

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1040 of 2022

Thakur Das Mandol

..... Petitioner.

-Versus-

Norendranath Mandol alias Noren  
Mandol alias Bakul Mandol being dead  
his heirs Sonaton Mondal and others

.....Opposite parties.

Mr. Sherder Abul Hossain, Adv. with

Mr. Chanchal Kumar Biswas, Advocate

..... For the petitioner.

Mr. Purnindu Bikash Das, Adv. with

Mr. Binoy Krishna Podder, Adv. and

Mrs. Biroja Bala, Advocate

.....For the opposite parties

Heard and judgment on 31<sup>st</sup> July, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 02.02.2022 passed by the Additional District Judge, 1<sup>st</sup> Court, Bagerhat in Title Appeal No. 123 of 2018 affirming those dated 22.04.2018

passed by the Assistant Judge, Fakirhat, Bagerhat in Title Suit No. 111 of 2016 decreeing the suit should not be set aside.

Opposite party No.1 as plaintiff filed Title Suit No. 111 of 2016 before the Court of Assistant Judge, Fakirhat, Bagerhat against the petitioner for partition in the schedule property.

Plaint case in short, inter alia, is that the original owner of 0.89 acres of land under C.S. khatian No. 222 and 2.12 acres of land under C.S. khatian No. 137 was Vejal Mondol. Under Kolkolia Mouza, in C.S. khatian No. 85, Vejal Mondol was the owner of eight ana share and Bishwanath Mondol and Fotique Mondol each were the owner of 4 ana share. Vejal Mondol was the sole owner in C.S. khatian No.16 in respect of 2.11 acres of land, the father of Vejal Mondol namely Horokali Mondol and the father of Bishwanath Mondol and Fotique Mondol namely Feduram Mondol. Bishwanath Mondol died leaving behind his wife Sumoti. Fotique Mondol died leaving behind his two sons namely Harendranath Mondol and the plaintiff Narendranath Mondol. Sumoti died leaving her husband's nephew Harendranath and Narendranath Mondol and accordingly they got 0.2550 acres of land out of 0.51 acres equally. Harendranath Mondol died in the

year 2001 leaving behind his two sons defendant Nos. 1 and 2. The son of Vejal Mondol namely Shantilal Mondol died issueless leaving behind his wife Sabitri Mondol and mother Urvashi Mondol. After the death of Urvashi Mondol, Sabitri Mondol became the owner by life interest. After the death of Sabitri Mondol, the ownership of the property goes to her husband's cousin Narendranath Mondol. The other cousin Harendranath Mondol died before the death of Sabitri Mondol and hence the heirs of Harendranath Mondol did not get any property left by Vejal Mondol. The plaintiff is entitled to get 5.5025 acres of land and accordingly he ask the defendant for partition on 01.11.2016 but the defendants denied it and hence the suit.

Petitioner as defendant No. 1 and 2 contested the suit by filing written statement denying the plaint case alleging, inter alia, that Vejal Mondol was the owner in respect of 5.3750 acres of land. The son of Shantilal Mondol died in the life time of Vejal Mondol in the year 1951 and thereafter in the year 1953 Vejal Mondol died leaving behind his widow Urvashi Mondol and the wife of his dead son's wife Sabitri Mondol as his heirs and accordingly S.A. khatian No. 214 prepared in the name of both

Urvashi Mondol and Sabitri Mondol in respect of four ana share. Sabitri Mondol got married with some Harashit Sakhari and regarding that marriage one acknowledgement deed was executed in favour of Urvashi Mondol and thus Urvashi Mondol got the whole property of Sabitri Mondol. After the death of Urvashi Mondol, the heirs of Harendranath and Narendranath got the whole property equally. The defendant No.3 by filing separate written statement and stating inter alia that 0.55 acres of land under S.A. khatian No. 224 is recorded in the name of Sonnashi Rani and 0.11 acres of land from dag No. 718/719 is recorded in the name of Government of Bangladesh and also listed as “Kha” schedule in vested property list and accordingly prayed for dismissal of the suit.

Defendant No.3 also contested the suit by filing separate written statement stating, inter alia, that 0.55 acres of land under S.A. khatian No.224 is recorded in the name of Sonnashi Rani and 0.11 acres of land from dag No. 718/719 were recorded in the name of Government of Bangladesh and also listed as “Kha” schedule in vested property list and accordingly prayed for dismissal of the suit.

During trial plaintiff examined 4 witnesses and produced a number of documentary evidence, which were exhibited in court as Ext. 1-7 and on the other hand defendant examined 2 witnesses and documents were also exhibited in court as Ext. 'Ka' series to 'Kha'.

By the judgment and decree dated 22.04.2018, the Assistant Judge decreed the suit in the preliminary form.

Challenging the said judgment and decree, defendant No.1 alone as appellant preferred Title Appeal No. 123 of 2018 before the Court of District Judge, Bagerhat, which was heard on transfer by the Additional District Judge, 1<sup>st</sup> Court, Bagerhat, who by the impugned judgment and decree dated 30.09.2021 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and decree, defendant petitioner obtained the instant rule.

Mr. Sherder Abul Hossain, the learned advocate appearing for the petitioner drawing my attention to the judgment of the court below submits that courts below without applying their judicial mind on misreading or non-reading and non-consideration of the materials evidence on record passed the impugned

judgment, which is not sustainable in law. The learned advocate further submits that on mere presumption courts below concurrently held that Harendranath Mondal, predecessor of the defendant died prior to Sabitri Mondol and the defendants thus did not acquire any property left by her. The impugned judgment is thus passed on mere presumption, which is not sustainable in law. The learned advocate further submits that in fact laws of succession amongst the Sapindas start after the death of Shantiram Mondol, when Harendra and Bakul @ Narendranath were survived, and after the death of Harendra his heir defendant No.1, Thakurdas and defendant No.2 Ramproshad succeed to him. The inheritance cannot remain in abeyance. On the death of the owner of the property the right of succession vests in him immediately. So the right of succession can never remain in abeyance in the expectation at the time of owners death.

Mr. Purnindu Bikash Das, the learned advocate appearing for the opposite party, on the other hand drawing my attention to the judgment of the court below submits that both the court below concurrently considering the death certificate issued by the No.7 Mulghor Union Parishad (Ext.7) together with deposition of

Advocate Hitler Golder, Chairman of the said Union Parishad deposed in court as P.W.3 found that plaintiffs contention to the effect that Harendranath Mondal died before Sabitri, who died on 28.01.2006 and thereby plaintiffs acquired the property as been owned by Sabitri on her life interest, but not the heirs of Harendranath (defendants of the suit) and as such rightly decreed the suit in favour of the plaintiff. In reply to the submission of Mr. Sherder Abul Hossain learned advocate further drawing my attention to the provision of section 86 of the Hindu Law submits that the order of succession among Sapindas is governed with the principles along with other that those who offer a Pinda to the deceased are preferred to those, who accept it from the deceased. In the case after the demise of Sabitri, the Pinda was offered by the plaintiff Narendranath, when admittedly Harendra was not alive accordingly Narendranath will get preference against his nephew Thakurdas and Ramprasadh, who are the son of his deceased brother Harendranath. On the death of the Hindu, the nearest heirs becomes entitled to the property left by him. Since the said concurrent judgment contains no misreading or non-

reading of the evidences, the impugned judgment contains no illegality, rule may be discharged.

Heard the learned Advocate and perused the lower court record and the impugned judgment.

This is a suit for partition. In the suit admittedly suit property was belonged to C.S. recorded tenant Rajkumar Mondol, who died leaving behind 2 sons Horokali Mondol and Feduram Mondol. Horokali Mondol died leaving behind Vajal Mondol. During life time of Vajal Mondol his only son Santiram Mondol died in the year 1951 and thereafter said Vajal Mondol died in the year 1953 leaving behind his wife Urboshi and widow of his son Sabitri. According to the plaintiff Sabitri Mondol while after demise of Urboshi got the property in life interest, died in the year 2006 leaving behind his cousin brother-in-law Narendronath Mondol @ Bakul Chandra Mondol, who is the plaintiff of the suit. The other cousin brother-in-law name Harendronath Mondol died in the year 2001 before the death of Sabitri (who died on 28.01.2006), his two sons, who are the defendants in the instant suit got no property.



Plaintiffs further case is that Feduram Mondol, the other son of Rajkumar Mondol died leaving behind two sons Bishwanath and Fotique. Said Bishwanath died issueless and thereby Fotique Mondol became owner of the suit property according to the share. Fotique Mondol died leaving behind 2 sons Harendranath Mondol and Bakul Mondol @ Norendranath Mondol (plaintiff). Plaintiff thus claim 5.5025 acres of land including 0.1275 acres of land from C.S. khatian No. 85 as per his share and successor of the property, since there was no partition amongst the co-sharer, he filed the instant suit.

Defendants contention is that after the death of Vejal Mondol his widow Urboshi Mondol got 8 annas share and Sabitri Mondol (widow of his son) got 8 annas share thereafter since Sabitri Mondol married to Harashit Sakhari and executed the deed of agreement thereby the property of Vejal Mondol in total been obtained by her mother-in-law Urvashi Mondol. After death of Urvashi Mondol this property was acquired by Sabitri in her life interest according to the Dayabhaga Law. Thereafter Harendronath Mondol (predecessor of the defendant) and Narendranath Mondol @ Bakul Mondol (Plaintiff), acquired the

said property equally. But plaintiff's instituted this false suit claiming the entire property, which is false and is liable to be dismissed with cost.

Both the courts below upon considering the death certificate (Ext.7) given by No.7 Mulghor Union Parishad together with volume of the death register books produced through P.W.3 Advocate Hitler Golder, who is the Chairman of the said Union Parishad found that Sabitri died on 28.01.2006, which is proved by documentary evidence and since the defendant could not prove by adducing any evidence rather D.W.1 and the other D.Ws. make a contradictory statements regarding the death of Harendronath, the defendants contention that Harendronath died after Sabitri not been proved. Accordingly both the court below concurrently held that defendants as being the heirs sons of Harendronath inherited the property of Vejal Mondol not been proved by any evidence.

Moreover, noticing the provision of section 86 of the Hindu Law I found substance in the submission of the learned advocate Mr. Purnindu Bikash Das appearing for the opposite party. When the Pinda was asked to be offered for Shantiram Mondol after the death of Sabitri, Harendranath was not alive and it was actually

been offered through Narendranath and according to section 86(1) of the Hindu Law he will get preference to inherit the property of Shantiram against his two nephew Thakurdas and Ramdash (Defendant No.1 and 2), who are the sons of his deceased brother Harendra. However since the concurrent findings of the court below is not been contradicted by any evidence from the record by the deposition before this court, it is difficult to hold the view that the said concurrent findings of the court below contains any error of law, which needs to be interfered with by this court. Since the plaintiffs contention as been concurrently found to be proved by the court below and a decree of his share been affirmed in a suit for partition and the said judgment contains no illegality, I find no merits in this rule.

In the result, the Rule is discharged and the judgment and decree passed by the court below are hereby affirmed.

The order of stay and status-quo granted earlier is hereby recalled and vacated.

Send down the Lower Court records along with the judgment at once.