

HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

**Present:**

**Mr. Justice S M Kuddus Zaman**

**CIVIL REVISION NO.949 of 2011.**

In the matter of:

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

Hamidul Hoq @ Hamidul Islam Fazlu  
being dead his heirs:

1(ka) Dishad Chowdhury and others  
**...Petitioners**

-Versus-

Abdul Quddus and others

**...opposite parties**

Mr. Mohammad Mahmud Hasan with  
Mr. Salah Uddin, Advocates

**.For the petitioners No.16 & 45.**

Mr. Shaikh Faruque Hossain,  
Advocate

**....For the opposite party Nos.1-4**

**Heard & judgment on:25.11.2024.**

This Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the impugned judgment and decree dated 23.09.2010 passed by the learned District Judge, Nilphamari in Other Appeal No.01 of 2006 affirming those dated 12.10.2005 passed by the learned Senior Assistant Judge, Domar, Nilphamari in Other Suit No.43 of 1993 decreeing the suit 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 in short are that the opposite parties and plaintiffs instituted above suit for partition

for 22.35 acres land appertaining to C.S. khatians No.201, 199, 194 and 192 claiming a separate saham for 1.83 acres land by inheritance claiming that the petitioners were the heirs of C.S. recorded tenants.

Above suit was contested by Defendant Nos.3, 4,11,12,24, 26, 32,, 36-40, 41-44 by filing separate written statements and they claimed separate saham.

At trial plaintiffs and defendants examined three witnesses each and produced and proved some documents which were marked Exhibits.

On consideration of facts and circumstances of the case and evidence the record the learned Assistant Judge decreed above suit and granted separate saham for the plaintiffs for 1.28 acres land and other defendants were also given separate sahams.

Being aggrieved by above judgment and decree defendant Nos.16, 30(ka)-30(Gha),32 and 45, 46, 49 as appellants preferred Other Appeal No.01 of 2006 to the learned District Judge, Nilphamari who dismissed above appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by above judgment and decree of the court of appeal below above appellants as

petitioners moved to this court and obtained this rule.

Mr. Mohammad Mahmud Hasan learned Advocate for defendant Nos.16 & 45 submits that the plaintiffs instituted above suit on 29.05.1993 and before filing of above suit in the disputed mouza R.S. khatian was finally published. But the plaintiffs did not bring above R.S. khatian into the hotchpotch of the schedule of this suit. As such the co-sharers who were necessary parties in this partition suit could not be identified and impleaded as defendants in above suit. Secondly since C.S. khatian has been divided into several S. A. khatians it would be difficult to identify land on the basis of C.S. khatian at the time of execution of decree or preparation of the final decree. If S.A. khatian were brought into hotchpotch then all-co-sharers could come up and contest the suit and seek separate saham. Since the plaintiff did not incorporate latest survey khatians in the plaint the impugned judgment and decree may be set aside and the suit may be remanded to the trial court for retrial after giving an opportunity to the plaintiff to amend the plaint and incorporate latest survey khatians,

S.A. and R.S. khatians in the schedule of the plaint.

Mr. Shaikh Faruque Hossain learned Advocate for the opposite party frankly concedes to above submissions of the learned Advocate for the petitioner and submits that in this suit for partition the plaintiffs should have incorporated latest survey khatians in order to identify the disputed land and the co-sharers who are necessary parties in above suit for partition. But inadvertently the appointed Advocate of the plaintiff at the time of drafting of the plaint erroneously omitted to bring the latest survey khatians in the schedule of the land of the plaint which needs to be corrected. The learned Advocate submits that the ends of justice will be met if the impugned judgment and decree passed by the learned District Judge affirming the judgment and decree of the trial court is set aside and this suit is remanded to the trial court for retrial after giving the plaintiffs an opportunity to amend their plaint and adduce further evidence, if any.

I have considered the submissions of the learned Advocates for respective parties and carefully examined all materials on record.

It is true that the plaintiffs claim title in the disputed property as successive heirs of C.S. recorded

tenants and accordingly they have incorporated in the schedule of the plaint four C.S. khatians as mentioned above. But since before filing of this suit S.A. khatian was finally published and before hearing of the appeal in the court of appeal below the R.S. or B.S. khatians have finally published, the plaintiffs should have incorporated in the schedule of the plaint the corresponding S.A. khatians in order to identify the latest location of the disputed land and identify and implead the co-sharers who are the necessary parties in a suit for partition. Since from above C.S. khatians several S.A. khatians have been prepared and by way of transfer and inheritance the number of co-sharers in the jomas have increased which can be detected only if the latest khatians are incorporated in the schedule to the plaint. As such I find substance in above submissions of the learned Advocates for respective parties that the impugned judgment and decree may be set aside and this suit maybe remanded to the trial court for retrial after giving both sides an opportunity to amend their respective pleadings and adduce further evidence.

In above view of materials on record I find substance in this Civil Revision and the rule issued in this connection deserves to be made absolute.

In the result, the rule is made absolute.

The impugned judgment and decree dated 23.09.2010 passed by the learned District Judge,

Nilphamari in Other Appeal No.01 of 2006 affirming those dated 12.10.2005 passed by the learned Senior Assistant Judge, Domar, Nilphamari in Other Suit No.43 of 1993 is set aside and above suit is remanded to the trial court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence, if any.

Let the lower courts' records along with a copy of this judgment be transmitted down at once.

Md. Kamrul Islam  
Assistant Bench Officer