

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah
and**

Mr. Justice Md. Bashir Ullah

Civil Revision No. 351 of 2010

In the matter of:

An application under Section 115(1) of the Code of
Civil Procedure, 1908

And

In the matter of:

Hajee Abu Bakkar Siddique and others

... Defendant nos. 1-3-Appellants-Petitioners.

-Versus-

Mostaque Bepari

... Plaintiff-Respondent-Opposite party.

Mr. Ranjan Kumar Chakravorty, Advocate

... For the petitioners.

Mr. Md. Mizanul Hoque, Advocate

... For the opposite party

Heard on 27.01.2025

Judgment on: 09.02.2025

Md. Bashir Ullah, J.

At the instance of defendant nos. 1-3 of Title Suit No. 3 of 2005 and that of the appellants in Title Appeal No. 141 of 2008, this Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 30.07.2009 passed by the learned Additional District Judge, First Court, Faridpur in Title Appeal No. 141 of 2008 dismissing the appeal and affirming the judgment and decree dated 27.10.2008 passed by the learned Joint District Judge, Second Court,

Faridpur in Title Suit No. 3 of 2005 decreeing the suit in preliminary form should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

It is worthwhile to note here that, the parties to the instant Civil Revision and that of the Civil Revision No. 412 of 2010 are same and Title Appeal No. 147 of 2008 was heard simultaneously with Title Appeal No. 141 of 2008 and those to Title Suit No. 03 of 2005 with Title Suit No. 08 of 2005, we thus vide order dated 07.01.2025 allowed the application of the opposite party to hear this Civil Revision No. 351 of 2010 with Civil Revision No. 412 of 2010 simultaneously and hence, we take it up for disposal.

At the time of issuance of the Rule, the operation of the impugned judgment and decree dated 30.07.2009 passed by the Additional District Judge, First Court, Faridpur in Title Appeal No. 141 of 2008 was stayed for a period of 03(three) months, which was subsequently extended from time to time and it was lastly extended on 04.10.2012 till disposal of the Rule.

The salient facts, relevant for the disposal of the Rule are:

The opposite party as the plaintiff filed Title Suit No. 03 of 2005 in the Court of Learned Joint District Judge, Second Court, Faridpur against the defendants-petitioners praying for a decree for partition in the suit land so described in the plaint. The case of the plaintiff in short is that one, Abdur Rob was the admitted owner of 32 decimals of land out of 52 decimals of plot no. 66 under S.A. *Khatian* No.100 of mouza

Satero Rashi (সতেরো রশি) who transferred 16 decimals of land to the plaintiff, Mostaque Bepari by way of a deed of exchange dated 3.7.1994 and on the same date Abdur Rob also transferred the rest 16 decimals land in favour of Abdul Wahhab, the predecessor-in-interest of defendant no.2. The plaintiff possesses his 16 decimals of land in the suit plot No. 66. Then Abdul Wahab proposed to exchange his 16 decimals of land in the suit plot in exchange for 16 decimals of land of the plaintiff under mouza, *Char Rashi* (চার রশি) where both parties agreed and accordingly a deed of exchange was executed and registered on 15-11-1995 but subsequently it was revealed that the said Abdul Wahhab without inserting the land of suit plot no.66, included 18½ decimals land from *Molamerdanghi mouza* (মোলামের ডাংগী মৌজা) in the said exchange deed. The plaintiff did not deliver possession of 16 decimals of land of suit plot no. 66 where the plaintiff also filed Title Suit No. 59 of 2002 in the Court of Assistant Judge, Sadarpur Court, Faridpur for a decree of declaration that the deed of exchange (*Ewaj* deed) is fraudulent, collusive and not binding upon the plaintiff. During the pendency of the said suit, Abdul Wahab transferred his 16 decimals along with 08 decimals of suit land that is in total 24 decimals in favour of defendant nos. 1 and 2, but he delivered possession of 16 decimals land in favour of them out of 24 decimals. The plaintiff is in possession of 16 decimals land of suit plot no. 66 by erecting homestead thereon. The plaintiff on 17th Chaitra, 1411 B.S. approached the defendant nos. 1 and 2 for partition of the suit land, but they refused to partition the same and hence the plaintiff instituted the suit.

The petitioners as defendant nos. 1-3 contested the suit by filing a written statement, denying all the material statements made in the plaint stating, *inter alia*, that the suit is not maintainable in its present form and manner, bad for defect of parties and also suffers from defect of hotchpot stating further that 52 decimals land of suit plot No. 66 of S.A. *Khatian* no. 100 under mouza, *Satero Rashi* belonged to one, Amullah Kumar Das who died leaving behind his daughter, Usha Rani Das as heir. While Usha Rani Das owned and possessed the suit plot she sold 20½ decimals of land to one, Ibrahim when Ibrahim also sold 10½ decimals of land by a sale deed dated 20.8.1988 and also sold 10 decimals of land to defendant nos. 1 and 3 by sale deed dated 22.8.1988 and delivered possession thereof. The defendant no. 3 also sold 01¾ decimals of land to the defendant no. 1 in 1998. The above Usha Rani Das as an owner of rest 31½ decimals land of suit plot no. 66 sold 13½ decimals of land by deed dated 14.12.1974 and 12½ decimals by deed dated 2.8.1974 to one, Fazlur Rahman Matubbor. Subsequently, Usha Rani Das also sold 06½ decimals of land to one, Raj Ballav Das by deed dated 11.5.1972 and thereafter Raj Ballav Das sold the same to Fazlur Rahman Matubbor by deed dated 28.11.1974. Fazlur Rahman transferred 10½ decimals of land by the registered deed dated 28.7.1985; 15½ decimals of land by deed dated 8.9.1985 and 11 decimals of land by deed dated 25.7.1985 to one, Abdur Rob Miah. Though Abdur Rob purchased 32 decimals of land by the above 3 deeds, but he acquired title over 31½ decimals of land in the suit plot. Thereafter, Abdur Rob transferred 16 decimals of land in favour of the plaintiff by the exchange deed dated 3.7.1994 and on the

same date by *ewaz* deed, Abdur Rob transferred 16 decimals land to Abdul Wahab Mia where the plaintiff got 15½ decimals of land instead of 16 decimals of land. After that, the plaintiff and his brother, Abul Kashem Bepari proposed to exchange 10½ decimals of land from plot No. 38 of R.S. *khatian* 134 under mouza *Char Rashi* and 08 decimals of land from S.A. Suit Plot 66 under mouza *Satera Rashi* in total 18½ decimals land with that of 18½ decimals of land from S.A. Plot no. 6281 of S.A. *khatian* 73 under mouza, *Molamerdangi* of Abdul Wahab and both parties agreed upon such proposal and on that basis, an exchange deed was executed and registered on 25.11.1995 which was duly acted upon from both sides. On the basis of the exchange deed, the plaintiff delivered possession of 10½ decimals of land from R.S. *Khatian* 134 and 08 decimals of land from suit plot no. 66 in favour of Abdul Wahab Mia and thus he (Abdul Wahab Mia) mutated his name and paid rent thereon with the knowledge of the plaintiff and recent *khatian* was duly prepared in his name. The defendant nos. 1 and 3 after purchasing 20 decimals of land from the extreme south side of the suit plot, erected a tin-shed hut, latrine and shop and have been living there with their family. Abdul Wahab Mia sold 24 decimals of land in favour of the defendants by two deeds dated 5.5.2003 and these defendants are in possession of the same with the knowledge of the plaintiff and others where they have a tin-shed hut and 3 shops. The plaintiff actually has been in possession over 7½ decimals of land from north-western corner of suit plot No. 66 having two tin-shed rooms and one, *semi-pucca* room. On the other, hand the defendants have their tin-shed room, a bamboo-made hut, one tube well

and two temporary latrines in 08 decimals land situated in the north-western corner of suit plot 66. Thus the defendants have been possessing 44½ decimals of land in the suit plot for more than 12 years, so the defendants prayed for a separate *saham* in respect of 44½ decimals of land of the suit plot. The two *kabala* deeds dated 5.5.2003 bearing Nos.1481 and 1482 have been duly acted upon and both the documents are valid and prayed for dismissal of the suit.

In order to dispose of the suit, the trial court framed as many as 6(six) different issues and to support the case, the plaintiff examined 3(three) witnesses and the defendants examined 2(two) witnesses. Apart from that, the plaintiff produced several documents which were marked as exhibit nos. '1'-'3' series while the defendants also produced several documents which were also marked as exhibit nos. 'ka'-'euo(1)' {ক-এ(১)} series.

The learned Joint District Judge, 2nd Court, Faridpur on conclusion of trial, decreed the suit in favour of the plaintiff in preliminary form by allotting *saham* of 15½ decimals of land on contest against defendant nos. 1-3 on 27.10.2008.

Challenging the said judgment and decree dated 27.10.2008, the defendants as appellants then preferred Title Appeal No. 141 of 2008 before the learned District Judge, Faridpur. Subsequently, the appeal was heard on transfer by the learned Additional District Judge, First Court, Faridpur for disposal. Upon hearing the parties the learned Additional District Judge then dismissed the appeal on 30.07.2009.

Being aggrieved by and dissatisfied with the said judgment and decree dated 30.07.2009 passed by the Additional District Judge, First Court, Faridpur in Title Appeal No. 141 of 2008 the defendants-appellants as petitioners preferred the instant Civil Revision and obtained rule and order of stay.

Mr. Ranjan Kumar Chakravorty, the learned Advocate appearing on behalf of the petitioners at the very outset contends that, the defendant-petitioners have been owning and possessing 44½ decimals of land out of entire 52 decimals land of suit plot for more than 12 years with the knowledge of plaintiff and others wherein the defendants also claimed for separate *saham*, but both courts below on mere surmise, conjecture and without applying their judicial mind and without considering the oral and documentary evidence of the plaintiff and defendants arrived at a wrong decision without allotting *saham* to the defendants and thus committed an error of law resulting in an error in the decision occasioning failure of justice.

He next contends that though the plaintiff filed a suit for partition but he did not implead all parties in the suit who were involved in the deed in question and thus the trial Court committed an error of law resulting in an error in the decision occasioning failure of justice.

He next submits that the Courts below have erred in law in passing the impugned judgment and decree which is not based on proper appreciation of facts, evidence and law and both the Courts below did not discuss evidence adduced and produced by the parties in its proper

prospective and as such the impugned judgment is not sustainable in law and he finally prays for making the Rule absolute.

Per contra, Mr. Md. Mizanul Hoque, learned Advocate appearing on behalf of the opposite party contends that the parties of Title Suit No. 03 of 2005 and Title Suit No. 08 of 2005 and then of Title Appeal No. 141 of 2008 and Title Appeal No. 147 of 2008 are same and so, the defendants-appellants are obligated to comply with the decision in Civil Revision No. 412 of 2010 passed by this Court and thus the defendants will not get 8 decimals of land out of their claim from 44.50 decimals of land in the suit plot.

Mr. Hoque further contends that there is no illegality or infirmity in the impugned judgment and order and he finally prays for discharging the Rule.

We have heard the submissions of the learned Advocates for both sides, perused the Civil Revision, judgment and decree passed by the trial Court as well as the appellate Court below and other materials on record.

Record shows that one, Usha Rani Das inherited 52 decimals of land in S.A. plot no. 66 and she sold 20.50 decimals of land to one, Ibrahim. The defendant nos. 1 and 3 purchased 20.50 decimals of land in the suit plot from Ibrahim on 20.08.1988 and 22.08.1988. Thereafter, Usha Rani Das sold out 26 decimals of land to one, Fazlur Rahman Matbar and 6.50 decimals of land to Raj Ballav Das. Raj Ballav Das sold out 6.50 decimals of land to Fazlur Rahman. Thus Fazlur Rahman purchased 32.50 (26+6.50) decimals of land but actually, he acquired

and became the owner of 31½ decimals of land in the suit plot and subsequently Fazlur Rahman transferred 32 decimals of land to one Abdur Rab by *kabala* no. 2270 dated 25.07.1985; *kabala* no. 2301 dated 28.07.1985 and *kabala* no. 2687 dated 08.09.1985. After that, Abdur Rab transferred 16 decimals of land by deed no. 1907 dated 03.07.1994 (vide exhibit-kha) in favour of defendant, Abdul Wahab Mia. On the same date, Abdur Rab transferred 16 decimals of land by *kabala* no. 1908 (exhibit-1) in favour of the plaintiff. Since, Abdur Rab was entitled to transfer 31.50 decimals of land and hence the plaintiff is entitled to 15½ decimals of land by *kabala* no. 1908. The plaintiff exchanged 8 decimals of land with defendant, Abdul Wahab Miah. But Abdul Wahab Miah gave him diluvion land and hence the plaintiff filed Title Suit No. 8 of 2005. The record also shows that the learned Joint District Judge, Second Court, Faridpur decreed Title Suit No. 8 of 2005 on 27.10.2008 and thereby declared that the deed of exchange being no. 3090 dated 15.11.1995 and deed no. 1482 dated 05.05.2003 were illegal, fraudulent and not binding upon the plaintiff. Challenging the said judgment and decree dated 27.10.2008, the defendants preferred Title Appeal No. 147 of 2008 which was dismissed on 30.07.2009 by the learned Additional District Judge, 1st Court, Faridpur. Being aggrieved, the defendants-appellant filed Civil Revision No. 412 of 2010 before this Court and upon hearing, this Court ultimately discharged the Rule on 04.02.2025. So, the defendant nos. 1 and 2 failed to prove acquiring right and title of 08 decimals of land in the suit plot. The defendants of Title Suit No. 03 of 2005 are parties to Title Suit No. 08 of 2005. So, the defendants are

obligated by the decision dated 04.02.2025 passed in Civil Revision No. 412 of 2010.

Thus defendant no. 3 Abdul Wahab Mia got 16 decimals of land from Abdur Rab and defendant nos. 1 and 3 got 20.50 decimals of land from Ibrahim as such defendant nos. 1 and 3 are entitled to $20\frac{1}{2}+16=36\frac{1}{2}$ decimals of land in the suit *khatian*.

The learned counsel contends that no Court made any discussion about the evidence of the witnesses. In this regard, this Court made following observation in Civil Revision No. 412 of 2010 (judgment passed on 04.02.2005):

“whether non-discussing evidence of the parties of the suit can ipsofacto render a suit dismissal or not. On that very point, we have already discussed that if from the testimony of a single witness, it is found that the plaintiff has been able to prove his/ her case through convincing evidence supported by materials on record and the court has taken into consideration of it, while adjudicating a suit, then non-discussion of evidence will not render the suit as dismissal, if by this, it has not occasioned failure of justice. In this regard, we can profitably rely on the decision of our Appellate Division reported in 18 BLD (AD) 121 where it has also been propounded that:

Simply because the impugned order was not a speaking order, could not by itself be a valid ground for interference by the High Court Division unless it can be shown that the

subordinate court has committed any error of law resulting in an error in the decision occasioning failure of justice.”

(emphasis added)

Thus, we find the trial Court has very legally observed that the plaintiff is entitled to 15.50 decimals of land and defendant nos. 1 and 3 are entitled 36.50 decimals of land in the suit plot and thus very correctly decreed the suit. The appellate Court below has also perfectly affirmed the judgment and decree passed by the trial Court.

However, it is now a well-settled proposition as established by our apex Court that a concurrent finding on fact arrived at by the courts below cannot be interfered with in a civil revision if non-misreading or non-consideration of evidence is found.

At the time of pronouncement of the judgment, the learned counsel for the appellants submits that the trial Court did not mention the *saham* of the defendants in the operative portion of the judgment and decree, so he humbly prays to mention the quantum of *saham* of the defendants measuring 36.50 decimals of land. However, we find that the trial Court observed that the plaintiff proved his title over 15.50 decimals of land and the defendants proved 36.50 decimals of land in the suit plot however the trial Court in its ordering portion of the judgment decreed 15.50 decimals of land to the plaintiff only. On the contrary, the appellate Court below opined that the defendants did not seek any *saham* on payment of court fee. We have full agreement with the said observation of the appellate Court below that if the defendants would like to get *saham* by the Court, they have to pay *ad valorem* Court fee

before the trial Court. If they pay the required *ad valorem* Court fee before the trial Court then the trial Court can consider the matter for ends of justice.

Regard being had to the above facts and circumstances, we do not find any substance in the rule resulting in the judgment and decree passed by the courts below is thus affirmed.

Accordingly, the rule is discharged, however without any order as to cost.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment along with the lower court records be transmitted to the court concerned forthwith.

Md. Mozibur Rahman Miah, J.

I agree.