

**Present:**  
**Mr. Justice Md. Salim**

**CIVIL REVISION NO. 282 OF 2024.**

Dr. Mohammad Ali and another.  
..... Defendant-Petitioners.

**-VERSUS-**

Begum Shahida Ahmed and others  
..... Plaintiff-Opposite parties.

Mr. Uzzal Bhowmik, Advocate  
-----For the petitioners.  
Mr. Md. Abdul Kader Bhuiyan, Advocate  
-----For the opposite parties.

**Heard on 02.06.2025, 29.07.2025 and  
27.10.2025.**

**Judgment on 03.11.2025.**

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 29.10.2023 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Chandpur in Civil Appeal No.24 of 2011 allowing the appeal in part by modifying the Judgment and decree dated 17.02.2011 passed by the learned Assistant Judge, Haziganj, Chandpur in Title Suit No.15 of 2004 decreeing the suit for partition should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The facts, in brief, for the disposal of the Rule are that the opposite party Nos. 1-6 herein as plaintiffs instituted Title Suit No.15 of 2004 before the Senior Assistant Judge, Haziganj, Chandpur, for the partition of suit land, contending, inter alia, that the disputed land is under the C.S. Khatian No.117 measuring a total of 1.19 acres. From this total amount of land, Ameer Uddin is entitled to I. anas; Ibrahim, Ali Akbor, and Abdul Matin are entitled to I. anas; and the remaining II. anas are entitled to Farizuddin, respectively. Having ownership and possession of the said I. ana portion of land under the disputed C.S. Khatian No. 117, Ameer Uddin died, leaving only his daughter, named Solema Khatun, as his heir, who became the owner of the said property. Solema Khatun sold .II acre of land from the disputed Plot No.344 and .1750 acre of land from the disputed Plot No.348, for a total of .2850 acre of land to Asia Khatun (wife of co-sharer Ibrahim Mojumdar) vide registered deed No.7379 dated 11.10.1952 and also delivered the possession of the same to her. Having en-titled over this total .2850 acres of land, Ashia Khatun sold .0550 acres of land from the disputed Plot No.344 and .0875 acres of land from the disputed Plot No.348 in total .1425 acres of land to Advocate Makbul Ahmed vide registered Kabla Deed No 5576 dated

28.06.1979 and also delivered the possession to him. The remaining 0.1425 acres of land at the disputed C.S. Plot Nos. 344 and 348, also sold by Ashia Khatun to Shahida Ahmed (Plaintiff No. 1) vide registered deed No. 5581 dated 29.06.1979, and possession was also delivered to her. Having en-titled .1425 acres of land, advocate Makbul Ahmed died, leaving one wife, the Plaintiff No.1 (Shahida Ahmed), and three sons, the Plaintiff Nos. 2-4 and two daughters, the Plaintiff Nos. 5-6. In this way, all the Plaintiffs are entitled to a total of .2850 acres of land, acquired by way of purchase and inheritance. That B.S record of the suit land has been correctly recorded in the name of the Plaintiffs. The disputed land is the Ejmali property, and the Plaintiffs requested the Defendants to distribute the land; however, the Defendants refused to do so, most recently on February 22, 2004. For this reason, the Plaintiffs filed this suit for the partition of the disputed land

The defendants, Nos. 1 and 2, contested this suit by filing a joint written statement, denying all material allegations in the plaint and stating that the disputed land is under C.S. Khatian No. 117, measuring 1.19 acres. From this total amount of land, Ameeruddin was entitled to a total of I. (four anas) anas, measuring 29.75 decimals of land. Having owned a total of

29.75 decimals of land, Ameeruddin died, leaving only his daughter, Solema Khatun, as his heir and successor in interest. As a result, Solema Khatun was entitled to  $\frac{1}{2}$  of her father's land, i.e., 14.875 decimals, by way of inheritance. However, Solema Khatun sold 0.2850 acres (0.11 acres of land from plot No. 344 and 1,750 acres of land from plot No. 348) of land, which extends to her portion, vide registered Deed No. 7379 dated 11.10.1952, to Ashia Khatun (wife of co-sharer Ibrahim), from the disputed Plot Nos. 344 and 348, which are illegal. The total land area of Plot No. 344 is 22 decimals. Among those, the father of Solema Khatun, named Amiruddin, was entitled to 5.5 decimals of land as one (1) anas share. The total land of Plot No. 348 is 35 decimals. Among those, the father of Solema Khatun, named Amiruddin, is entitled to 8.75 decimals as one (1) anas share in total, and the said two plots are entitled to 14.25 decimals; therefore, Solema Khatun is entitled to  $\frac{1}{2}$  of the 14.25 decimals, which is 7.125 decimals of land. However, Solema Khatun sold a total of 28.50 decimals of land to Ashia Khatun, although she is entitled to only 7.5 decimals of land, Ashia Khatun sold 0.0550 acre of land from the disputed Plot No. 344 and 0.0876 acre of land from the disputed Plot No. 348, totaling 0.1425 acre of land, to Advocate Makbul Ahmed, vide registered

Kabla No. 5576 dated 28.06.1979. She also sold 0.1435 acres of land from the disputed C.S. Plot Nos. 344 and 348 to Shahida Ahmed (Plaintiff No. 1) vide registered deed No. 5581 dated 29.06.1979 but, they entitled only 7.125 decimals since Solema entitled only 7.125 decimals of land, and such Ashia Khatun also entitled 7.125 decimals of land and sale of access 21.375 decimals is illegal, Advocate Mokbul Ahmed and Shahida Ahmed entitled only 7.5 decimals of land out of 28.50 decimals of land since Solema Khatun sold 21.375 decimals of land in access to her entitlement which is illegal but, the Plaintiffs illegally and unlawfully grabbed 22 decimals out of 22 decimals of land from C.S. Plot No. 343. Subsequently, 0.03 acre of land from the disputed Plot No.343 and 0.08 acre land from the disputed Plot No.348 in total, .11 acres of land acquired by the roads and highway through the L.A. Case No.02/42-43 and 05/56-57, respectively. Ibrahim, All Akbor, and Abdul Motin Baten were entitled to 8.75 decimals of land, but they received all the compensation for the said land in proportion to their shares.

Forij Uddin was the owner of .5950 acres of land, who died leaving 02(two) daughters, named Rabia Khatun and Tofurer Nesa, and one wife, named Ulfot Banu, who got the said

land among those .2025 acres out of .8100 acres of land were recorded in R.S. Khatian No.197 in their name. Having inherited ownership from her parents, and by an amicable settlement. Rabia sold .2200 acres of land from Plot No.343 and .0300 acres of land from Plot No.347 in total, .2500 acres of land to the C.S. co-sharer Abdul Motin vide Deed No.1803 dated 03.03.1969 and delivered possession to him. Abdul Motin owned .0991 acres of land by way of inheritance and .2500 acres by purchase in total, .3491 acres of land, among which .1291 acres of plot No.348 and .2200 acres of plot No.343 by an amicable settlement. Abdul Motin passed away, leaving two sons, namely Masud Ahammed Mazumdar and Ali Azom Mazumdar, who inherited the same property. Through an amicable settlement, Masud Ahmed Mozumdar obtained 0.3367 acres of land, comprising 0.1167 acres from Plot No. 348 and 0.2200 acres from Plot No. 343. Having en-titled over this land, Masud Ahmed Mozumdar sold .22 decimal from the disputed Plot No.343 and 11.67 decimals from the disputed Plot No.348 in a total of 33.67 decimals of land through the registered deed No.10635 dated 13.10.1982 and 14.12.1982 in favour of Rahima Khatun. Rahima Khatun, having been entitled by way of purchase, sold the same 33.67 decimals of land, vide

registered Deed No. 13408 dated 27.11.1984, to Mohammad Jahangir Alam. Subsequently, the disputed 33.67 decimals of land owned by Md. Mizanur Rahman, through the registered Partition Deed No. 946 dated January 29, 1992, along with his brothers. Md. Mizanur Rahman exchanged the said 33.67 decimals of land with Defendant Nos. 1 & 2 vide registered Exchange Deed No. 5541 dated 07.07.1992. As a result, Defendants Nos. 1 & 2 are entitled to 33.67 decimals of land, and D.P. Khatian No. 295 has been recorded and published in their names. The Plaintiffs filed an objection being Case No.1016 under section 30 of the State Acquisition & Tenancy Act, but the same was disallowed on 11 03.2001 on contest and 33.67 decimals of land have been mutated in the name of the defendants No.1 and 2 vide mutation case No.200 of 2000-2001 and they have been possessing the land by paying land's rent to the government.

The learned Assistant Judge of Haziganj, Chandpur, framed the necessary issues to substantiate the dispute between the parties.

Subsequently, the learned Assistant Judge of Haziganj, Chandpur, by the Judgment and decree dated 17.02.2011,

decreed the suit and gave saham only to the plaintiffs, and hereby refused to give saham to the defendants.

Being aggrieved by and dissatisfied with the above Judgment and decree, the defendants Nos. 1 and 2, as appellants, preferred Civil Appeal No. 24 of 2011 before the learned District Judge, Chandpur.

Eventually, the learned Joint District Judge, 1<sup>st</sup> Court, Chandpur, by the Judgment and decree dated 29.10.2023, allowed the appeal, modifying the Judgment and decree passed by the trial Court below, and gave a partial saham to the defendant-opposite parties.

Being aggrieved by the above Judgment and decree, the defendants, as petitioners, preferred this Civil Revision under Section 115(1) of the Code of Civil Procedure before this court and obtained the instant Rule with an order of status quo.

Mr. Uzzal Bhowmik, the learned advocate appearing on behalf of the petitioners, submits that both the Courts below failed to consider that Md. Jahangir Alam purchased 33.67 decimals of land from Mst. Rohima Khatun, as per two different registered deeds, namely Kabala Deed No. 13408 dated November 27, 1984, and Kabala Deed No. 1525 dated January 30, 1985, further states that the defendant-petitioners have

owned 33.67 decimals of land. In contrast, the appellate court below awarded the defendants only 12 decimals of land. As such, the impugned Judgment and decree passed by the Courts below are neither proper nor in accordance with law and committed an error of law, resulting in an error in the decision and occasioning a failure of justice.

Mr. Md. Abdul Kader Bhuiyan, the learned advocate appearing on behalf of the opposite parties, submits that the trial Court, considering all the materials on record, rightly gave saham to the plaintiffs, and the appellate court also gave saham to the defendant, and the defendant has no right to get more saham. Thus, the Rule is liable to be discharged.

We have carefully considered the submissions advanced by the learned advocate for both parties and reviewed the Judgment of the courts below, as well as the oral and documentary evidence and other materials on the record.

It appears that the plaintiffs filed the instant suit for partition, praying for a Saham of 28.50 decimals of land. On the contrary, the defendants Nos. 1 and 2 contested the suit by filing a written statement, and they claimed a Saham of 33.67 decimals of land.

In order to prove the case, the plaintiff examined as many as two witnesses and adduced several documents, which were exhibited with different marks. On the other hand, the defendants examined as many as two witnesses and produced several documentary evidence, which were marked as exhibits accordingly.

We have scrutinized each deposition and cross-examination of the witnesses, and anxiously considered the material evidence on record. It appears from the record that the trial Court below decreed the suit, granting saham only to the plaintiffs as claimed and refusing to grant saham to the defendants. The appellate court below, modifying the Judgment and decree of the trial court below, awarded a Saham of 12 decimals of land to the defendants and found possession over 28 decimals of land, but did not grant a Saham of the same.

Now, it must be decided by this court whether Defendants –petitioners Nos. 1 and 2 are entitled to the saham of 33.677 decimals of land or not.

Analyzing the evidence on record, it appears that both parties admit that C.S. recorded tenant Forij Uddin was the owner of 0.5950 acres of land, who died, leaving two daughters, Rabia Khatun and Tofurer Nesa, and one wife, Ulfot Banu, who

inherited the said land among them. 0.2025 acres out of 0.8100 acres of land were recorded in R.S. Khatian No.197 in their name. Having inherited ownership from her parents and partition by amicable settlement, Rabia sold 0.2200 acres of land from Plot No. 343 and 0.0300 acres of land from Plot No. 347 in total, 0.2500 acres of land to the C.S. co-sharer, Abdul Motin, vide Saf Kabala Deed No. 1803 dated 03.03.1969, and delivered possession to him. In this way, Abdul Motin owned 6.25 decimals of land (after acquisition) by inheritance and 25 decimals by purchase, for a total of 31.25 decimals. Abdul Motin died, leaving two sons, named Masud Ahammed Mazumdar and Ali Azom Mazumdar, who inherited the same property. And by an amicable settlement, Masud Ahmed Mozumdar obtained 31.25 decimals of land in the Plot No. 348 and Plot No. 343. Having titled over this land, Masud Ahmed Mozumdar, although sold 33.67 decimals to Rahima Khatun, but she actually got 31.25 decimals through registered deed No. 10635 dated 13.10.1982 and the registered deed dated 14.12.1982, respectively. Rahima Khatun, having been entitled to the land by way of purchase, sold the same 31.25 decimals vide registered Deed No. 13408 dated 27. 11. 1984, and registered Deed No. 1525 dated 30.01.1985, to Mohammad

Jahangir Alam. Subsequently, the disputed 31.25 decimals of land owned by Md. Mizanur Rahman, through the registered Partition Deed No. 946 dated 29.01.1992, along with his brothers. Md. Mizanur Rahman exchanged the said 31.25 decimals of land with Defendant Nos. 1 & 2 vide registered Exchange Deed No. 5541 dated 07.07.1992. As a result, Defendants Nos. 1 & 2 are entitled to get Saham of 31.25 decimals of land.

Notably, although Defendants Nos. 1 and 2 narrated their source of ownership's facts in their written statement, they could not produce the registered deed No. 1525, dated 30.01.1985, which contains 21.375 decimals of land, before the courts below. Therefore, the defendant petitioners presented additional evidence before this court and furnished the alleged deed No. 1525, dated 30.1.1985, marked as Exhibit A.

In view of the above facts and circumstances of the case, as well as the evidence on record, it appears that the defendants-petitioners have successfully proved, by oral and documentary evidence, that they are the legal owners and possessors of 31.25 decimals of land of plot Nos. 344 and 347, but the trial court below did not rely on the oral and documentary evidence on record adduced and produced by the

defendants-petitioners, and it rejected the prayer of the defendants-petitioners to allocate saham. On the other hand, the court of appeal below, although it believed the defendants' case, instead gave them only 12 decimals of land and possession over 28 decimals of land. Thus, it appears to us that the ends of justice would be best served if we pass an order to dispose of the Rule with a modification of the Judgment and decree of the court of appeal below, with the effect that the saham of the plaintiff is 28.50 deecimals of land and the saham of the defendants Nos.1 and 2 is 31.25 decimals of land in the respective plots.

In view of the above facts and circumstances, the Judgment and decree of the court of appeal below are hereby affirmed with effect of the above modification. Thus, we find merit in the Rule.

Resultantly, the Rule is disposed of without any order as to cost with the above modification of the Judgment and decree of the Courts of appeal below.

The impugned Judgment and decree dated 29.10.2023, passed by the learned Joint District Judge, 1<sup>st</sup> Court, Chandpur in Civil Appeal No.24 of 2011, is affirmed with modification in the effect that the saham of the plaintiff is 28.50 decimals of

land and the saham of the defendants Nos. 1 and 2 is 31.25 decimals of land in the respective plots. The Judgment and decree dated 17.02.2011, passed by the learned Assistant Judge, Haziganj, Chandpur, in Title Suit No. 15 of 2004, are set aside.

Let the order of stay granted by this court is hereby vacated.

Communicate the Judgment and send down the Lower Courts Records at once.

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**(Md. Salim, J).**

**Kabir/BO**