

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO. 5414 OF 2022**

In the matter of:

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

And

Jibon Chandra Baroi and others  
... Petitioners

-Versus-

Mithun Baroi and others  
... Opposite parties

Mr. Md. Abul Kasem, Advocate  
.... For the petitioners.

Mr. Md. Abdul Bari, Advocate  
.... For the opposite party.

**Heard and Judgment on 01.09.2024.**

This Rule was issued calling upon the opposite party Nos.1-2 to show cause as to why the impugned judgment and decree dated 17.04.2022 passed by the learned Special District Judge, Faridpur, in Title Appeal No.115 of 2018 dismissing the appeal and thereby affirming the judgment and decree dated 14.06.2018 passed by the learned Assistant Judge, Charvadrasan Court, Faridpur in Title Suit No.58 of 2015 decreeing the suit should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that now deceased Paban Kumar Baroi predecessor of the opposite party Nos.1 and 2 as plaintiffs instituted above suit for partition seeking a separate saham for 76.8 decimal land

appertaining to B.S. Khatian Nos.1263 and 1197 as described in the schedule to the plaint.

It was alleged that above mentioned Paban, Sontosh and Jibon, three brothers, were the owner and possessor of 1.53 acres land of B.S. Khatian No.1263 and they jointly transferred 49 decimal land to Mozibur Rahman by a registered kabala deed and they were in possession in the remaining 104 decimal land. By separate four registered kabala deed Sontosh and Jibon transferred 39.50 decimal land to Paban. Above three brothers jointly purchased 8 decimal land of B.S. Khatian No.1197 by registered kabala deed dated 30.05.1988 from Jogesh. Thus the plaintiffs heirs of deceased Paban became are owners and possessors 76.84 decimal land. Above land has not been partitioned by meets and bound and the plaintiffs refused to effect an amicable partition.

Defendant Nos.1-4 contested the suit by a filing a joint written statement alleging that that Paban executed a bainapatra for sale of 5.6 decimal land of B.S. Khatin No.1263 in favour of Jibon and Sontosh and in above land Jibon and Sontosh constructed their dwelling house. On the other hand Paban constructed his separate house in another land but above Paban could not execute and register the sale deed before his death.

At trial plaintiffs examined 1 witness and documents of the plaintiffs were marked as Exhibit Nos.1-6. On the other hand defendant

examined 4 witnesses and his documents were marked as Exhibit Nos.Ka-Kha.

On consideration of the facts and circumstances of the case and materials on record the learned Assistant Judge decreed the suit in preliminary form and allocated a separate saham for 76.84 decimal land.

Being aggrieved by above judgment and decree defendants preferred Title Appeal No.115 of 2018 to the District Judge, Faridpur which was heard by the learned Special District Judge who dismissed the appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by the above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this Court and obtained this Rule.

Mr. Md. Abul Kasem, learned Advocate for the petitioners submits that Paban, Sontosh and Jibon were full brothers and disputed property was acquired during the continuation of their joint mess. The defendants have constructed their dwelling house in the land of B.S. Khatian No.1263 B.S. and Paban has constructed his separate dwelling house in the land of Plot No.3053. There was an amicable partition among above three brothers and pursuant to above partition Paban transferred his 5.6 decimal land from above three plots to his brothers Sontosh and Jibon. It was agreed upon that Paban would execute and register a sale deed but due to sudden demise of Sontosh above

document could not be executed. The learned Judges of the Courts below committed serious illegality in passing the impugned judgment and decree in respect of above 5.6 decimal land of plot Nos.3151, 3152 and 3153 of B.S. Khatian No.1263 which is not tenable in law.

On the other hand Mr. Md. Abdul Bari, learned Advocate for the opposite party Nos.1-2 submits that the defendants claimed 5.6 decimal land of B.S. Khatian No.1263 on the basis of a bainapatra from Paban. But the defendants could not produce and prove any bainapatra at trial. As such the learned Judges of the Courts below on correct appreciation of evidence on record rightly and concurrently held that plaintiffs were the lawful owners and possessors in 76.84 decimals land and accordingly allocated a saham for the plaintiff which calls for no interference.

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

It is admitted that three brothers namely Paban, Sontosh and Jibon were owners and possessors of 1.53 acres land of B.S. Khatian No.1263 in equal shares and they jointly transferred 49 decimal land to Mozibur Rahman and they jointly acquired 2.67 decimal land by purchase from B.S. Khatian No.1197. It is also admitted that above Paban acquired 39.50 decimal land by four separate registered kabala deeds from his two brothers Sontosh and Jibon. As such the plaintiff

became the owner and possessor of 76.84 decimals land in B.S. Khatian Nos.1263 and 1197.

The defendants claimed that when now dedeased plaintiff Paban constructed his separate dwelling house in plot No.3053 he executed a bainapatra for sale of his 5.6 decimal land of plot Nos. 3151, 3152 and 3153 to his two brothers Sontosh and Jibon. But due to sudden demise of Sontosh no registered kabla deed could be executed and registered by Paban.

Plaintiffs have denied that Paban ever executed any bainapatra for sale of above land of B.S. Khatian No.1263 to his two brothers.

Above defendants could not produce and prove any bainapatra allegedly executed by Paban for sale of 5.6 decimal land. It is well settled that a bainapatra is not a deed of title. In immovable property title can be acquired among them by a registered deed of sale and admittedly the petitioners did not have any such deed from Paban nor they made any endeavour to get a sale deed by enforcing the alleged bainapatra. The defendants have failed to prove their claim of acquisition of 5.6 decimals land out of plot Nos. 3151, 3152 and 3153 from Paban.

In above view of the facts and circumstances of the case and materials on record I hold that the learned Judges of the Courts below on correct appreciation of evidence on record has rightly found that the plaintiffs are the lawful owners and possessors in 76.84 decimals land in

two disputed B.S. Khatian as mentioned above and accordingly decreed the suit in preliminary form and allocated separate saham for the plaintiff for 76.84 decimal land which calls for no interference.

I am unable to find any substance in this application under 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 order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

However, there is no order as to costs.

Send down the lower Court's record immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*