

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1351 of 2022

IN THE MATTER OF :

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

-And-

In the Matter of:

Wazed Ali

...Defendant-Petitioner

-Versus-

Jarina Begum and others

...Plaintiff-Opposite Parties

No one

..... For the petitioner

Mr. Zulfiqur Ahmed, Advocate

...For the opposite parties 1-3 & 5-8

Mr. Uzzal Bhowmick, with

Mr. Manoz Kumar Kirtania, Advocates

...For the Opposite Party No. 4

Judgment on: 11.12.2025

Md. Riaz Uddin Khan, J-

Upon an application under section 115(1) of the Code of Civil Procedure Rule was issued asking the opposite parties to show cause as to why the impugned judgment and decree dated 28.11.2021 (decree signed on 29.11.2021) passed by the Additional District Judge, Manikgonj in dismissing the appeal being Title Appeal No. 31 of 2016 and thereby affirming the judgment and decree dated 11.02.2016 passed by the Joint District Judge, 2nd Court, Manikgonj decreeing the suit in part in Title Suit No. 47 of 2009 should not be set aside and/or such other or further order or orders should not

be passed as to this Court may deem fit and appropriate.

At the time of issuance of the Rule the operation of the impugned judgment and decree was stayed for a period of 06(six) months.

Brief facts for disposal of this Rule is that opposite party Nos. 1-38 as plaintiffs filed Title Suit No. 47 of 2009 before the Joint District Judge, 2nd Court, Manikganj for partition of the scheduled land. The portrayal of the essential facts forming the background of the plaintiffs' case, in short, is that the land appertained to C.S. Khatian Nos.15 and 64 were owned by Mohar Shikder who died leaving behind his 9 sons namely Ala Baksh, Nayandi, Delbar, Talebar, Kalim Uddin, Musti, Kachi, Kaju and Naju. Subsequently, Kachi and Naju died as bachelor leaving rest 7 brothers to inherit them. Ala Baksh died leaving a son namely Haran and a daughter Sajan Bibi. Then Haran died leaving two daughters namely Rejimon and Khushimon. Nayandi died leaving 2 sons Kazimuddin and Azimuddin. Kazimuddin died leaving 1 son Khorshed. Azimuddin died leaving 3 sons Nathu, Kahi and Alauddin. Kalim Uddin died leaving son Ranju. Musti died leaving 2 sons Hossain and Miah Chan and a daughter Ofaton. Delbar died leaving a brother Talebar. Therefore, Talebar got 182 decimals by way of inheritance and by way of purchase got 34 decimals, total, 216 decimals and on 02.02.1953 vide Saaf Kabala No.1167 transferred 207 decimals of land to his son Hazrat Ali. Subsequent to transfer while Talebar owned 09 decimals of land died leaving Samiron (first wife), Hazrat Ali (plaintiff, son by the first wife), Asmani, Solemon and Joytun (3 daughters by first

wife), Wazed Ali (defendant No.1 and son by second wife), Suraton (daughter by second wife). Asmani died leaving brother Hazrat Ali. Samiron Nessa vide Kabala No.11988 dated 21.10.43 purchased 59 decimals of land from Kazu and Kazimuddin. Samiron Nessa thus owned 60 decimals of land by purchase and inheritance died leaving only son Hazrat Ali. Thus, Hazrat Ali by way of purchase got 207 decimals, inherited from father Talebar and sister Asmani 3 decimals, from mother 60 decimals, totaling 270 decimals of land. For the sake of convenience of enjoyment, the plaintiff demanded partition by metes and bounds but the Defendants declined to effect partition, hence, the suit.

The defendant No.1 appeared and contested the suit by filing written statements denying the material averments made in the plaint stating *inter alia*, that the land appertained to C.S. Khatian Nos.15 and 64 were owned by Mohar Shikder who died leaving behind his 9 sons namely Ala Baksh, Nayandi, Delbar, Talebar, Kalim Uddin, Musti, Kachi, Kaju and Naju and C.S. record was rightly prepared in their names. Subsequently, Kachi died as bachelor leaving brothers Ala Baksh, Nayandi, Delbar, Talebar, Kalim Uddin, Kaju and Naju. Ala Baksh died leaving a son, Haran, a daughter, Sajon Bibi. Haran died leaving 2 daughters Rejimon and Khushimon. Nayandi died leaving 2 sons Kazimuddin and Azimuddin. Kazimuddin died leaving a son Khorshed. Azimuddin died leaving 3 sons Nathu, Kahi and Alauddin. Musti died leaving 2 sons namely Hossen and Miah Chan and a daughter, Ofatun. Nazu died leaving 2 sons Nazar Ali and Fazar Ali. Talebar purchased 113½ decimals of land in the benami of his wife Samiron Bibi from Kazu vide

Kabala No.11988 dated 29.09.1943 and subsequently, Samiron regarding the said 113½ decimals of land executed a Nadabi deed being No.2058 dated 10.04.1947 in favour of Talebar. Samiron died leaving husband Talebar and the statement of the plaintiff that Talebar died leaving wife Samiron is not correct. Therefore, Hazrat Ali got no land from mother Samiron. Subsequently, Talebor, father of the both plaintiff and Defendant No.1, vide deed of gift No.1705 dated 28.05.1964 transferred 241½ decimals of land including 141½ decimals of the suit land. Therefore, during R.S. operation R.S. Khatian Nos.54 and 245 were correctly prepared in his name. As such, the Defendant No.1 prayed for dismissal of the suit and in the event if the suit is decreed, prayed for Saham in respect of 141½ decimals of land.

The suit came up for trial before the Joint District Judge, 2nd Court, Manikganj and the plaintiff adduced 2 witnesses and produced documents which were marked as exhibits but the defendant did not adduce any witness of document though cross examined the PWs. After conclusion of trial the learned Joint District Judge was pleased to decreed the suit in part awarding 243 decimals to the plaintiff vide the judgement and decree dated 11.02.2016 passed in Title Suit No.47 of 2009.

Against that, the Defendant No.1 as appellant filed Title Appeal No.31 of 2016 before the learned District Judge, Manikganj which was ultimately heard and disposed of by the learned Additional District Judge, Manikganj who too was pleased to dismiss the

appeal vide judgment and decree dated 28.11.2021 passed in Title Appeal No.31 of 2016.

Being aggrieved by and dissatisfied with the said judgments and decrees passed by the courts below the defendant no.1 being petitioner filed the instant civil revision and obtained rule and stay as stated in the very outset.

This Rule was fixed for hearing at the instance of the opposite party No. 4 and since then it is appearing in the list but the learned advocate for the petitioner never appeared before this Court. On the other hand the learned advocate for the opposite party Nos. 1-3 and 5-9 appeared while opposite party No. 4 by separate vokalatnama also appeared before this Court.

The petitioner in the instant civil revision has taken 4 grounds including formal grounds contending *inter alia* that the courts below nowhere in their judgments discussed the manner of approval of the shares and the bone contention of the parties as to whether Talebar purchased 113½ decimals of land in the benami of his wife Samiron Bibi from Kazu vide kabala No.11988 dated 29.09.1943 and whether Samiron regarding the said 113½ decimails of land executed nadabi being No.2058 dated 10.04.1947 in favour of Talebar and whether Samiron died before husband Talebar or not and whether Talebar by deed of gift No. 1705 dated 28.05.1964 transferred 241½ decimals of land including 141½ decimals of the suit land infavour of the defendant No. 1 and as such the court below committed an error of law resulting in an error in decision occasioning failure of justice.

The petitioner's further ground is that the court below had miserably failed to consider that all the land of Mohar Shikder and Talebar, predecessor of both the plaintiffs and the defendant No. 1 were not brought in the hotchpotch and the PW-1 Jorina Begum had categorically admitted the same in her cross examination and therefore instant suit for partition among the successors of Mohar Shikder and Talebar with part of his land is not maintainable and as such the judgments and decrees passed by the courts below are liable to be set aside.

Mr. Uzzal Bhowmick the learned advocate appearing for the opposite party No.4 submits that admittedly the original title to the disputed land belonged to Mohar Shikdar and upon his death, the title devolved to his nine sons. Subsequently by rules of inheritance (including the shares of unmarried brothers Kachi and Nazu, and later the share of brother Delbar), Talebar Shikdar consolidated a total of 184 decimals of land (though the plaintiff claimed 207 decimals). This forms the first and major segment of the Plaintiff's title, as Talebar subsequently sold this entire 184 decimals of land to his son, the Plaintiff Hazrat Ali, via Registered Sale Deed No. 1167 dated 02.05.1953 (Exh. 2/ঔবত). The second segment of the Plaintiff's title comes from his mother, Samiron Nessa, who had independently purchased 59 Decimals of land from Talebar's brother Kaju via Registered Sale Deed No. 11988 dated 21.10.1943 (Exh. 2/Gha). Both the courts below rejected the Defendant's claim that Samiron later disclaimed this land. Consequently, upon Samiron's death, the Plaintiff inherited these 59 decimals,

resulting in a proven total title of 243 Decimals for the Plaintiff Hazrat Ali. Trial Court granted a partial preliminary decree in favor of the Plaintiff for 243 decimals of land (saham) out of 270 decimals.

The learned advocate next submits that in direct contrast, the Defendant Wazed Ali's chain of title failed completely. The Defendant claimed title through two sources: firstly, a Deed of Gift (No. 1705 dated 28.05.1964) for 241½ Decimals from his father Talebar, and secondly, through inheritance from father Talebar. Both the courts below ruled that the Gift Deed was ineffective because Talebar had already sold his entire 184 decimals share to the Plaintiff in 1953, by a sale deed meaning he was title less at the time of the alleged gift.

The learned advocate then submits that Talebar died while being title less in the suit land, leaving nothing to be inherited by his heirs (both plaintiff and Defendants) in the Suit properties. Therefore, the trial court found the Defendant's claim to be unproven, establishing their title as nothing in the suit property. The Key finding is that the Plaintiff successfully proved ownership of 243 decimals of land through purchase and inheritance but the Defendant-Petitioner failed to adduce any oral or documentary evidence to support his claims. The Appellate Court upheld the judgment and decree of the Trial Court and dismissed the appeal concurring the findings with the trial court.

The learned advocate further submits that this civil revision should be discharged, because both the Judgments of the Trial Court and the Appellate Court

conclusively established that the defendant-petitioner failed to produce or prove any documentary or oral evidence to substantiate his claims. He failed to even exhibit the alleged Deed of Gift and/or Nadabi Patra into evidence as claimed by him. Under the law of evidence, a claim without proof is legally unsustainable. The alleged Gift Deed dated 28.05.1964 relied upon by the defendant-petitioner was executed by their father, Talebar, after he had already made himself title less by executing the registered Sale Deed No. 1167 (Exh. 2/kha) in favour of the Plaintiff on 02.05.1953. The legal maxim *Nemo dat quod non habet* (No one can give what they do not have) renders the subsequent Deed Gift of 1964 null and void/inoperative, a finding correctly arrived at by the courts below.

The learned advocate finally submits that both courts below explicitly held that no dispute regarding the maintainability, defect of parties or hotchpotch was argued or proved. The Defendant-Petitioner failed to take any specific plea or lead any evidence to the effect that any necessary party was left out and apparently, the genealogy of the respective parties are the same as per their pleadings. Therefore, the Petitioner cannot now be permitted to raise a new plea of defect of hotchpotch or non-joinder or mis-joinder in the Revisional stage for the first time. Both the courts below after meticulous scrutiny of evidence and assessment of depositions, arrived at concurrent findings of fact. This Court, sitting in a Revisional Jurisdiction, generally does not interfere with concurrent findings of fact, unless there is a grave error of law or procedural irregularity, non-reading or

misreading of evidence, none of which exists in the instant case.

Mr. Zulfiqur Ahmed, the learned advocate appearing for the opposite party Nos. 1-3 and 5-9 adopted the submissions made by the learned advocate for the opposite party No. 4.

I have heard the learned advocates of the opposite parties, perused the revisional application. I have also perused the Lower Court Record including the plaint, written statements, depositions of PWs, exhibited documents and both the judgments passed by the courts below.

It appears from the judgment of the trial court that after calculation of the sham the trial court came to finding that the predecessor of the plaintiff and the defendant No.1 Talebar got 184 decimals of land in the Suit Jote. The plaintiff claimed 34 decimals of land through Talebar who purchased the same but since the plaintiff could not prove that purchase by adducing any evidence hence Talebar was not entitled to that 34 decimals of land. Though Talebar by his deed of gift No. 1167 dated 02.02.1953 sold 207 decimals to the plaintiff Hazarat Ali but Hazarat Ali will get only 184 decimals of land since Talebar was owner of that property only. The trial court then found that since the Talebar's entire share has been transferred by the above deed dated 02.02.1953, a subsequent deed of gift dated 28.05.1964 in favour of the defendant No. 1 is an ineffective one transferring no title. The trial court also found that Talebar's wife Samiron bought 59 decimals of land by a registered deed being No. 11988 dated 21.10.1943, though the defendant claimed that

Samiron was the benamdar and actually Talebar bought those land in her name but this contention has not been proved by adducing evidence before the court hence the trial court found that 59 decimals of land was owned by Samiron. These finding of facts was also confirmed by the Appellate Court below.

At this stage of revision, the petitioner raised a plea that both the courts below failed to discuss whether Samiron died before Talebar. It is well settled that any claim by any party is to be proved by that party. The defendant No. 1 claimed that Samiron died before Talebar. So it was of the duty of the defendant to prove that Samiron died before Talebar but this claim could not be proved by the defendant who even did not lead any evidence to prove it. The petitioners further plea is that there is a defect of hotchpotch in the suit land as the plaintiff failed to bring all the properties of Mohar Shekh and Talebar. In this connection also it was the duty of the defendant-petitioner to show that properties of Mohar and Talebar were left out but the defendant failed to discharge his onus or burden of proof. In fact, the defendant did not lead any evidence, either oral or documentary, before the trial court or even appellate court.

It is now well settled that the revisional court usually should not interfere with the concurrent findings of fact unless there is serious misreading and non-consideration of evidence on record or serious procedural irregularity which resulted in an error of law occasioning failure of justice. Since the petitioner could not show any such misreading or

nonconsideration of evidence or any procedural mistake resulted in an error in the decision occasioning ultimate failure of justice, I do not find any reason to interfere with the concurrent finding of facts arrived at by both the courts below.

In the facts and circumstances of the case I find no merits in the instant rule, hence, I am constrained to discharge the same.

In the result the Rule is **discharged** with cost.

Send down the lower court records along with a copy of this judgment at once.