

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

**CIVIL REVISION NO.2824 OF 2024**

Abdul Hamid being dead, his heirs  
Md. Monju Miah and others  
.....The defendant-Petitioners.

**-VERSUS-**

Md. Siddique Miah being dead, his heirs  
Kolpona Khatun and others  
.....The plaintiff-opposite parties.

Mr. Md. Zahedul Bari, Advocate  
..... For the petitioners.

Mr. Golam Hossain Sarwar, Advocate  
..... For the opposite parties.

**Heard on 13.02.2025, 27.02.2025 and**  
**06.03.2025**  
**Judgment on 06.03.2025**

The leave is granted, and by this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and order dated 09.08.2023 passed by the learned District Judge, Kishoreganj, in Civil Revision No.08 of 2023 rejecting the Civil Revision and affirming the order dated 11.01.2023 passed by the learned Senior Assistant Judge, Karimganj, Kishoreganj in Partition Suit No.11 of 2005 rejecting the application under Section 6 of the Land Reform Ordinance,1984 should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

Facts leading to the disposal of this Rule are that the opposite parties, as plaintiffs, instituted Partition Suit

No.11 of 2005 before the Senior Assistant Judge, Karimganj, Kishoreganj, for a preliminary decree in respect of 0.27 acres of land.

The petitioners, as defendants Nos.1-3, contested the suit by filing a joint written statement denying the material allegations of the plaint. Subsequently, the learned Senior Assistant Judge, Karimganj, Kishoreganj by the Judgment and order dated 20.06.2007, decreed the suit in favor of the plaintiffs.

Being aggrieved by and dissatisfied with the aforesaid Judgment and decree, the defendants, as petitioners, preferred Other Appeal No.130 of 2007 before the learned District Judge, Kishoreganj. Eventually, the learned Joint District Judge, 2<sup>nd</sup> Court, Kishoreganj, by the Judgment and decree dated 21.04.2010, disallowed the appeal and affirmed those passed by the trial Court.

Being aggrieved by the above Judgment and decree, the plaintiff, as petitioners, filed Civil Revision No.2908 of 2010 before the High Court Division, in which the Rule was made absolute by the Judgment and decree dated 23.08.2015. Against that Judgment, the defendants preferred Civil Petition for Leave to Appeal No.4640 of 2017, which was dismissed on 18.02.2021 by the Appellate Division.

Thereafter, the defendants as petitioners filed an application under Section 6 of the Land Reform Ordinance, 1984, before the Senior Assistant Judge, Karimganj, Kishoreganj, for preserving the homestead of the petitioners on the suit land and for refraining from taking any step for eviction of the petitioners from their homestead.

The plaintiff-opposite parties contested the same by filing a written objection against the application under Section 6 of the Land Reform Ordinance, 1984. Subsequently, the learned Senior Assistant Judge, Karimganj, Kishoreganj, by the Judgment and order dated 11.01.2023, disallowed the said application.

Being aggrieved by and dissatisfied with the aforesaid Judgment and order, the defendant-petitioners preferred Civil Revision No.8 of 2023 under Section 115(2) of the Code of Civil Procedure before the District Judge, Kishoreganj, who, by the Judgment and order dated 09.08.2023 rejected the said Civil Revision and affirmed the order of the learned Assistant Judge, Karimganj, Kishirgonj.

Being aggrieved by and dissatisfied with the above Judgment and order, the defendants, as petitioners, moved this Civil Revision before this court under section

115(4) of the code of civil procedure before and obtained the instant Rule and an order of stay.

I have anxiously considered the submission of the learned advocate for both parties and perused the impugned Judgment and order and the other materials on record. It appears that the plaintiff-opposite parties filed the Partition Suit No.11 of 2005 before the Senior Assistant Judge, Karimganj, Kishoreganj, got saham in respect of 0.27 acres of land and the defendants-petitioner got saham of .06 decimals of land, which was finally affirmed and upheld up to the Appellate Division. Thereafter, this defendant-petitioner filed an application under Section 6 of the Land Reform Ordinance, 1984, for preserving the homestead of the petitioners on the suit land and for refraining from taking any step for eviction of the petitioners from their homestead.

It appears that the learned Senior Assistant Judge, Karimganj, while disallowing the application, says that –

“অত্র মোকদমার প্রাথমিক ডিক্রিতে ১-৩ নং বিবাদীপক্ষ ৬ শতাংশ ভূমি বাবদ ছাহাম প্রাপ্ত হয়েছেন বিধায় তাদের বাস্তুহারা হওয়ারও কোনো আশংকা নেই।“

The appellate court below, while affirming the Judgment of the learned Assistant Judge, observed that--

“নথি পর্যালোচনায় দেখা যায় যে, নালিশী দাগের ৩৩ শতাংশ ভূমির মধ্যে প্রার্থী/বিবাদীগণ ৬ শতাংশ ভূমি বাবদ ছাহাম প্রাপ্ত হইয়াছেন এবং প্রতিপক্ষ বাদীগণ ২৭ শতাংশ ভূমি বাবদ ছাহাম প্রাপ্ত হইয়াছেন। কিন্তু প্রার্থী/বিবাদীপক্ষ প্রতিপক্ষগণ দূরবর্তী স্থানে বসবাস করার সুযোগে নালিশী সম্যক ৩৩ শতাংশ ভূমিই দখল করিতেছেন। প্রার্থীগণ ততটুকু ভূমির মালিক কেবলমাত্র ততটুকু ভূমি দখলে রাখার অধিকারী এবং ভূমি সংস্কার অধ্যাদেশ ১৯৮৪ এর ৬ অনুচ্ছেদ অনুযায়ী ঐ ৬ শতাংশ ভূমি হইতে তাহাদের উচ্ছেদ করা ঠাইবে না। কিন্তু অতিরিক্ত ঐই ভূমিতে প্রার্থীগণের কোন মালিকানা নাই সেই ভূমিতে জোর করিয়া দখল বহাল রাখার কোন অধিকার প্রার্থীপক্ষের নাই।”

It appears that both the courts below, in view of the provision so enumerated in section 6 of the Land Reform Ordinance, 1984, refused to interfere with the order of eviction of the petitioner who had no title to the suit land save and except .06 decimals of homestead.

Section 6 of the Land Reform Ordinance, 1984, provided that any land used as a homestead by its owner in the rural area shall be exempted from all legal processes, including seizure, distress, attachment, or sale by any officer, court or any other authority and the owner of such land shall not be divested or dispossessed of the land or evicted therefrom by any means. Provided that nothing in this section shall apply to the acquisition of such homestead under any law.

It manifests that the homestead of an owner in a rural area is exempted from all legal processes, rather than in order to get such protection, the homestead must be in a rural area as per the proviso so enumerated in section 6 of the Ordinance. On the other hand, those who lost their ownership of such homestead do not come within the ambit of section 6 of the Ordinance. This view gets support in the case of Abdul Hai and another Vs. Chan Banu Bibi reported in 20 BLT (AD) 23 wherein their Lordship of the Appellate Division says that-

“The High Court Division further held that the provisions of section 6 of the Ordinance envisages that the homestead of an owner in a rural area is exempted from all legal processes but in order to get such protection under the Ordinance, the homestead must be in a rural area and the exemption from the legal processes is available only to an owner of such a homestead; it will be illogical to hold that any person, who is in possession of a homestead, will be an 'owner' and enjoy the protection under the Ordinance, rather, in order to come within the ambit of the Ordinance such an 'owner' must be an owner in the legal sense in his own lawful right; if it is found that he has got no 'title' in the said homestead which can be protected under the law or is a trespasser or is a licensee or whose possession has

not yet been perfected 'into a title on the principle of adverse possession or who lost his ownership in due process of law, is not an 'owner' in the legal sense and cannot claim protection under section 6 of the Ordinance from legal process; it is true that section 3 of the Ordinance provides that the provisions of the Ordinance shall override all other laws but even this non obstinate clause cannot go beyond the ambit of the Ordinance itself, the Ordinance made provisions in respect of laws relating to the benami transactions, homesteads and bargadars which are not of universal application, further the word 'owner', as is defined in section 2 of the Ordinance, is only in relation to a bargadar and so it is apparent that one has to read, understand and appreciate the scope of the word 'owner' as appearing in section 6 of the Ordinance within the ambit of the said very Ordinance itself in its restrictive sense and not beyond it.

The High Court Division having found that in the instant case, the predecessor of the petitioners purchased the case land and constructed his house thereon, but the prayer of the defendant-respondent for pre-emption of the said land was allowed by the learned Munsif (now Assistant Judge) which was

affirmed up to the Appellate Division and consequently, the petitioners lost their ownership of the suit land and so they are no longer 'owners' of their homestead and as such they do not come within the ambit of section 6 of the Ordinance.”

In the instant suit, we have already noticed that the plaintiff-opposite parties filed the Partition Suit No.11 of 2005 before the Senior Assistant Judge, Karimganj, Kishoreganj, got saham in respect of 0.27 acres of land, and the defendants-petitioner got saham of .06 decimals of land, which was finally affirmed and upheld up to the Appellate Division. Therefore, the petitioners no longer own their homestead, which has 33 decimals of the suit land save and except for .06 decimals. Further, since the petitioners are owners of .06 decimals of the homestead, they will not be evicted from the above 06 decimals. As such, they do not come within the ambit of Section 6 of the Land Reforms Ordinance, 1984 for the rest of the land as they are no longer owners of that land / homestead.

Considering the above facts and circumstances of the case and the materials on record, I am of the firm view that the learned Judges of the courts below correctly appreciate and construe the documents and materials on record in accordance with the law in rejecting the application under Section 6 of the Land Reform

Ordinance, 1984 and as such, no interference is called for by this court.

As a result, the Rule is discharged without any order as to cost.

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

Communicate this Judgment at once.

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

Kabir(BO)