

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

Present:

**Mr. Justice S. M. Saiful Islam**

**Civil Revision No. 875 of 2011**

With

**Civil Revision No. 951 of 2011**

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Abdul Matin and others.

---- Plaintiff-Respondent-Petitioners.

-versus-

Md. Osman Ali and others.

---- Defendant-Appellant-Opposite Parties  
(In both the Cases).

Mr. Md. Akramul Haque with

Mr. Md. Mosharaf Hossain, Advocates

---- For the Petitioners.

Mr. Shasti Sarker, Senior Advocate with

Mr. Obayed Ahmed and

Mr. Laxman Biswas, Advocates

--- For the Opposite Parties  
(In both the Cases).

**Heard On: 25.01.2026, 26.01.2026,  
27.01.2026, 28.01.2026 and 29.01.2026.**

**Date of Judgment: 15.02.2026.**

**S. M. Saiful Islam, J.**

As these two Civil Revisions (Civil Revision 875 of 2011 and Civil Revision 951 of 2011) derive from the same impugned judgment and as both the Revisions are between the same parties, respecting the same properties, these have been heard together and being disposed of by this common judgment.

In Civil Revision 875 of 2011 Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 20.10.2010 passed by the learned Joint District judge, 1<sup>st</sup> Court, Gaibandha in Other Class Appeal No. 04 of 2008 (after analogous hearing with Other Class Appeal No. 05 of 2008) reversing those dated 20.11.2007 passed by the learned Senior Assistant Judge, Shaghatta in Other Class Suit No. 35 of 1994 (after analogous hearing with Other Class Suit No. 58 of 1994) should not be set aside and/or pass such other or further order or orders passed as to this Court may deem fit and proper.

In Civil Revision 951 of 2011 Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 20.10.2010 passed by the learned Joint District judge, 1<sup>st</sup> Court, Gaibandha in Other Class Appeal No. 05 of 2008 (after analogous hearing with Other Class Appeal No. 04 of 2008) reversing those dated 20.11.2007 passed by the learned Senior Assistant Judge, Shaghatta in Other Class Suit No. 58 of 1994 (after analogous hearing with Other Class Suit No. 35 of

1994) should not be set aside and/or pass such other or further order or orders passed as to this Court may deem fit and proper.

Short facts of the case of the plaintiffs in Other Class Suit No. 35 of 1994 is that Kapashi Bibi, Azimuddin and Rupban Bibi were C S recorded tenant in .84 *acres* of land appertaining to C S *Khatian* No. 83 of Badinar Para Mouja under Saghatta Police Station of Gaibandha District. Kapashi Bibi died leaving behind one son Azimuddin and one daughter Rupban Bibi. Thus Rupban Bibi got .28 *acres* of land in the disputed *Khatian*. Rupban Bibi transferred her .28 *acres* of land to her three sons Osman Ali, Noya Mia and Abdur Razzak by deed of *heba-bil-awaj*. Later on those sons of Rupban Bibi transferred .185 *acres* of land to Amir Hossain. Those three sons of Rupban Bibi i.e. Osman Ali, Noya Mia, Abdur Razzak along with Amir Hossain filed Other Class Suit No. 35 of 1994 against the heirs of C S recorded other tenant Azimuddin in the Court of 2<sup>nd</sup> Assistant Judge, Gaibandha praying for partition respecting their .28 *acres* of land.

The defendants of Other Class Suit No. 35 of 1994 contested the suit by filing a written statement contending *inter alia* that Azimuddin, Kapashi Bibi and Rupban Bibi were tenant in the suit *jote* under Shukurullah and others till 1332 B. S. That Shukurullah filed Rent Suit No. 674/1932 against those tenants

and that suit was decreed and accordingly Shukurullah took the land in his *khas* possession. That thereafter Azimuddin and Kapashi Bibi executed and registered *Kabuliyat* in favor of Shukurullah and took settlement afresh of that .84 *acres* of land. That Rupban Bibi did not take that fresh settlement and her name was wrongly included in the C S *Khatian* and she never owned and possessed land in the suit *Khatian*. That Kapashi Bibi transferred 1.185 acre of land including her portion in the suit *Khatian* to her son Azimuddin by registered *Kabla* deed dated 13/05/1952. That Azimuddin transferred .27 *acres* of land from the suit *Khatian* to Samirannesa and in the S A Record the suit land has been correctly recorded in the name of Azimuddin in S A *Khatian* No. 101 and Samirannesa in the S A *Khatian* No. 102. Thus the defendants of Other Class Suit No. 35 of 1994 prayed for dismissal of that suit and also they being as plaintiff filed Other Class Suit No. 58 of 1994 praying for partition as well as declaration of title respecting their .57 *acres* of land.

Learned trial Court tried both the suits analogously and by analogous judgment and decree dated 21/08/1995, dismissed the Other Class Suit No. 35/1994 and decreed the Other Class Suit No. 58/1994.

Being aggrieved from that judgment and decree, the plaintiffs of Other Class Suit No. 35/1994 (the defendants of

Other Class Suit No. 58/1994) filed Other Class Appeal No. 229 of 1995 and 230 of 1995 before the Court of District Judge, Gaibandha. Learned Appellate Court heard two appeals analogously and by the judgment dated 08/06/2000 remanded the suits to the Trial Court for fresh trial. Learned Appellate Court directed the Trial Court for holding a local investigation by appointing a survey knowing lawyer to decide whether the land stated in registered *Kabuliat* dated 02/02/1933 and the land appertaining to C S *Khatian* 83 is same land or not.

Learned Trial Court accordingly after holding local investigation, disposed of these two suits analogously. Learned trial Court then dismissed the Other Class Suit No. 35/1994 and decreed the Other Class Suit No. 58/1994 by the judgment and decree dated 20/11/2007. Learned trial Court held by that judgment that Rupban Bibi lost her right title interest in the suit *Khatian* and therefore the deed executed by Rupban Bibi on 08/12/1987 in favor of plaintiff Nos. 1-3 (In Other Class Suit No. 35/1998) was merely paper transaction and that plaintiffs had not acquired any right, title interest by that deed. Trial Court further held that the deed executed by Kapashi Bibi to Azimuddin dated 13/03/1952 was a genuine deed and the defendants of Other Class Suit No. 35/1998 (plaintiffs of Other Class Suit No. 58/1998) had been able to prove their title and possession over

.57 acres of suit land. Accordingly, learned trial Court dismissed the Other Class Suit No. 35/1994 and decreed the Other Class Suit No. 58/1994 by the judgment and decree dated 20/11/2007.

Being aggrieved from that judgment and decree, the plaintiffs of Other Class Suit No. 35/1994 (the defendants of Other Class Suit No. 58/1994) filed Other Class Appeal No. 04 of 2008 and 05 of 2008 before the Court of District Judge, Gaibandha. These two Appeals were transferred to the Court of Joint District Judge, 1<sup>st</sup> Court, Gaibandha and that Appellate Court after hearing the parties of both the Appeals, allowed the Appeals and decreed the Other Class Suit No. 35/1994 allotting *saham* on .28 acres of land in favor of the plaintiffs of that suit. Learned Appellate Court also decreed the Other Class Suit No. 58/1994 in part allotting *saham* on .28 acres of land in favor of the plaintiffs of that suit by the judgment and decree dated 20.10.2010.

Being aggrieved and dissatisfied from that judgment and decree of the Appellate Court, defendants of Other Class Suit No. 35/1994 (the plaintiffs of the Other Class Suit No. 58/1994) filed these two revisional applications and obtained the Rules.

At the time of issuance of the Rules, operation of the impugned judgment was stayed for a period of 6 (six) months which was extended later on till disposal of the Rules.

Learned Advocate Mr. Akramul Haque along with the learned Advocate Mr. Md. Mosharaf Hossain, appearing on behalf of the petitioner submits that the learned trial Court rightly decreed the suit of the petitioners and dismissed the suit of the opposite party after proper consideration of evidence on record, but the learned Appellate Court through misreading and non-consideration of evidence on record allowed the Appeals by the impugned judgment and decree. He further submits that the Plaintiff-Opposite Party of Other Class Suit No. 35/1994 (the defendant of the Other Class Suit No. 58/1994) failed to prove their title and possession over the suit land and on the other hand the defendants of the Other Class Suit No. 35/1994 (Plaintiff of Other Class Suit No. 58/1994) proved their title and possession over the suit land. Accordingly, the Appellate Court ought to have affirmed the judgment and decree of the trial Court. He also submits that the learned Appellate Court did not apply judicial mind in passing the impugned judgment and the judgment of the Appellate Court is neither proper nor in accordance with law. For these reasons the learned Advocate for the petitioners prayed for making the Rules absolute.

On the other hand, learned Senior Advocate Mr. Shasti Sarker along with the learned Advocate Mr. Laxman Biswas appearing on behalf of the opposite party submits that the learned

Appellate Court upon proper appreciation of evidence on record has rightly allowed the Appeal. Rupban Bibi was all along tenant in the suit *Khatian* and the suit land was never sold in auction. He further submits that the S A Record of the suit land was wrongly prepared in collusion with Azimuddin. He also submits that the learned Appellate Court has not committed any error in law in the impugned judgment and decree. In support of his contentions learned Advocate referred to the cases of *Amjad Sheikh Vs. Siddik Hossain* [8 DLR 217], *Cinmoy Chowdhury Vs. Mridul Chowdhury* [55 DLR (AD) 115].

Heard the learned Advocates for both the parties. Perused the revisional application along with the annexures, the impugned judgment and decree and the lower Court records.

Crux of the dispute in the instant case between the parties lies in the matter whether Rupban Bibi was tenant in the disputed C S *Khatian* No. 83. According to the plaintiffs of the Other Class Suit No. 35/1994, Rupban Bibi was tenant in that *Khatian* and her name was rightly recorded in that *Khatian* and they claim the suit property by virtue of transfer by Rupban Bibi. On the other hand the plaintiffs of the Other Class Suit No. 58/1994 claim that Rupban Bibi was not tenant in C S *Khatian* No. 83 and her name was wrongly recorded in that *Khatian*. They claim that landlord of that *Khatian* Shukurullah filed Rent Suit No.

674/1932 against the tenants and that suit was decreed and accordingly Shukurullah took the land in his *khas* possession and thereafter Azimuddin and Kapashi Bibi executed and registered *Kabuliyat* on 23/01/1933 in favor of Shukurullah and took settlement afresh of that .84 acre of land. According to them Rupban Bibi did not take that fresh settlement and she never owned and possessed any land in this *Khatian* after that *Kabuliyat* and settlement.

Certified copies of disputed *Khatian* No. 83 have been filed by both the parties which have been marked as exhibit Nos. "1" and "Gha". On perusal of that C S Record it appears that Rupban Bibi was a recorded tenant in 4 *anas*, 13 *gandas*, 1 *kara*, 1 *kranti* share in that *Khatian*. Defendants of Other Class Suit No. 35/1994 (plaintiffs of Other Class Suit No. 58/1994) have filed the certified copy of the registered *Kabuliyat* dated 02/02/1933 which has been marked as Exhibit- "Cha". On perusal of that *Kabuliyat* it appears that Kapashi Bibi executed that *Kabuliyat* on her own behalf and on behalf of her minor son Azimuddin. It is also found from that *Kabuliyat* that it does not contain the C S Plot number or *Khatian* number and land included in that *Kabuliyat* was described only by boundaries. Thus it appears that this *Kabuliyat* was executed before Cadastral Survey in that area. It also appears from that *Kabuliyat* that the

term of this *Kabuliyat* was only three years. So, it appears that after three years, fresh settlement of the suit land was given. Thus, though Rupban Bibi did not execute the *Kabuliyat* dated 02/02/1933, but that *Kabuliyat* expired after three years and after that, Rupban Bibi had opportunity to take settlement of that land with her mother Kapashi Bibi and brother Azimuddin. So, it cannot be said that the C S Record in the name of Rupban Bibi was wrong on the basis of Rent Suit and *Kabuliyat* because that rent suit and *Kabuliyat* happened prior to the C S Record and Rupban Bibi had opportunity to become tenant of that *Khatian* at the time of C S Record. According to the provisions of section 103(B) of the Bengal Tenancy Act, C S Record is presumed to be correct until and unless it is proved to be incorrect. In the instant case, the defendants of the Other Class Suit No. 35/1994 have not been able to prove reliably that the C S Record was incorrect. In such facts and circumstances, I am of the opinion that Rupban Bibi was tenant in C S 83 *Khatian* and C S Record was correctly prepared in her name.

Defendants of the Other Class Suit No. 35/1994 (plaintiffs of the Other Class Suit No. 58/1994) claim that Kapashi Bibi transferred her land in the suit *Khatian* to Azimuddin by *Kabla* dated 13/03/1952. That *Kabla* has been filed by them which has been marked as Exhibit- "Ka". It has been stated in that *Kabla*,

that Kapashi Bibi owned entire .84 acres of land in the suit *Khatian* and out of that .84 acres of land; she transferred .82 acres of land to her son Azimuddin. It is not clear from the pleadings of the defendants of the Other Class Suit No. 35/1994 (plaintiffs of the Other Class Suit No. 58/1994) that when and how Kapashi Bibi owned the entire .84 acres of land in the suit *Khatian* because according to the statement in their plaint and written statement, Azimuddin himself took the settlement of the suit land with her mother Kapashi Bibi and Azimuddin himself was C S recorded tenant. Thus statement in the deed dated 13/3/1952 (Exhibit- "Ka") is contradictory with the statement in the pleadings of the defendants of the Other Class Suit No. 35/1994 (plaintiffs of the Other Class Suit No. 58/1994).

Learned Appellate Court has held that this deed dated 13.03.1952 (Exhibit- 'Ka') was either collusive or executed by false personification. But it may be mentioned here that this deed is more than thirty years old document produced from proper custody. The plaintiffs of the Other Class Suit No. 35/1994 have not prayed any relief against that deed. No evidence has been adduced by the plaintiffs of the Other Class Suit No. 35/1994 to prove that this deed is forged or otherwise illegal. In such facts and circumstances, it is not proper to say that this deed is collusive or executed by false personification. But it can be said

that this deed is effective only in respect of 2 (two) *anas* share of Kapashi Bibi as recorded in the C S *Khatian*.

In the facts and circumstances, I am of the opinion that C S Record of the suit *Khatian* is correct and the parties are entitled to get *saham* according to the shares recorded in that *Khatian*. Predecessor of the plaintiffs of the Other Class Suit No. 35/1994, Rupban Bibi was tenant in the C S 83 *Khatian* in 4 *anas* 13 *gandas* 1 *kara* 1 *kranti* share in .84 *acres* land and accordingly she was owner of .2450 *acres* of land. Though Rupban Bibi transferred .28 *acres* of land to plaintiffs Nos. 1-3 of Other Class Suit No. 35/1994 by *heba bil ewaj* deed dated 08/12/87, they will get only .2450 *acres* of land by that deed. Thus the plaintiffs of the Other Class Suit No. 35/1994 are entitled to get *saham* on .2450 *acres* of land from the suit *Khatian*.

On the other hand, C S recorded tenant Azimuddin had 9 *anas*, 6 *gandas*, 2 *karas*, 2 *krantis* share in the .84 *acres* of land in the C S *Khatian*. He got 2 *anas* share of Kapashi Bibi by the *kabla* deed dated 13/03/1952 (Exhibit- "Ka"). Thus Azimuddin got rest share in the C S *Khatian* and accordingly he was entitled to get rest .5950 *acres* of land. Admittedly, he transferred .27 *acres* of land to the defendant No. 4 of Other Class Suit No. 58/1994. So the plaintiffs of Other Class Suit No. 58/1994 are entitled to get *saham* on .3250 *acres* of land. Defendant No. 4 of

Other Class Suit No. 58/1994 Most. Amiran Alias Samirannesa is entitled to get *saham* on .27 acres of land subject to payment of requisite court fee. Regarding the possession of the suit land, the findings of the learned Appellate Court seems to me just and proper.

Thus upon consideration of the evidence on record and relevant provisions of law, I am of the opinion that learned Appellate Court has rightly decreed the Suits in preliminary form, but the amount of land allotted to the parties seems to be inappropriate and requires to be modified. In the facts and circumstances, I am of the opinion that these Rules are liable to be discharged with modifications indicated above.

In the result, these Rules are discharged without any order as to costs and with modifications mentioned below.

The Other Class Suit No. 35/1994 is decreed in part for partition in preliminary form against defendant Nos. 1-9 and *ex parte* against the rest without any orders as to costs. Plaintiffs of that suit will get *saham* on .2450 acres of land in the suit *Khatian*.

The Other Class Suit No. 58/1994 is decreed in part for partition in preliminary form against defendant Nos. 1-3/6 and *ex parte* against the rest without any orders as to costs. Plaintiffs of that suit will get *saham* on .3250 acres of land in the suit

*Khatian*. Plaintiffs' title to that .3250 acres of land is hereby declared.

Parties are directed to partition the suit land amicably within 30 (thirty) days from the date of receipt of this judgment by the trial Court, failing which, the parties will be entitled to get the land partitioned through Court according to the *saham* allocated to them.

The order of stay passed earlier by this Court is hereby vacated.

Records of the Courts below be sent to the concerned Court at once along with a copy of the judgment.