Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 5200 of 2022

Md. Golam Mostofa and others

…… Petitioners.

-Versus-

Abdul Haque and others

…….Opposite parties.

Mr. Abul Kashem Bhuiya, Adv. with.

Mr. Kawsar Mahmud, Advocate

……For the petitioners.

Mr. Syed Mahmudul Ahsan, Adv.

Mr. Mohammad Shahidul Islam, Adv.

.....For the Opposite parties

Heard on 13th December, 2023

Judgment on 9th June, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 19.09.2022 passed

by the Additional District Judge, Pirojpur in Title Appeal No. 94 of 2014 allowing the appeal after setting aside the judgment and decree dated 10.08.2014 passed by the Assistant Judge, Mathbaria, Pirojpur in Title Suit No. 123 of 1999 decreeing the suit in part should not be set aside.

Petitioner as plaintiff filed the above suit initially for partition subsequently by way of amendment he prayed for declaration of title and for partition against the opposite parties.

Plaint case in short, inter alia, is that the land in question as described in schedule 'ka' of the district Pirojpur, Upazila-Mathbaria, Porgona_Sayedpur, Touzi No. 4991, Mouza No. 3501, Sapleza, under the estate of landlord Edward Pari Kasper. Riyat Mujahar Howlader and others got the settlement by Amolnama No.11 in 1277 B.C. at the annual rent 109 Ana. at C.S. Plot No. 1098 area of land 4.78 decimals. After settlement Khobir Uddin Chowkider becomes the owner of the said 4.78 decimals land by recording his name in R.S. khatian No. 792, 793, 794, 795 and 796 at R.S. plot No. 2019, 2022, 2021 corresponding to C.S. Plot No. 1098 under Supleza Mouza, J.L. No. 54. Thereafter Khobir Uddin transferred 1.98 decimals of land to late Abul Hashem, the

predecessor of the petitioners by registered Kaem Kossha deed on 18.10.1949 from the R.S. Plot No. 2020 corresponding to C.S. Plot No. 1098. Khobir Uddin Mortgaged the whole 4.78 decimals of land to the Mathbaria co-operative Bank. In default of payment of loan, the bank sold that land in auction and the bank itself purchased that auction and whose name was recorded in S.A. khatian in plot No. 2020. Thereafter the bank executed a no objection deed in favour of Khobir Uddin on 07.02.1958 and registered on 08.02.1988 after receiving the loan money. Though the bank's name was recorded in plot No. 2020, it was not amended as per non-objection deed and the bank was not in possession of the said land. The predecessor of the petitioners were enjoying the possession of the land. Sonamuddin was the owner of 89 decimals of land at the ratio of 4 anna in R.S. khatian No. 795. At the demise of that Sonamuddin, the predecessor of the petitioners inherits 25.50 decimals of land and Joyful also inherits 12.17 decimals of land among, which joyful bequeathed 6.50 decimal lands to the petitioner No.1. Hence the petitioners jointly owned 210 decimals of land. Abul Hashem the predecessor of the petitioners instituted Title Suit No. 395 of 1982 praying for

declaration of title against the predecessors of the opposite parties in the learned court of Assistant Judge, Mathbaria, Pirojpur and in that suit the predecessor of the opposite parties came to a compromise admitting the title of Abul Hashem, the predecessor of the petitioners and as the predecessor of the opposite parties did not interrupt in peaceful possession it was not submitted before the court and the court dismissed the Title Suit being No. 395 of 1982 for default.

Opposite party as defendant contested the suit by filing written statement denying the plaint case alleging, inter alia, that 8.05 acres of land from C.S. plot No. 1098 was belonged to Khabir Uddin Chowkider, who obtained loan from Mathbaria Cooperative Bank by mortgaging the said property. But subsequently when he failed to pay the loan money, said property was auction purchased by the said bank. R.S. khatian No. 792 was rightly been recorded in the name of bank. .55 decimals of land out of said land of the bank was orally been settled in favour of Khabir Uddin, which was subsequently been recorded in the R.S. khatian No. 793 subsequently S.A. khatian No. 420 recorded into his name correctly. Thereafter Khobir Uddin paid the entire

money to the bank and the bank handed over the possession in his favour the entire land. Accordingly on 08.02.58 bank gave a registered nadabi releasing letter for 4.78 decimals of land including the said 55 decimals of land in favour of Khobir Uddin. But 2.68 decimals of land was not been there for releasing and no nadabi deed was executed by the bank in favour of Khobir Uddin. 3.30 acres of land out of said land was transferred by Khobir Uddin in favour of his son Abdus Sattar by way of heba-bil-ewaj deed on 25.02.58. Thereafter Khobir Uddin transferred 1.48 decimals of land in his grandson defendant No.1 through a registered deed of heba-bil-ewaj dated 11.07.58. After the death of Khobir Uddin rest of the land was owned and possessed by his son Abdus Sattar and 3 daughters Nuri Begum, Halimon and Nur Jahan as his legal heirs. After the death of Abdus Sattar his property was inherited by his son defendant No.1 and widow Hamida Begum. Khobir Uddin never gave a solenama for 1.98 acres of land on 18.10.49 with the plaintiffs predecessor of Title Suit No. 395/82 that solenama is forged and concocted. Plaintiffs never owned and possessed any land in the suit land. The suit is false and is liable to be dismissed with cost.

Defendant No.27 and 39 also contested the suit by filing written statement denying the plaint case.

The learned Assistant Judge vide judgment and decree dated 10.08.2014 decreed the suit in part.

Challenging the said judgment and decree, opposite party No.1 defendant preferred Title Appeal No. 94 of 2014 before the Court of District Judge, Pirojpur, which was heard on transfer by the Additional District Judge, Pirojpur, who by the impugned judgment and decree dated 19.09.2022 allowed the appeal and after setting aside the judgment of the trial court dismissed the suit.

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

Mr. Abul Kashem Bhuiya, the learned advocate appearing for the petitioner, drawing my attention to the judgment of the court below submits that while the trial court upon proper assessment of the evidence on record found the suit was not been barred by limitation and considering all other aspect of this case decreed the suit in favour of the plaintiff rightly, the appellate

court upon misconception of law upon miss-reading of the plaint as well as the evidence on record held that the suit is barred by limitation and dismissed the suit most illegally. The impugned judgment is not sustainable in law. Lastly he submits that the question of title can well be decided in a suit for partition as been held by our Apex court. In support of this contention he cited a decision in the case of Chinmoy Chowdhury & another –Vs. Sree Mridul Chowdhury & ors. reported in 23BLD(AD)83.

Mr. Syed Mahmudul Ahsan, the learned advocate appearing for the opposite party, on the other hand submits that although initially the suit was filed for simple partition but subsequently by way of amendment of the plaint, plaintiff sought for a prayer for declaration of title along with prayer for partition and suit is now in the form of declaration of title and for partition. Noticing the same together with the earlier instituted suit filed by the plaintiffs for title, the appellate court has rightly found that the instant suit was filed after the expiry of long period of 6 years and is barred by limitation. The said finding contains no illegality and as such the judgment contains no error of law and as such there is nothing to interfere by this court. He thus prays for discharging the rule.

Heard the learned advocate and perused the lower courts record and the impugned judgment.

It appears from the record that earlier, plaintiff instituted Title Suit being No. 395 of 1982, which was renumbered as 409 of 1984 on showing the cause of action mentioned the date on 29.11.82 when their title was threatened by the defendants. That suit was dismissed for default on 24.03.1992. Plaintiff thereafter again filed this suit for partition showing the cause of action on 20th Joishtha, 1406 equivalent to the year 1999. Although the trial court vide judgment and decree dated 10.08.2014 decreed the suit in favour of the plaintiff but in appeal there against. Appellate Court set aside the said judgment only on point of limitation. Appellate court while deciding the point of limitation has observed that:

> ‘‘ বাদীর দেওয়ানী মোকদ্দমা ৩৯৫/৮২ যা পুনঃনাম্বার ৪০৯/৮৪ মোকদ্দমাটি খারিখ হয় ২৪/০৩/৯২ ইং তারিখে এবং ঐ মোকদ্দমায় বাদীর প্রতিকার ছিল ঘোষনা মূলক ডিক্রী অর্থাৎ স্বত্ব প্রচারের। বাদীর বর্তমান ১২৩/৯৯নং মোকদ্দমায় প্রতিকার হলো স্বত্ব প্রচারসহ বন্টনের প্রাথমিক ডিক্রী। বন্টনের নালিশের কারণ পুনঃ পুনঃ উদ্ভব হয়। কিন্তু স্বত্ব প্রচারসহ বন্টনের নালিশের কারণ

পুনঃ পুনঃ উদ্ভব হয় না। এক্ষেত্রে বিবাদী একটি নির্দিষ্ট তারিখে বাদীর দাবী বা প্রতিকারকে অস্বীকার করেন। বন্টনের মোকদ্দমার ক্ষেত্রে মামলা কোনভাবে খারিজ হলে অর্থাৎ তদ্বির অভাবে খারিজ হলে পুনরায় বিবাদী অস্বীকার করলে আবার নালিশের কারণ তৈরী হলে নতুন মামলা করা যায়। কিন্তু স্বস্ব প্রচারসহ বন্টনের প্রতিকারের ক্ষেত্রে তদ্বির অভাবে মামলা খারিজ হলে পুনরায় নতুন মামলা করতে গেলে নতুন করে নালিশের কারণ তৈরী করে মামলা করা যাবে না। এক্ষেত্রে স্বত্ব প্রচারসহ বন্টনের প্রতিকারের ক্ষেত্রে তদ্বির অভাবে মামলা খারিজ হলে এই মামলার যে নালিশের কারণ ছিল ঐ নালিশের কারণ থেকে যেদিন মামা তদ্বির অভাবে খারিজ হয়েছে ঐ সময়টুকু বাদ দিয়ে বাকি নির্ধারিত সময়ের মধ্যে নতুন মামলা দায়ের করতে হবে। দেওয়ানী ১২৩/৯৯নং মোকদ্দমার প্রতিকার ছিল স্বত্ব প্রচারসহ বন্টন। এক্ষেত্রে তামাদি ০৬ বছর। দেওয়ানী ৩৯৫/৮৪ মোকদ্দমাটি তদ্বির অভাবে খারিজ হয়েছে ২৪/০৩/৯২ইং তারিখে। ঐ খারিজের তারিখ হতে ০৬ বছরের মধ্যে নতুন মোকদ্দমা আনয়ন করতে পারতেন স্বত্ব প্রচারসহ বন্টনের প্রার্থনায়। কিন্তু বাদী দেওয়ানী ১২৩/৯৯ নং মোকদ্দমা দায়ের করেছেন ২৯/০৯/৯৯ইং তারিখে। বাদীকে নতুন মোকদ্দমা দায়ের করতে হবে ২৪/০৩/৯৮ইং তারিখের মধ্যে। কিন্তু বাদী দেওয়ানী ১২৩/৯৯নং

মোকদ্দমা দায়ের করেছেন ২৯/০৯/৯৯ইং তারিখে অর্থাৎ বাদী নির্ধারিত সময়ের পরে দেওয়ানী ১২৩/৯৯নং মোকদ্দমা দায়ের করেছেন। বাদীর স্বত্ব বিলুপ্ত হওয়ায় বাদী ০৬ বছর পর স্বত্বের প্রতিকারের প্রার্থনায় নতুন মোকদ্দমা আনয়ন করেছেন যার কারণে মোকদ্দমাটি তামাদি দোষে বারিত হবে।

পি.ডব্লিউ-১ গোলাম মোস্তফা তিনি জবানবন্দীতে বলেছেন তার পিতা জীবদ্দশায় দেওয়ানী ৩৯৫/৮২নং মোকদ্দমা পিরোজপুর ১ম মুন্সেফী আদালতে দায়ের করে। উহা পরবর্তীতে দেওয়ানী ৪০৯/৮৪ নং মোকদ্দমায় পরিনত হয়।

বিজ্ঞ বিচারিক আদালত এই বিষয়ে সিদ্ধান্ত প্রদান করেছেন যে মোকদ্দমাটি তামাদি দোষে বারিত নয়। তিনি সিদ্ধান্ত প্রদান করেছেন কোন মোকদ্দমা তদ্বির অভাবে খারিজ হয়ে গেলে নতুন নালিশের কারণের ভিত্তিতে পুনরায় মোকদ্দমা আনয়ন করা যায়। এই মামলার প্রতিকারের ক্ষেত্রে এই সিদ্ধান্ত প্রযোজ্য নয়। কোন মোকদ্দমা তদ্বির অভাবে খারিজ হয়ে গেলে নতুন মোকদ্দমা করতে গেলে পূর্বের মামলার যে কজ-অব এ্যাকশন ছিল, ঐ কজ-অব এ্যাকশন থেকে যেদিন মামলা খারিজ হয়েছে ঐ সময় টুকু বাদ দিয়ে বাকি সময় থেকে তামাদি গণনা শুরু হবে। ফলে বিজ্ঞ নিম্মাদালত যে সিদ্ধান্ত প্রদান করেছেন তা সঠিক ও আইনানুগ হয়নি।’’

The petitioner try to submit that this findings on the limitation is not correct and said that the suit was initially filed for partition and subsequently by way of amendment although sought for declaration of title and for partition but that amendment was not objected by the defendant rather it was admitted by the defendant and question of title can well be adjudicated in the suit for partition. In support of the contention he cited a decision in the case of Cinmoy Chowdhury & anr. Vs. Sree Mridul Chowdhury & ors. reported in 23 BLD(Ad) 83.

I have gone through the judgment cited by the learned advocate for the petitioner. In the said judgment their lordships mainly relied on a decision reported in 49 DLR(AD) 68, wherein it has been held that:

> "In a suit for partition the court will no doubt consider the title of the plaintiffs to the suit land in some details more than in a suit for permanent injunction…"

Decision referred to here by the learned advocate appearing for the petitioner is no doubt will speak against the submission

made by the learned advocate for the petitioner. Instant suit was filed for partition initially, subsequently prayer for declaration of title was added by way of amendment and converted the suit in the form of declaration of title and for partition. Embodied the claim of declaration of title in the plaint, plaintiff himself has taken burden on his shoulder to overcome the hurdle of law of limitation. The findings of the appellate court on considering that when the earlier suit for title was been dismissed and subsequently although there is no bar to initiate another suit for declaration of title but subject to law of limitation it ought to have been filed within 6 years from the cause of action minus the period, which has been consumed for earlier suit. Upon counting the dates from the cause of action, appellate court has found that the instant suit was filed after the expiry of 6 years and accordingly is barred by limitation. Considering the legal position of this case, I find no illegality there in the judgment passed by the appellate court on the point of limitation and dismissed the suit as been held as a barred by limitation.

Regard being had to the above law, fact and circumstances of the case, I find there is nothing to interfere in the impugned judgment and the rule contains no merit.

I thus find no merit in the rule.

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

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

Send down the Lower Court Records and communicate the judgment at once.