advocate with

Mr. Iqbal Kalam Chowdhury, Advocates

-----For the petitioners.

Mr. Abdul Wadud Bhuiyan, Senior Advocate with

Mr. Sharder Abul Hossain and

Ms. Nadira Akhter, advocates

-----For the opposite parties.

**Heard on 04.12.2024, 06.01.2025,
19.01.2025, 20.01.2025, 28.01.2025,
29.01.2025 and 12.02.2025.**

Judgment on 12.02.2025.

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 07.11.2022 passed by the learned Additional District Judge, Lakshmipur in Title Appeal No.24 of 2016 allowing the appeal by modifying the Judgment and decree dated 24.04.2016

passed by the learned Assistant Judge, Ramgonj, Lakshmipur in Title Suit No.338 of 2007 decreeing the suit for partition should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The facts, in brief, for the disposal of Rule are that the opposite party No.1, as plaintiff, instituted Title Suit No.142 of 2001 before the Senior Assistant Judge, Lakshmipur, for the partition. On transferred before the Assistant Judge, Ramganj, Lakshmipur, renumbered as Title Suit No.338 of 2007. The plaintiff's case is that one Imam Uddin owned 2.45 acres of land of Petty Khatian No.692 of Mouja Tumchar, who sold 04 decimals to Abu Polowan. He died as an owner of the rest of the 2.41 acres, leaving one son, Keramoth Ali, and three daughters, Jamila Khatun, Syedur Nessa, Joynob Banu, and wife Nur Nessa. On the death of Nur Nesa, wife of Imam Uddin, her one son and three daughters inherited their mother's share.

Thus, Keramoth Ali inherited $96\frac{7}{16}$ decimals, and each daughter $48\frac{7}{32}$ decimals. Keramoth Ali sold 34 decimals to Abdul Gafur vide registered saf Kabala dated 15.06.1943. Thus, Keramoth Ali, the owner of the remaining $62\frac{7}{16}$ decimals, died, leaving one wife, Nur Banu, five sons, Nazirullah, Syed

Ullah, Marfot Ullah, Rafiq Ullah, and one daughter, Mariam Banu. Thus, the wife inherited $7 \frac{12}{16}$, each son $10 \frac{2}{16}$, and each daughter $5 \frac{1}{16}$ decimals. By Judgment of Noakhali Collectorate dated 15.11.1946 in Miscellaneous Case No.1520 of 1945-46, though there was the conditional order of redemption of 34 decimals, rather Keramot Ali or his heirs could not take back the land by complying with the condition of the Judgment. Nazir Ullah, son of Keramoth Ali, owned $10 \frac{2}{16}$ decimal by inheritance and 01 decimal by purchase from Abu Polwan vide Kabala dated 27.01.1969. Nazir Ullah also purchased 15 decimals from Zoden Ali and others, heirs of Jomila (daughter of Keramoth Ali) vide Kabala dated 25.01.1972. Nazir Ullah also purchased $5 \frac{5}{16}$ decimals from Ahmadullah and other heirs of Saidunnessa (daughter of Imam Uddin) vide registered saf-kabala 2553 dated: 02.02.1962. Nazir Ullah also purchased 3.5 decimals from Zainal Abedin, son of Saidunnessa, vide registered saf-kabala No. 2894 dated 18.02.1968. Mansur Ahmed and Tofayel Ahmed, sons of Jaigun (Jainob) Banu, sold 08 decimals to Nazirullah. Thus, Naziruallah became the owner of 48 decimals.

Nazirullah sold 18 decimals to defendant No. 08 Ojiullah, son of Nazirullah, and gifted 16 decimals to plaintiff vide registered Heba deed No. 2201 dated 24.02.1994. Najir Ullah remained the owner of 14 decimals.

Tofayel Ahmed (son of Jaigun/Jainob Banu) sold 12 decimals to Ozifa Khatun vide registered saf-kabala No. 7814 dated 31.10.1957. Ali Akbar sold 1.5 decimals to Ozifa Khatun vide registered saf-kabala No. 2207 dated 01.01.1978. Thus, Ozifa Khatun became the owner of 13.5 decimals and inherited from Nazir Ullah 13.5+14 decimals, a total of 27.5 decimals, died leaving 03 sons, Plaintiff Kalim Ullah, defendant No 8 and 9, and three daughters defendant No. 10-12. Thus, the plaintiff owned 16+6=22 decimals and purchased 34 decimals from Ali Haider and others, heirs of Abdul Gafur vide registered saf-kabala No. 3590 dated 13.04.1997. Nurul Islam, heir of Saidunnesa (daughter of Imam Uddin), sold 02 decimals to plaintiff Kalim Ullah vide registered saf-kabala 3190 dated 13.04.1998. Sultan Ahmed, co-sharer of Raiyati, sold 4 ½ decimal to the plaintiff vide registered saf-kabala No.7131 dated 02.08.2001. Another co-sharer, Abdul Kuddus, sold

3 ½ decimals to the plaintiff vide registered saf-kabala No. 9105 dated 18.10.2001. Thus, the plaintiff became the owner of 66 decimals of land. Some lands were wrongly recorded in the name of defendants No 15-26, who are not co-share, so they have no right, title, or possession in the suit land.

Defendants 1, 5-7 contested the suit by filing a joint written statement contested the suit. They admitted the statement of inheritance as stated in the plaint. Their substantive case was that Keramoth Ali, son of Imam Uddin and Nurunnessa (wife of Imamuddin), became the owner of $96 \frac{7}{16}$ decimals, and each daughter owned $48 \frac{3}{16}$ decimals of land. Keramoth Ali sold 34 decimals in 1943 to Abdul Gafur. Later, Keramoth Ali filed Case No. 1520 of 1945-46 at Noakhali Collectorate as per Act 1 Section 4 of Bengal Act, 1944 for redeeming 34 decimals of the land from Abdul Gafur. The said case was allowed, and the land was released vide order dated 15.11.1946 in favor of Nazir Ullah and other heirs of Keramoth Ali, as Keramoth Ali died during the pendency of the case. Thus, Keramoth Ali, being

the owner of $96 \frac{7}{16}$ decimals, died leaving his wife, Nur Banu, five(5) sons, Nazir Ullah, Marfoth Ullah, Syed Ullah, Rafique Ullah, Nurul Huq, one(01) daughter Mariam Banu. As such, his wife inherited 12 decimals; each son got 15 decimals, and the daughter got $7 \frac{1}{2}$ decimals.

Heirs of purchaser Sadia Khatun purchased from Imam Uddin and sold 04 decimals by Kabala dated 27.01.1969 to Nazir Ullah, Marfoth Ullah, Syed Ullah, and Nurul Huq. Thus, each son got 01 decimal.

Monsur Ahmed and Tofayel Ahmed, sons of Jamila (Daughter of Imam Uddin), inherited $48 \frac{3}{16}$ decimals from their mother, and thus each became the owner of $24 \frac{1}{16}$ decimals.

Monsur Ahmed sold his share to Nurul Huq, Syed Ullah, and Nazir Ullah (the plaintiff's father). Each got $8 \frac{3}{16}$ decimals.

Tofayel Ahmed, owner of $24 \frac{1}{16}$ decimals, sold to Fajil Ahmed and Ali Akbar, who sold it to the plaintiff's mother,

Ojuba Khatun, Nurul Huq, Syed Ullah, Rafique Ullah by Kabala dated 30.10.1957. Ojuba Khatun became the owner of 12 decimals, and each of the other became the owner of 4 decimals.

Syeder Nessa, daughter of Imam Uddin, the owner of $48 \frac{3}{16}$ decimals, died, leaving 01 daughter, Jamila, and 02 sons, Ahmed Ullah and Joynal Abedin. Thus, each son got $19 \frac{1}{16}$ decimals, and the daughter got $10 \frac{1}{16}$ decimals.

Ahmed Ullah, son of Jamila, sold 16 decimals to Nazir Ullah, Syed Ullah, and Nurul Huq vide registered Saf Kabola No. 2553 dated 02.02.1962. Thus, Each person got $05 \frac{1}{16}$ decimals.

Joynal Abdin, son of Jamila, sold 07 decimals to Nazir Ullah and Nurul Huq, and hence, each became the owner of $3\frac{1}{2}$ decimals. Joynal Abdin, owner of the remaining 12 decimals, died issueless, leaving brother Ahmed Ullah.

Ahmed Ullah sold 16 decimals and owned 3 decimals and 12 decimals from his brother. In all, 15 decimals died, leaving his wife, Kodh Banu, 01 son, Nurul Islam, and 02

daughters, Khatija and Nur Jahan. As such, his wife, Kodh Banu, inherited 02 decimals; his son got $6\frac{1}{2}$ decimals, and each daughter had $3\frac{1}{4}$ decimals.

Kodh Banu, Khatija, and Nur Jahan were sold to Syed Ullah, and Parul Begum vide registered Saf-Kabola 1631 dated 13.02.2001, though the vendor was the owner of $8\frac{1}{2}$ decimals. By way of the purchase, Syed Ullah and Parul each became owners of $4\frac{1}{4}$ decimals. Marfoth Ullah, son of Keramoth Ali, sold to Afia Khatun, which she sold ($8\frac{3}{4}$ decimals) to Nurul Haq. Thus, Nurul Haq owned $45\frac{3}{4}$ decimals of those he gifted his wife Kodbanu by Kabala dated 30.11.1976. Kodbanu also purchased $1\frac{1}{2}$ decimals from Ali Akbar, 12 from Jamila, and $3\frac{1}{2}$ from Nurul Haq. Thus, she owned $66\frac{1}{2}$ decimals and gifted 49 decimals to Parul and Minara. Kadbanu sold 8.5 decimals to defendant No.1. Parul, owning $3\frac{1}{3}$ decimals, sold 9.5 to defendant No. 1 and 14 decimals to Oziullah. Thus, she owned $8\frac{1}{4}$ decimals.

After selling $7 \frac{1}{2}$ decimals to Afia and 7 decimals to Oziullah, Syed Ahmed owned $32 \frac{1}{2}$ decimals. After selling 07 decimals to Ojiullah, Marfot Ullah, who owned $9 \frac{1}{4}$ decimals died, leaving two sons, Hedayed Ullah and Mohammad Ullah. Hedayed Ullah as heir and by purchase has owned $8 \frac{10}{16}$ decimals. Mohamad Ullah, as heir and by purchase, has owned $10 \frac{2}{16}$ decimals.

In that way, defendant No.1, being the owner of 18 decimals, opened mutation Khatian No. 2538 in his name. Defendant No. 2 owned $32 \frac{12}{16}$ decimals, defendant No. 3 owned $10 \frac{2}{16}$ decimals, defendant No.4 owned $8 \frac{10}{16}$ decimals, defendant No.5 owned $8 \frac{4}{16}$ decimals, defendant No. 6 owned 17 decimals, defendant No.7 owned $4 \frac{8}{16}$ decimals in all defendants 1-7 are owners of $99 \frac{4}{16}$ decimals of land, and they prayed separate saham for land above. Defendant No. 30 also prayed for Saham for 05 decimals of land.

The learned Assistant Judge, Ramgonj, Lakshmipur, framed necessary issues to determine the dispute between the parties.

Subsequently, the learned Assistant Judge, Ramgonj, Lakshmipur, decreed the suit in part by the Judgment and decree dated 24.04.2016.

Being aggrieved by and dissatisfied with the above Judgment and decree, the plaintiff-opposite parties, as appellant, preferred Title Appeal No.24 of 2016 before the learned District Judge, Lakshmipur. Eventually, the learned Additional District Judge, Lakshmipur by the Judgment and decree dated 07.11.2022 allowed the appeal by modifying the Judgment and decree passed by the trial Court.

Being aggrieved by the above Judgment and decree, the defendant-petitioners preferred this Civil Revision under section 115 (1) of the Code of Civil Procedure before this court and obtained the instant Rule with an order of status quo.

Mr. Abul Kalam Chowdhury, the learned senior advocate appearing on behalf of the petitioner, submits that the appellate court below committed misreading of the law, non-consideration of facts and materials on record, and ought not to have disbelieved of the official document i. e. judgment dated

15.11.1946 in Miscellaneous Case No.1520 of 1945-46 which has got its presumptive value, and as such the impugned Judgment and decree of the appellate Court is liable to be set aside. He then submits that Keramot Ali sold 34 decimals of land to Abdul Gafur by deed dated 15.06.43 during the famine. Thereafter, Keramot Ali filed Miscellaneous Case No. 1520/1945-46 and redeemed the propriety by the Judgment and order dated 15.11.46 and, as such, the plaintiff did not accrue any title in 34 decimals of land as he purchased it on 13.04.97 from the heirs of Abdul Gafur, who had no sellable right and title.

Mr. Abdul Wadud Bhuiyan, the learned senior advocate appearing on behalf of the opposite party, vehemently opposes the contention so made by the learned advocate for the petitioners and submits that the said Judgment and order dated 15.11.46 passed by the collector, Noakhali was conditional Judgment. Finally, Keramot Ali could not take back the property by complying with the Judgment's condition as he failed to pay the amount as ordered by the collector. Therefore, Abdul Gafur owned 34 decimals of land, which the plaintiff purchased lawfully. He finally submits that the disputed 34 decimals of land have been confined among the plaintiff and

defendant No.8 to 12, and the enhancement of the share of the plaintiff by the appellate court has not affected the share of the defendant Nos. 1, 5, 6, and 30 as such their share will not be varied.

I have anxiously considered the submissions advanced by the learned advocate for both parties and perused the Judgment of the courts below, as well as oral and documentary evidence and other materials on the records.

It manifests that the plaintiff claimed saham a total of 66 decimals of land as described in the plaint. On the other hand, the contested defendants i. e. defendant No. 1, claimed 18 decimals; defendant No. 5, 6.64 decimals; defendant NO.6, 17 decimals; defendant No. 7, 5 decimals; and defendant No. 30, 5 decimals of lands. To prove his case, the plaintiff examined as many as two witnesses and produced necessary documentary evidence marked as exhibits. On the other hand, the defendants examined as many as three witnesses and produced the documentary evidence marked as exhibit.

I have scrutinized each deposition and cross-examination of the witnesses and anxiously considered the material evidence on record. It manifests that while decreeing the suit in part, the trial court gave 18 decimals saham to defendant No1, defendant

No.5, 6.64 decimals, defendant No.6, 17 decimals, defendant No. 7, 5 decimals and defendant NO. 30, 5 decimals, on the other hand, gave saham to the plaintiff only 28.87 decimals instead of 66.67 decimals of land with the findings that predecessor of the plaintiff and some of the defendants during famine of 1943 sold 34 decimals of suit land to Abdul Gafur. After the promulgation of the Bengal Alienation of Agricultural Land(Temporary Provision) Act 1944 i. e. Bengal Act 1944 the Miscellaneous Case NO.1520 of 1945-46 was instituted under section 4 of the Bengal Act,1944 before the Collector, Nokhali to redeem the 34 decimals of land by Keramot Ali, whose heirs were duly substituted after his death. After hearing the Miscellaneous case, it was allowed (Exhibit-1), so 34 decimals of land alienated by Keramot Ali were restored. Accordingly, lands left by Keramoth Ali, including 34 decimals, were recorded in subsequent MRR khatian in his heirs's name correctly.

Further, it manifests that after modification of the Judgment of the trial court below, the appellate court below gave saham $28.67 + 34 = 62.67$ decimals to the plaintiff while silent about the saham of the defendants with finding that Judgment dated 15.11.1945 passed by the collector, Noakhali in Miscellaneous Case No.1520 of 1945-46 was conditional

Judgment, and finally, Keramoth Ali or his heirs could not back 34 decimals of land which was sold to Abdul Gafur by complying with the Judgment's condition as he failed to pay the amount ordered by the collector, Noakhali.

Now, the moot question of the instant case is whether the heirs of Keramot Ali paid the amount ordered by the collector in Miscellaneous No.1520/ 1945-46 for restoring back of said 34 decimals of lands to them.

Notably, both parties admitted that Keramot Ali, in his lifetime, sold 34 decimals of land to Abdul Gafur by deed dated 15.06.1943 during the famine of 1943. It reveals from the exhibit - ৩(১) that After the promulgation of the Bengal Alienation of Agricultural Land(Temporary Provision) Act,1944 i. e. Bengal Act 1944 the Miscellaneous Case NO. 1520 of 1945-46 was instituted under section 4 of the Bengal Alienation of Agricultural Land(Temporary Provision) Act 1944, i. e. Bengal Act 1944 before the Collector, Nokhali, to redeem the 34 decimals of land by Keramot Ali, whose heirs were duly substituted after his death. After hearing the Miscellaneous case, it was allowed. In this regard, the trial Court, while reducing the Saham of the plaintiff, says that---

“কেরামত আলী ৯৬.৪ ডিঃ ভূমিতে মালিক থাকাবস্থায় বিগত ১৫/৬/৪৩ইং তারিখের রেজিঃকৃত সাফ কবলা দলিল মূলে ৩৪ ডিঃ ভূমি আঃ গফুরের নিকট বিক্রি করে বিবাদীপক্ষ দাবী করে যে, ঐ সময় সরকার দুভিক্ষের কথা বিবেচনায় নির্দিষ্ট সময়ের মধ্যে বিক্রিত ভূমির বিষয়ে নীতিমালা জারী করে এবং কেরামত আলী Bengal Act, ১৯৪৪ এর ৪(১) উপধারার বিধান মোতাবেক ১৯৪৪ইং সনে নোয়াখালী কালেক্টরেট অফিসে- ১৫২০/১৯৪৫-৪৬ নং মোকদমা দায়ের করেন। ঐ মোকদমার বিগত ১৫/১১/৪৬ইং তারিখের আদেশ অনুবলে কেরামত আলী কর্তৃক আঃ গফুরের নিকট বিক্রিত ৩৪ ডিঃ ভূমিতে কেরামত আলী এবং তৎওয়ারিশগণের স্বত্ব পুনরুদ্ধার করা হয় বিবাদীপক্ষের এই বক্তব্য অস্বীকার ক্রমে বাদী দাবী করে যে, উল্লেখিত ১৫২০/৪৫-৪৬ইং মিছ মামলায় বিগত ১৫/১১/৪৬ইং তারিখের আদেশের অনুবলে কোন তদ্বীর করা হয় নাই বিধায় উক্ত আদেশ কার্যকরী হয় নাই। বাদীপক্ষ তার জবানবন্দীতে বলেন যে, মিছ- ১৫২০/১৯৪৫-৪৬ইং মোকদমা খারিজ হয়ে যায়। কিন্তু বিবাদীপক্ষ তাদের বক্তব্যের সমর্থনে প্রদর্শনী ঞ(১) চিহ্নিত বিগত ১৫/১১/৪৬ ইং তারিখের আদেশের সহি মোহর নকল দাখিল করেন। উক্ত প্রদর্শনী ঞ(১) পর্যালোচনায় দেখা যায় কেরামত আলীর হস্তান্তর গ্রহীতা আব্দুল গফুর নালিশী দলিলের পন্যের মূল্য ও সুদ বাবত ১১০/-টাকার বিপরীতে নালিশী দলিলের ভূমি ভোগ দখলের মাধ্যমে ২৪৮ টাকার আদায় করে এবং তৎ প্রেক্ষিতে আদালত নালিশী দলিল মূলে বিক্রিত ৩৪ ডিঃ

ভূমিতে কেৰামত আলীর ওয়ারিশ নাজির উল্যা গং দেৰ পক্ষে স্বত্ব পুনৰুদ্ধাৰের আদেশ প্রদান কৰে।”

The Appellate Court below, while reversing the findings of the trial Court, says that-

“প্রদ, ঞ (১) এর ভাষ্য পর্যালোচনায় পাওয়া যায় যে, নাজির উল্যা হ গং কে ১০ কিস্তির ১১০ টাকা আব্দুল গফুরকে পরিশোধ করার শর্তে ৩৪ ডিং সম্পত্তি নাজির উল্যা গং ফেরত পাবেন মর্মে আদেশ হলেও নাজির উল্যা হ কিংবা তার পক্ষে অন্য কেহ মিছ ১৫২০/১৯৪৫-৪৬ নং মামলায় প্রদত্ত আদেশ মতে আব্দুল গফুর গংকে ১১০ টাকা পরিশোধ এর কোন দালিলিক প্রমাণ পাওয়া যায়না। বিবাদী-রেসপনডেন্ট তৎবিষয়ে বিশ্বাস যোগ্য কোন প্রমাণ উপস্থাপন করতে পারেননি। ফলে মিছ মামলার আদেশের শর্ত প্রতিপালিত না হওয়ায় তর্কিত ৩৪ ডিং সম্পত্তি বাদী-আপীল্যান্টের বায়া আব্দুল গফুর এর নিকট থেকে যায়। পরে তা বাদী-আপীল্যান্ট বিগত ১৩/০৪/১৯৯৭ ইং তারিখের ৩৫৯০ নং সাফকবলা মূলে খরিদ করে স্বত্ববান দখলকার হওয়ায় তা বন্টন মূলে পেতে হকদার।”

There is no dispute that, as per the Judgment dated 15.11.1946, Rs. 110 (at present TK 110) is payable under the order of restoration under section 4 of the Act, was outstanding. However, the parties of the suit failed to prove by adducing and depositing any oral or documentary evidence that the said TK. 110 was deposited/ paid by the heirs of Keramot Ali. Therefore,

Abdul Gafur owned 34 decimals of land, and after his death, his heirs became the owners of the said land, which the plaintiff purchased lawfully.

Mr. Chowdhury submits that since the said 34 decimals of land had been redeemed by the Judgment and order dated 15.11.46 (exhibit-ঞ-১) and MRR Khatian has been rightly prepared in name of Keramot Ali and as such, the plaintiff did not accrue any title in 34 decimals of land as he purchased it on 13.04.97 from the heirs of Abdul Gafur, who had no sellable right and title. Admittedly, MRR Khatian Exhibit-Ka has been recorded in respect of 34 decimals of land in the name of the heirs of Keramot Ali, but such a record of right does not create or extinguish the title of land, and this view gets support from the case of Ramjan Khan Vs. Obaidul Huq, 28 DLR(AD) 61 wherein their Lordships of the Appellate Division held that:--

The record of rights is not a document of title. It does not create or extinguish title to land.

Further notable that the defendant No.7-Kod Banu, being an owner of 59.22 decimals of land by way of gift and purchase, she gifted 27 decimals to Parul Begum (defendant No.5) and 22 decimals to Minara Begum (defendant No.6) by Kabala dated 20.04.1985; then sold 8.50 decimals to Farida Yeasmin

(defendant No.1) by Kabala dated 26.08.1999 and sold 1.72 decimals to said Parul Begum by Kabala dated 13.02.2001. Therefore, she became a landless person.

Considering the facts, circumstances, and discussion above, we do not find any substance for the submission of Mr. Chowdhury. Therefore, we firmly believe that the appellate court below correctly observed that the Judgment and order dated 15.11.46 passed by the collector, Noakhali was conditional Judgment. Finally, Keramot Ali or his heirs could not take back the property by complying with the Judgment's condition as he failed to pay the amount as ordered by the collector, Noakhali. So, Abdul Gafur owned 34 decimals of land, and after his death, his heirs became the owners of the said land, who transferred to the plaintiff lawfully. Therefore, we do not find substance in the Rule. However, it appears that the ends of justice would be best served if the Judgment of the appellate court below is to be modified with the following effect ---

The saham of the plaintiff is $28.87+34=62.87$ decimals; the saham of defendant No. 1 is 18 decimals; the saham of defendant No.5 is 6.64 decimals; the saham of defendant No.6 is 17 decimals; the saham of defendant No. 30 is 05 decimals and the saham of defendant No.7 is nill.

As a result, the Rule is discharged without any cost with the above modification of the Judgment of the Appellate Court below.

The impugned Judgment and decree dated 07.11.2022 passed by the learned Additional District Judge, Lakshmipur, in Title Appeal No.24 of 2016 allowing the appeal and reversing the Judgment and decree dated 24.04.2016 passed by the learned Assistant Judge, Ramgonj, Lakshmipur in Title Suit No.338 of 2007 is affirmed by the above modification.

Let the order of stay and status quo are hereby vacated.

Communicate the Judgment and send down Lower Court Records at once.

.....
(Md. Salim, J).

Kabir/BO