

Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 6171 of 2022
Md. Ahamed Ali and others....Petitioners
-Versus-
Md. Abul Hossain and others....Opposite parties
Mr. Md. Shahadat Alam, Advocate
....For the petitioners
Mr. Chowdhury Md. Redwan-E-Khuda, Advocate with
Ms. Nusrat Yeasmin, Advocate
....For the opposite party Nos. 1, 2, 3, 5 and 6
Heard on 07.05.2026, 07.06.2026, 09.06.2026, 15.06.2026,
17.06.2026, 23.06.2026 and 25.06.2026
Judgment delivered on 05.07.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party Nos. 1 to 6 to show cause as to why the impugned judgment and decree dated 11.09.2022 (decree drawn on 17.09.2022) passed by the Joint District Judge, Court No. 1, Lalmonirhat in Title Appeal No. 36 of 2020 affirming the judgment and decree dated 02.03.2020 (decree drawn on 09.03.2020) passed by the Assistant Judge, Pathgram, Lalmonirhat in Title Suit No. 56 of 2019 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The plaintiff-opposite parties filed Other Class Suit No. 56 of 2019 in the Court of Assistant Judge, Pathgram, Lalmonirhat praying for setting aside the exparte judgment and decree dated 28.11.2007 passed by the Assistant Judge, Hatibandha, Lalmonirhat in Other Class Suit No. 25 of 2006 and partition of the suit land stating that Sito Bibi and Johirun Nessa were the C.S. recorded tenant and C.S. Khatian No. 300 regarding 5.35 acres of land in equal share was recorded in their names and C.S. Khatian No. 305 was recorded in the name of Akbar Uddin. Sito Bibi obtained 2.675 acres of land and died intestate, leaving behind her 3 sons, Anar Uddin, Kottu Sheikh and Shomser Ali, and each of them obtained .8916 decimals of land. Kottu Sheikh died intestate, leaving behind wife plaintiff No. 4, 2 daughters plaintiff Nos. 5 to 6, and 2 brothers. After the death of Anar Uddin, his wife Ajkul Beowa, 1 son and 2 daughters equally got 98.45 decimals of land. After the death of Ajkul Beowa, her son and 2 daughters, i.e., plaintiff Nos. 1 to 3, inherited the property of their mother. Thus, the plaintiff Nos. 1 to 3 inherited 98.45 decimals of land, and plaintiff Nos. 4 to 5 inherited 70.58 decimals of land, and they are now possessing 1.6903 acres of land. Except plaintiff No. 1, the other plaintiffs are women. The father of the plaintiffs died when he was young. In S.A. khatian, 21 decimals of land were wrongly recorded in the name of the defendant No. 39, Government of Bangladesh. During the S.A. operation, another share of plot No. 1 was fraudulently recorded in the name of

Akber Uddin, Fatema Khatun and Momtaj Begum, who paid the share of crops to the plaintiffs. On 16.03.2018, Mohar Ali refused to give the share, mentioning that the heirs of Akber Hossain obtained a decree regarding plot No. 1 along with another plot in Other Class Suit No. 25 of 2006, and defendant Nos. 9 to 12 also filed Title Suit No. 6 of 2002 and obtained an ex parte judgment and decree. After getting information of the ex parte judgment and decree passed in Other Class Suit No. 6 of 2002, the defendant Nos. 1 to 8 filed Other Class Suit No. 25 of 2006 for setting aside the judgment and decree passed in Other Class Suit No. 6 of 2002 and obtained a judgment and decree on 28.11.2007. The heirs of Sito Bibi, defendant Nos. 1 to 12, were not impleaded as defendants in the Other Class Suit Nos. 6 of 2002 and 25 of 2006. On 25.03.2018, the plaintiffs claimed partition in the suit land, but the defendants refused to give the saham of the plaintiffs, for which they filed the suit.

The defendant Nos. 1 to 8 contested the suit by filing a written statement denying the assertion made in the plaint, stating that Sito Bibi and Johirun Nessa were the C.S. recorded tenants of C.S. Khatian No. 300 and Nessa Bibi was the C.S. recorded tenant of C.S. Khatian No. 305. Situ Bibi transferred the disputed land to Akber Ali, predecessor of the defendants, by different deeds. Osman Ali, son of Johirunnessa, transferred his property vide Deed Nos. 741/1943 and 4521/1943 to Akber Ali and Nessa Beowa, and Akber Hossain obtained possession of the land purchased by the said deeds. After the death of C.S. recorded tenant Nessa Bibi, her son Akber Hossain inherited her property, and the land mentioned in C.S. Khatian Nos. 300 and 305 were recorded in the name of Akber Hossain in S.A. Khatian Nos. 411 and 412. Akber Hossain died intestate, leaving behind his wife, 4 sons, and 6 daughters. Momtaj Begum and Fatema Khatun recorded their names by tampering with S.A. Khatian Nos. 411 and 412 along with Akber Hossain, and after the death of Akber Hossain, they obtained an ex parte judgment and decree in Other Class Suit No. 6 of 2002. After that, the defendants came to know about the judgment and decree of the said suit and filed Other Class Suit No. 25 of 2006 for setting aside the ex parte judgment and decree passed in Other Class Suit No. 6 of 2002, which was decreed on contest on 28.11.2007. Against the said judgment and decree passed in Other Class Suit No. 25 of 2006, Momtaj Begum filed Other Appeal No. 19 of 2008. Fatema and Momtaj Begum filed the instant suit through the plaintiffs, who had no title and possession in the suit land.

During trial, the plaintiffs examined 2 P.Ws, and the defendants examined 2 D.Ws to prove their respective cases. P.W. 1 proved the certified copy of the C.S. Khatian No. 300 as exhibit 1, certified copy of the S.A. Khatian No. 411 as

exhibit 2 and the enquiry slip dated 21.04.2008 as exhibit 2(Ka), and the certified copy of the judgment and decree along with the report of the Commissioner in Other Suit No. 25 of 2006 as exhibit 3. The defendant proved the certified copy of C.S. Khatian Nos. 300 and 305 as exhibits Ka series and the certified copy of the S.A. Khatian Nos. 411 and 412 as exhibits Kha series, B.S. Khatian Nos. 2332, 2334 and 2336 as exhibits Ga series and the Deed Nos. 741/43 and 4521/43 as exhibits Gha series.

After concluding trial, the trial Court by judgment and decree dated 02.03.2020 decreed the suit on contest against the defendant Nos. 1 to 8 and exparte against other defendants setting aside the exparte judgment and decree passed in Other Class Suit No. 25 of 2006 giving saham of 1.6904 acres of land of C.S. Khatian No. 300 in favour of the plaintiffs holding that the suit does not suffer from any defect of parties and the heirs of Sito Bibi were necessary party but they were not impleaded as defendants in Other Class Suit No. 25 of 2006 for which, the interest of the plaintiffs were adversely affected by the judgment and decree passed in Other Class Suit No. 25 of 2006 and decided the issue Nos. 4 and 5 in favour of the plaintiffs and that the defendants failed to prove that Sito Bibi transferred land of C.S. Khatian No. 300 by different deeds and that Osman Sheikh, son of Johirun Nessa, transferred 43+83=126 decimals of land of C.S. Khatian No. 300 to Akber Ali and Nessa Beowa by Deed Nos. 741/43 and 4521/43 and that the defendants failed to prove the basis of S.A. Khatian No. 411 in the name of Akber Hossain, Fatema Khatun and Momtaj Begum and that the S.A. Khatian No. 411 was wrongly recorded and the land of Sito Bibi was not transferred and after death of Sito Bibi, her half share i.e 2.675 acres of land was inherited by her 3 sons Anar Uddin, Kottu Sheikh and Shomser Ali and each of them obtained .8916 decimals of land and after death of Kottu Sheikh, his wife, plaintiff No. 4 obtained 11.15 decimals of land, 2 daughters plaintiff Nos. 5 to 6, obtained jointly 59.46 decimals of land and 2 brothers Shomser Ali and Anar Uddin jointly inherited 18.54 decimals of land and that after death of Anar Uddin, his wife Ajkul Beowa, son plaintiff No. 1, 2 daughters plaintiff Nos. 2 to 3, inherited 98.43 decimals of land and that after death of Ajkul Beowa, plaintiff Nos. 1 to 3, inherited her share and the plaintiff Nos. 1 to 3 obtained 98.43 decimals of land and plaintiff Nos. 4 to 6 obtained 70.61 decimals of land, total 1.6904 acres of land and that the plaintiffs could not prove B.S. khatian and possession in the suit land and decided the issue Nos. 6, 7 and 8 in favour of the plaintiffs.

Against the said judgment passed by the trial Court, the defendants filed Title Appeal No. 36 of 2020 in the Court of the District Judge, Lalmonirhat. The

Joint District Judge, Court No. 1, Lalmonirhat heard the appeal and by impugned judgment and decree dated 11.09.2022 dismissed the appeal holding that the defendants failed to prove that Akber Ali purchased the land from Sito Bibi and after death of Sito Bibi, her heirs inherited 2.675 acres of land and her 3 sons Anar Uddin, Kottu Sheikh and Shomser Ali obtained .8916 decimals of land each and affirmed the share of the plaintiffs awarded by the trial Court and that S.A. Khatian No. 411 was wrongly recorded in the name of Akber Hossain, Fatema Khatun and Momtaj Begum and that the possession of the co-sharer is the possession of other co-sharers and the plaintiffs and the defendants are the co-sharers of the C.S. Khatian No. 300 for which, the plaintiffs are jointly possessing the suit land along with the defendants and the findings of the trial Court that the plaintiffs failed to prove possession is not correct and considering the joint possession of the plaintiffs, the appellate Court affirmed the saham of the plaintiffs holding that the plaintiffs are the heirs of the Sito Bibi and they were necessary party in Other Class Suit No. 25 of 2006 but they were not impleaded as defendants in the said suit for which the exparte judgment and decree passed in Other Class Suit No. 25 of 2006 are liable to be set aside and no illegality was committed by the trial Court in setting aside the judgment and decree passed in Other Class Suit No. 25 of 2006.

Learned Advocate Mr. Md. Shahadat Alam appearing on behalf of the petitioners submits that the plaintiffs failed to prove that they are the heirs of C.S. recorded tenant Sito Bibi and both the Courts below without considering S.A. and BRS khatian, rent receipts paid after purchasing the land from Sito Bibi illegally passed the impugned judgment and decree which suffers from misreading and non-reading of the materials evidence and thereby committed an error of law resulting in an error in decision in decreeing the suit occasioning failure of justice. He prayed for making the Rule absolute by setting aside the impugned judgments and decrees passed by the Courts below.

Learned Advocate Mr. Chowdhury Md. Redwan-E-Khuda appearing along with the learned Advocate Ms. Nusrat Yeasmin on behalf of the opposite party Nos. 1, 2, 3, 5 and 6 submits that that the plaintiffs are the heirs of Sito Bibi and the defendants failed to prove any deed regarding the alleged transfer of the suit land by Sito Bibi in favour of Abkber Hossain and D.W. 1 admitted that he has no objection, if the plaintiffs got the saham as heirs of Sito Bibi and both the Courts below on correct assessment and evaluation of the evidence of both the parties arrived at a concurrent findings of fact regarding the title of the plaintiffs. He prayed for discharging the Rule.

I have considered the submissions of the learned Advocate Mr. Md. Shahadat Alam, who appeared on behalf of the petitioners, and the learned Advocate Mr. Chowdhury Md. Redwan-E-Khuda, who appeared along with the learned Advocate Ms. Nusrat Yeasmin on behalf of the opposite party Nos. 1, 2, 3, 5 and 6, perused the evidence adduced by both the parties, the impugned judgments and decrees passed by the Courts below and the records.

On perusal of the judgments and decrees passed by the Courts below, reveals that both the Courts below arrived at concurrent finding of facts that the plaintiffs are the heirs of C.S. recorded tenant Sito Bibi who was the owner of 2.67 decimals of land of C.S. Khatian No. 300 and as heirs of Sito Bibi, the plaintiffs are entitled to get their respective saham and that the defendants failed to prove that Sito Bibi transferred the land to Akber Hossain and that as heirs of Sito Bibi, the plaintiffs were necessary party in Other Class Suit No. 25 of 2006 but they were not impleaded as defendants and set aside the exparte judgment and decree passed in Others Class Suit No. 25 of 2006.

P.W. 1 Md. Abdul Hossain stated that Sito Bibi and Johirun Nessa were the C.S. recorded tenants of C.S. Khatian No. 300 and each of them obtained 2.67 acres of land out of total 5.35 acres of land, and Sito Bibi died intestate leaving behind her 3 sons Anar Uddin, Kottu Sheikh and Shomser Ali, and each of them obtained .8916 decimals of land, and after that, the plaintiffs inherited the property. By cross-examining P.W. 1, the defence affirmed that the plaintiffs only claimed the property of Sito Bibi. The evidence of P.W. 1 that Sito Bibi is the C.S. recorded tenant and that 2.675 acres of land was recorded in her name in C.S. Khatian No. 300 and that the plaintiffs are the heirs of Sito Bibi was not disputed by the defendants. The defendants claimed that Sito Bibi transferred her share to Akber Hossain by different deeds, but the defendants failed to prove the transfer of the land by Sito Bibi. Therefore, I am of the view that the plaintiffs, as heirs of Sito Bibi, are entitled to get their respective share in the suit land.

In reply to a question, D.W. 1 Abed Hossain affirmed that Sito Bibi was the recorded tenant of C.S. Khatian No. 300 and admitted that he could not prove any deed of Sito Bibi and the heirs of Sito Bibi were not impleaded as defendants in Other Class Suit No. 25 of 2006, and he has no objection if the heirs of Sito Bibi get their shares. D.W. 1 also admitted that S.A. Khatian No. 412 was wrongly recorded, for which there is no legal consequence. P.W. 2 stated that he is not aware as to how the half share of Sito Bibi was recorded in the name of Akber Hossain. From the evidence discussed hereinabove, it is well proved that Sito Bibi was the owner of 2.675 acres of land of C.S. Khatian No. 300 and during her lifetime, she did not transfer her share, and as heirs of Sito Bibi, the

plaintiffs are entitled to get the shaham on the suit land. As heirs of Sito Bibi, the plaintiffs were necessary parties, but they were not impleaded as defendants in Other Class Suit No. 25 of 2006, for which both the Courts below legally set aside the ex parte judgment and decree passed in Other Class Suit No. 25 of 2006. I do not find any misreading or non-reading of material evidence of the parties, and no perverse findings have been arrived at by the Courts below.

I find no merit in the Rule.

In the result, the Rule is discharged.

The order of stay granted earlier by this Court at the time of issuance of the Rule is hereby vacated.

However, there will be no order as to costs.

Send down the lower Court's records at once.