

District-Manikganj.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 2024 of 2022.

Samir Uddin.

---- Defendant-Appellant-Petitioner.

-Versus-

Anowar Ali and others.

---- Plaintiff-Respondent-Opposite Parties.

Mr. Mohammad Kofil Uddin Khan, Advocate

----For the Defendant-Appellant-Petitioner.

Mr. Kamruzzaman Bhuiyan, Advocate with

Mr. Md. Ashraful Alam, Advocate

----For the Plaintiff - Respondent-Opposite Parties.

Heard On: 10.11.2025., 17.11.2025.

And

Judgment Delivered On: 18.11.2025.

Md. Toufiq Inam, J.

This Rule, at the instance of defendant No. 1-petitioner, was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 07.02.2018 and 13.02.2018 passed by the learned Joint District Judge, Manikganj, in Title Appeal No. 108 of 2013, allowing the appeal in part and thereby modifying the judgment and decree of the trial court passed in Title Suit No. 274 of 2006 decreeing the suit, should not be set aside and as to why the matter should not be remanded for fresh decision in accordance with law.

The present opposite party No. 2, as plaintiff, instituted the suit for partition of 39 decimals of land. The trial court, upon assessing the respective titles of the parties, allotted saham as follows:

- i) Plaintiff No. 2 was allotted 1.925 decimals,
- ii) Defendant No. 1 was allotted 27.75 decimals, and
- iii) Defendants Nos. 2–8 were allotted 9.25 decimals.

Being aggrieved, defendant No. 1 preferred an appeal. The learned appellate court maintained the findings of the trial court with regard to title and, while disposing of the appeal, enhanced the saham of defendant No. 1 from 27.75 decimals to 30.75 decimals. However, the appellate court did not proportionately reduce the saham of the other co-sharers. As a result, the total saham allotted exceeded 39 decimals, which is the total quantum of land involved in the suit.

The petitioner further contends that the appellate court failed to consider one of his purchase deeds, holding that the genealogy was unclear, although, according to the petitioner, the said deed is valid and relevant for determining his proportionate share. Hence, the present revisional application.

Mr. Mohammad Kofil Uddin Khan, learned Advocate appearing for the petitioner, submits that the appellate court acted illegally and with material irregularity by enhancing the saham, however, without

adjusting the saham of the other co-sharers, thereby rendering the decree mathematically impossible and legally untenable. He further submits that the appellate court misdirected itself in discarding the petitioner's purchase deed being Deed No. 3115 dated 04.08.1996 without properly examining the supporting materials on record. According to him, such findings suffer from non-application of judicial mind, which warrants interference by this Court in revisional jurisdiction.

On the other hand, Mr. Kamruzzaman Bhuiyan, learned Advocate for the opposite parties, appearing along with Mr. Md. Ashraful Alam, learned Advocate, supports the impugned judgment. However, he fairly concedes that the saham as determined by the appellate court exceeds the total suit land.

Upon consideration of the impugned judgment and decree, this Court finds that the appellate court, while enhancing the saham of one party, failed to reassess and readjust the saham of all the co-sharers, resulting in a total allocation exceeding 39 decimals. Such a decree is inherently contradictory and cannot be sustained in the eye of law. Determination of saham in a partition suit necessarily requires a fresh and comprehensive re-evaluation of the title and shares of all parties, and the appellate court is duty-bound to ensure consistency between the total area of the suit land and the aggregate saham allotted. The summary rejection of a registered purchase deed on the ground of

unclear genealogy, without proper examination of the supporting materials, amounts to non-consideration of material evidence and constitutes an error apparent on the face of the record. The cumulative effect of these defects goes to the root of the matter, rendering the impugned appellate judgment legally unsustainable.

In view of the foregoing discussions, this Court is of the considered opinion that the matter requires fresh adjudication by the appellate court upon proper appreciation of the evidence on record and accurate calculation of saham strictly consistent with the total land involved in the suit.

In the result, the Rule is made absolute.

The impugned judgment and decree dated 07.02.2018 and 13.02.2018 passed by the learned Joint District Judge, Manikganj, in Title Appeal No. 108 of 2013 are hereby set aside.

The matter is remanded to the learned appellate court with directions to re-hear and re-decide the appeal afresh upon proper consideration of all deeds, genealogies, and materials relevant to the determination of title. If necessary, the court may allow amendment of pleadings by the parties in accordance with law. The appellate court shall determine the correct saham of each co-sharer, ensuring that the total saham does not exceed 39 decimals, and shall afford both parties reasonable

opportunity of hearing, including opportunity to clarify genealogical connections relating to their respective purchase deeds. The appeal shall be disposed of expeditiously, preferably within a period of six months from the date of receipt of this order.

However, the decree passed by the trial court shall remain in abeyance until disposal of the appeal.

Send down the lower court records at once together with this judgment.

There shall be no order as to costs.

(Justice Md. Toufiq Inam)

Ashraf/ABO.