

**Present:**  
**Mr. Justice Md. Mansur Alam**

**CIVIL REVISION NO. 2455 OF 2025**

**IN THE MATTER OF:**

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

-And-

**IN THE MATTER OF:**

Abu Sufiyan Talukder

Defendant No.6-appellant-petitioner

Versus

1.Selina Monir and others

Plaintiff-respondent-opposite party

2.Abul Kalam Azad and others

Defendant-respondent-opposite parties

Mr. Md. Serajul Haque, Advocate with

Mr. Mohammad Abdulla Al Masud, Advocate

Mr.Shibli Nomani, Advocate

for the petitioners

Mr. Jamir Uddin Sircar Senior Advocate with

Mr. Kazi Raman (Manik), Advocate

for the opposite party No.1

**Heard on:15.02.26, 26 02.26**

**& 01.03.2026**

**Judgment on:27.04.2026**

1.The Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 08.05.2025 (decree signed on 13.05.2025) passed by the learned Additional District Judge, 1<sup>st</sup> Court, Faridpur in Title Appeal No.178 of 2015 disallowing the appeal and affirming the judgment and decree dated 24.08.2015 (decree signed 31.08.2015) passed by the learned Assistant Judge, Sadarpur, Faridpur in Title Suit No.84 of 2004 decreed the suit in part preliminary forum

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

2.The case of the plaintiff's respondent-opposite party in short is that the original owners of the suit land were Hira Lal Chandra, Haro Lal Chandra and Harembo Lal Chandra in the R.S. khatian No.606 in equal share. Thereafter, Haro Lal Chandra sold out 60 decimals of land by registered patta being No.7806 dated 26.08.1949 to Badulla Moshalche and thereafter Badulla sold out his land to Abdur Rahman Kazi dated 07.12.1950 and S.A. khatian No. 603 was rightly prepared in the name of Abdur Rahaman Kazi. Abdur Rahman Kazi sold out 30 decimals of land to Fazlul Haque Bepari vide registered sale deed No.3076 dated 31.07.1978 and Fazlul Haque Beparai thereafter sold out 07 decimals of land to Md. Masudul vide registered sale deed No. 2664 dated 20.06.1983 who rightly mutated his name over the suit property. Thereafter for personal difficulties, Md. Masudul appointed Monirul Islam as his attorney with some special powers on the suit land vide registered Power of Attorney Deed No.441 dated 22.02.1998. Monirual Islam by virtue of that Power of Attorney transferred 07 decimals of land to his wife Selina Monir (plaintiff opposite party No.1) vide registered heba deed No.28 dated 02.01.2004 and she got the possession over the suit land but the defendants with ill motive on 05.07.2004 at night dispossessed the plaintiff from the suit land. Therefore, the plaintiff-responent-opposite party filed instant suit

with a prayer for declaration of title, for partition and for recovery of khas possession.

3. On the other hand, defendant No.6 and the defendant Nos. 8-9 contested of the suit by filling two sets of written statement. The short fact of the case of defendant No.6 is that admittedly the suit land appertaining to R.S. khatian No. 606 was belonged to Hira Lal Chandra, Haru Lal Chandra and Herambo Lal Chandra in equal share, who sold out their 60 decimals of land vide registered sale deed No. 8424 dated 07.12.1950 to Abdur Rahaman Kazi, who thereafter sold out his said 60 decimals of land vide registered sale deed being Nos. 3076 and 3077 dated 31.07.1978 to Fazlul Haque Beparai. Fazlul Haque Beparai being in possession sold out 7 decimals of land by registered sale deed No.2666 dated 20.06.1983 to Mohammad Aynal Huqe, sold out 01 decimal of land by registered sale deed being No.6669 dated 20.06.1983 to Razia Begum, sold out 06 decimals of land by registered sale deed No. 4447 dated 23.11.1983 to Mr. Habibur Rahman and also sold out 01 decimal of land by registered sale deed No.2496 dated 09.09.1990 to Sabiha Mannan. Aforesaid Aynal Haque sold out his 07 decimals of land by registered sale deed No.2981 dated 17.11.1993 to this defendant No. 6 Sabiha Mannan. Rezia Begum sold out her 01 decimal of land by registered sale deed No. 3502 dated 23.12.1993 to present defendant No.6, Habibur Rahman sold out his 06 decimals of land by registered sale deed No. 505 dated 26.02.1997 to the present defendant No.6. The aforesaid Sabiha

Mannan sold out her 01 decimal of land by way of registered sale deed No.1312 dated 03.04.2002 to the defendant No. 6. In this way the defendant No. 6 is enjoying and possessing 15 decimals of land in the northern side of the suit plot. The defendant No. 6 has dwelling house in R.S. Plot No. 83 which is adjacent to the alleged road. The plaintiff has no right title interest and possession upon the suit land.

4.The defendant Nos.8-9 contested the suit filling separate written statement and their case in short is that admittedly the suit land appertaining to R.S. khatian No. 606 was belonged to Hira Lal Chandra, Haru Lal Chandra and Herambo Lal Chandra in equal share. After demise of Hira Lal Chandra his brothers Haru Lal Chandra and Herambo Lal Chandra sold out their 60 decimals of land by a registered patta No.7806 dated 26.08.1949 to Badulla Mashulchi who thereafter sold out his 60 decimals of land by a registered deed No.8424 dated 17.12.1950 to Abdur Rahman Kazi. Abdur Rahman Kazi being in possession sold out his 30 decimals of land by a registered sale deed No.3076 dated 31.07.1978 to Fazlul Haque Beparai and that Fazlul Haque Beparai sold out 30 decimals of land by a registered sale deed No.2665 dated 20.06.1983 to Parvin Akter. Fazlul Haque Beparai also sold out 07 decimals of land by a registered sale deed No.2667 dated 20.06.1983 to Mohammad Abdul Majid. Aforesaid Parvin Akter died leaving behind her husband Al-Masud Maksudul Hoqe, mother Amena Begum and father Samsuzzaman @ Samsuddin

Chowdhury as her legal heirs who thereafter sold out their 06 decimals of land by a registered sale deed No.1750 dated 05.05.2004 to Ishaque Bepari and Yakub Bepari. Thereafter, the aforesaid heirs of Parvin Akter together with Mohammad Abdul Mojid jointly sold out their (1+7)=8 decimals of land by registered sale deed No. 1751 dated 05.05.2004 to Mokshed, Earshad, Kalu and Arjo. Isqhaque Bepari and Yakub Bepari sold out their 05 decimals of land by a registered sale deed No.2528 dated 10.10.2009 to the defendant No. 8 Abul Kalam Azad and also sold out the remaining 01 decimals of land by registered sale deed No. 2527 dated 14.10.2009 to the defendant No.9 Yousuf Mollah. Kalu and Arjo sold out their 04 decimals of land by registered sale deed No. 2567 dated 30.07.2007 to the defendant No. 9 Yousuf Mollah. In such way the defendant Nos.8 and 9 are enjoying and possessing the aforesaid 10 decimals of land in the suit land.

5.Learned trial Judge, Sadarpur, Faridpur after evidence decreed the suit in part and allotted 07 decimals of land to the plaintiff in separate shaham by the judgment and decree dated 24.08.2015.

6.Being aggrieved by and dissatisfied with said judgment and decree passed by the learned Assistant Judge, Sadarpur, Faridpur this defendant petitioner preferred appeal being Title Appeal No. 178 of 2015 before the learned District Judge, Faridpur which was transferred to learned Additional District Judge, 1<sup>st</sup> Court, Faridpur who after hearing both the parties disallowed the

appeal and thereby the affirmed judgment and decree of trial Court on 08.05.2025.

7. Being aggrieved by and dissatisfied with the judgment and decree of learned Appellate Court the defendant-appellant-petitioner moved this revision and obtained Rule.

8. Mr. Md. Serajul Hoque Learned Advocate appearing on behalf of the defendant No. 6 appellant-petitioner takes me through the impugned judgment and decree, deposition of the witnesses and other materials on record and then submits that the plaintiff-respondent-opposite party is not a co-sharer in the suit land and the suit land not joint property of the party. So, there is no cause of action for partition the suit land in the plaint. A partition decree cannot be passed against the stranger who are not co-sharer and as such the plaint is liable to be rejected under the provision of order 7 Rule 11 of the Code of Civil Procedure. The plaintiff-opposite party filed the present suit praying for declaration of title, recovery of possession and partition for 07 decimals of land. So admittedly the plaintiffs have no right title and possession upon the suit land. Plaintiff-respondent-opposite party also failed to prove his previous possession and dispossession by the defendant-appellant petitioner on 05.07.2004 which learned trial Court held that: “সার্বিক আলোচনার প্রেক্ষিতে নালিশী জমিতে বাদী দখল প্রমান করতে সমর্থ না হওয়ায় এবং ইং ০৫.০৯.০৪ তারিখে বেদখল হয়েছেন বলে যে দাবী করেছেন তা প্রমান করতে সক্ষম না হওয়ায় বাদী স্বত্ব প্রচার ও উচ্ছেদপূর্বক খাস দখলের ডিগ্রি পাবেন না। ” No Court can pass a decree in a partition suit without considering the title and

possession of the plaintiff but both the learned Courts below here without considering the same most arbitrarily decreed the suit by passing the impugned judgment and decree and thereby committed error of law resulting in an error in the decision occasioning failure of justice.

9.Learned Advocate also submits that the alleged Power of Attorney deed No. 441 dated 22.02.1998 discloses that Masudul Haque appointed Monirul Islam Hoq as attorney only for selling out the property but not to gift the property to anybody. Learned Advocate referred the case reported in 10 BLT (AD) at page-32 where it is held that a person did not acquire any title by way of gift from the person who himself had no title but merely had Power of Attorney to transfer. It appears from the gift deed No. 28 dated 02.01.2002 that Monirul Islam Hoq as a land owner gifted the property as donor not as attorney. Learned trial Court without considering the aforesaid deed wrongly held that: “মাছুদুল হক উক্ত ০৭ শতক জমি বাবদ ইং ২২/০২/১৯৯৮ তাং ৪৪১ নং আম-মোজারনামা মূলে মনিরুল ইসলাম কে আমমোজার নিয়োগ করেন প্রদর্শনী ২(ক)। মনিরুল ইসলাম ইং ০২/০১/২০০২ তারিখের ২৮ নং দানপত্র মূলে উক্ত ০৭ শতক জমি বাদী সেলিনা মনিরকে দান করেন (প্রদর্শনী-২), উল্লেখিত আলোচনা থেকে দেখা যায় যে, বাদী দাবীকৃত ০৭ শতক জমি বাবদে স্বত্ব প্রমাণ করতে সমর্থ হয়েছেন।” Learned Appellate Court was misconceived in discussing the chain of title of plaintiff-respondent-opposite party, affirmed the judgment and decree of the trial Court.

10. Learned counsel further submits that though the plaintiff claimed that her husband Monirul Huq acquired title upon the suit land on 02.01.1999 on payment of proper value to Masudul Huq but plaintiff has failed to produce any such registered document before the court Section 89 of the State Acquisition of Tenancy Act, 1950 provides that every transfer shall be made by registered instrument and according to section 54 of the Transfer Property Act, 1882 that sale of tangible immovable property can be made in only by a registered instrument and according to section 49 of the Registration Act, 1908, that no document required to be registered shall operate to create, declare assign, limit or extinguish any right, title or interest unless it has been registered. Learned both the Courts below without considering this preposition of law most arbitrarily decreed the suit by pronouncing the impugned judgment and decree and thereby committed error of law resulting in an error in the decision occasioning failure of justice. Learned Advocate further submits that though the sale deed No.2664 dated 20.06.1983 executed by Fazlul Haque Bepari in favour of the plaintiff and the sale deed No. 2666 dated 20.06.1983, sale deed No.2669 dated 20.06.1983 executed by Fazlul Haque Bepari in favour of defendant No.6 were executed and registered on the same day but the sale deed of the defendant No.6 was acted upon on 20.06.1983 and defendant No.6 got possession in the suit land but the sale deed of the plaintiff is not acted upon till today and the plaintiff opposite party thus has no possession upon the suit

land. Learned Appellate Court most arbitrarily beyond the claim of the plaintiff hold that: “মোঃ ফজলুল হকের নিকট বাদীর ০৭ শতাংশ জমির দলিল আগে। বাদীর পূর্ববর্তী মালিকানার দলিলে (প্রদর্শনী ২/খ) বাদীর উক্ত ০৭ শতাংশ জমি তর্কিত দাগের উত্তরে মালিকানা প্রাপ্ত হয় মর্মে উল্লেখ আছে। বিবাদীর মালিকানার দলিলে বিবাদী নালিশা দাগে ১৫ শতাংশ জমি উত্তরে ভোগদখল করেন মর্মে উল্লেখ আছে। বাদীর জমি যেহেতু আগে এবং চৌহদ্দীতে বাদী প্রাপ্ত হয়েছেন সেহেতু ৬ নং বিবাদীর উত্তরে অবন্টনকৃত ভূমিতে মালিকানার অর্জিত হয় নাই। গৃহীত সাক্ষ্য প্রমাণ পর্যালোচনায় দেখা যায় নালিশী ভূমির উত্তরে রাস্তা। বিবাদী বাদীর পরে দলিল করে উত্তরে রাস্তা সংলগ্ন ভূমিতে স্বত্ব দখল দাবী করেন যাহা কোন ভাবেই অত্র আদালতের নিকট গ্রহণযোগ্য নয়।” Learned Appellate Court thereby committed error of law resulting in an error in the decision occasioning failure of justice.

11.Learned Advocate lastly submits that the impugned judgments and decrees of the Courts below are totally based on misreading, non-consideration of materials evidence on record and misconstruction of documents and thereby committed error of law resulting in an error in the decision occasioning failure of justice.

12.Mr.Jamir Uddin Sircar Learned Senior Advocate with Mr. Md. Kazi Rahman Manik learned Advocate appearing for the plaintiff-respondent-opposite party argues that learned trial judge and learned appellate Court properly scrutinized the evidence on oral and documentary passed the impugned judgments and decrees. Learned appellate Court was justified in disallowing the appeal and thereby affirmed the judgment and decree of trial Court on 08.05.2025. Learned Advocate further submits that the attorney executed his work with the instructions of his principal and if there

arises any question about the activities of attorney by his principal or the agent of principal that will be valid under legal principles of law. The 3<sup>rd</sup> party has no right to arise any question about the activities of attorney. In the present case the petitioner is a 3<sup>rd</sup> party which has no locus standi to make any question after 24 years of the execution of this Power of Attorney. Moreso, the petitioner or the principal of this Power of Attorney deed did not challenge this registered deed within the specified time under the Limitation Act. The petitioner raised the present dispute regarding the legality of the deed long after 24 years which bears no presumptive value. Learned Advocate added that the plaintiff-respondent-opposite party's deed will give priority in accordance with the principles of law and equity because her deed was registered before the deed of the petitioner and the plaintiff-opposite party No. 01 mutated her name regarding the suit land and paid rent to the government till today. Also learned Advocate submits that according to the Power of Attorney Act, 1882 the holder of Power of Attorney exercised his power. The Power of Attorney Act, 1882 provides that the donee of a Power of Attorney may, if he thinks fit execute or do any assurance, instrument or thing in with his own name and a signature and his own seal, where sealing is required, by the authority of donor of the power and every assurance, instrument and thing so executed and done shall be as effectual in law as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof. So, the Power

of Attorney, exercise of power by the said Power of Attorney the transaction of the said property is valid and lawful.

13.Learned Advocate lastly submits that the judgment and decree of learned trial Court is valid and accurate and learned appellate Court was quite justified in disallowing the appeal and affirming the judgment and decree of the trial Court.

14.Having heard the arguments advanced by both the learned Advocates and having perused the evidence on record oral and documentary.

15.The suit land under R.S. khatian No.606 was belonged to Hira Lal Chandra, Haru Lal Chandra and Heram Bolia Chandra in equal share. The subsequent transfer by the R.S. tenants is admitted by the defendant appellant-petitioner. Also, it is admitted subsequent transferee Fazlul Haque Bepari sold out his 07 decimals of land by registered No.2664 dated 20.06.1983 to Masudul Haque. Masudul Haque being in possession appointed Monirul Islam as Attorney vide registered power of attorney deed No. 441 dated 22.02.1998 for selling out the suit land. The plaintiff- opposite party claims attorney Monirul Islam transfer that 07 decimals of land to his wife plaintiff opposite party No. 01 vide registered heba deed No.28 dated 02.01.2004 and the plaintiff-opposite party No.1. has been and have been possessing the suit land. The defendant-respondent-petitioner raises dispute regarding transfer in favour of plaintiff opposite party No.01. Defendant-appellant-petitioner claims that attorney Monirul Islam Haque had

no power to transfer the property to his wife, plaintiff-opposite party No. 01 by way of the gift deed. But it is appears on perusing the evidence that Masudul Haque appointed Monirul Islam Haque as attorney for the purpose of selling out the property. The authority of selling out of the property also includes transfers in any manner of the suit property. So, the transfer by Monirul Islam Haque in favour of his wife by way of heba deed No.28 dated 02.01.2002 is proper and valid. Also, it is proved by the plaintiff-opposite party that Monirul Islam Haque purchased the suit land from Masudul Haque on 02.01.1999. The plaintiff-opposite party did not submit the kabala deed of 02.01.1999. Though the plaintiff has not produced the deed of 02.01.1999 but Monirul Islam Haque has been empowered to transfer the suit land by way of Power of Attorney and accordingly Monirul Islam Haque transfer the suit land to his wife plaintiff opposite party No.01 by way of heba deed No. 28 dated 02.01.2002. Plaintiff-opposite party submitted that heba deed before the trial Court as Exhibit-2. The defendant-appellant-petitioner did not challenge the heba deed No. 28 dated 02.01.2002 and so long this heba deed exists, the title by way of that heba deed cannot be said illegal. That being a registered heba deed, so without setting aside the same the defendant-appellant-petitioner cannot claim that the plaintiff opposite party No.01 did not acquire right, title upon the suit land.

16.The plaintiff-respondent-opposite party's definite case is that Fazlul Haque Beparai sold out his 07 decimals of land by

registered sale deed being No. 2664 dated 20.06 .1983 to Masudul Haque. The source of the plaintiff-opposite party's title is based on this deed No.2664 dated 20.06.1983. It is admitted by the plaintiff-opposite party that Fazlul Haque Bepari sold out 30 decimals of land by registered sale deed being No.2665 dated 20.06.1983. Though these two deeds are executed and registered in the same day on 20.06.1983 but the deed of Masudul Haque being No. 2664 precedes the deed No.2665 as the deed of Masudul Huq executed earlier. So, learned Court below are quite justified to hold that the deed claimed by the plaintiff was executed prior to the deed claimed by the defendant-appellant-petitioner and hence the deed No.2664 will get priority. Learned Appellate Court rightly observed that the defendant-appellant-petitioner No.06 has not acquired right and title upon the non-partitioned suit land and therefore that defendant-appellant-petitioner cannot claim right and title upon the suit land adjacent to the alleged road. Learned Appellate Court rightly found that there is no any dispute among the plaintiff and defendant regarding the ownership of the suit land; only the dispute remains among them relating to the land adjacent to the alleged road. As the plaintiff-opposite party's deed precedes the deed of defendant No.06, as such he cannot legally claim the ownership of the disputed land adjacent to the alleged road.

17.The arguments advanced by the defendant-appellant-petitioner that the plaintiff-opposite party is not entitled to get

shaham in the partition suit in as much he failed to prove his right and title upon the suit land but on appreciation of the evidences oral and documentary that the deed purchased by the plaintiffs transferor will get priority than the deed of defendant-petitioner. The defendant-appellant-petitioner cannot raise any question regarding the contention of the deed of Power of Attorney as they are not the party of that Power of Attorney deed. The principal of that Power of Attorney deed Mohammad Masudul Haque acknowledged the execution of Power of Attorney deed. So, as a stranger the defendant-appellant-petitioner has no right to challenge the Power of Attorney deed.

18. From the above facts and circumstances and the proposition of law, the impugned judgment and decree of learned appellate Court is well founded and well reasoning. There is no any misreading, mis-interpretation and non-consideration of evidence by the learned appellate Court. In this context we can rely on the decision of Hazari Bala Shaha Versus Niron reported in 17 BLD (AD), 1997 at page 294 where it is held that “It is settled principle of law that the findings of fact arrived at by the lower appellate Court which is the final Court of fact is binding on the High Court Division as revisional Court except in certain well defined exceptional circumstances, such as non-consideration or mis-reading of the material evidence affecting the merit of the case.” But in this case it appears that learned appellate Court carefully considered all the material facts and circumstances of the

case and evidence on record in arriving at its findings. There is no any mis-reading, mis-interpretation and non-consideration of evidence by the learned appellate Court. As such in revisional jurisdiction there is no scope to interfere with the judgment and decree of the appellate Court.

19. In view of the discussion made as above this Court led to find that the plaintiff-opposite party has been able to prove his right title upon the suit land and the learned both the Courts below were quite justified in decreeing the suit in part and allotted the prayed shaham in favour of the plaintiff-opposite party. So, the impugned judgment and decree by the appellate Court warrants no interference.

**20. In the result the Rule is discharged without any order as to costs.**

The impugned judgment and decree dated 08.05.2025 (decree signed on 13.05.2025) passed by the learned Additional District Judge, 1<sup>st</sup> Court, Faridpur in Title Appeal No. 178 of 2015 disallowing the appeal and affirming the judgment and decree dated 24.08.2015 (decree signed 31.08.2015) passed by the learned Assistant Judge, Sadarpur, Faridpur in Title Suit No.84 of 2004 decreed the suit in part preliminary forum is hereby upheld and confirmed.

The order of stay and status-quo granted earlier, at the time of issuance of Rule, is hereby vacated.

Send down the lower Courts' record with a copy of this Judgment to the Courts' below at once.