

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.4305 OF 2010**

In the matter of:

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

And

Md. Nurul Islam and others

... Petitioners

-Versus-

Md. Afzal Hossain being dead his heirs- Most. Atia Begum and others

... Opposite parties

Mr. Md. Zahangir Alam, Advocate

.... For the petitioners.

Mr. Mohammad Eunos, Advocate

.... For the opposite party Nos.2 and

4-11.

**Heard on 20.01.2025 and Judgment on 21.01.2025.**

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 11.10.2020 passed by the learned Additional District Judge, Chapai Nawabgonj in Title Appeal No.100 of 2006 reversing the judgment and decree dated 30.03.2006 passed by the learned Senior Assistant Judge, Sadar, Chapai Nawabgonj, in Other Class Suit No.106 of 1993 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 opposite parties as plaintiffs instituted above suit for declaration of title for "Ka" schedule land and partition

for “Kha” schedule land of the plaint alleging that above property belonged to Kokra Gosh and Koilash Gosh and Kokra Gosh died leaving only son Satish Chandra Gosh as heir. Above Kokra Gosh and Satish Chandra Gosh left this country for good for India after 1947 and exchanged above land with the predecessors of the plaintiffs namely Rukeya Bewa and predecessor of the defendants namely Meherullah Sheikh, Abdul Munaf and defendant Nos.1-3 with their land in India. Above Kokra Gosh and Satish Chandr Gosh executed a deed of Power of Attorney on 28.06.1951 for above land in favor of Abdul Munaf predecessor of defendant No.5 who executed and registered a kabala deed for above land to above seven persons including himself on 13.12.1954.

As one of seven recipients of above kabala deed plaintiffs predecessor Rokeya Bewa acquired  $\frac{1}{7}$  th share of 27.05 acre land but in the relevant S. A. and R. S Katians erroneously only 3 biga land has been recorded in the name of Rokeya Bewa instead of 1.7 acres.

Defendant No.1-7 and 16-17 contested above suit by filling a joint written statement alleging that disputed 27.05 acres land belonged to Koilash Chandra Gosh & Satish Chandra Gosh who exchanged above land with the Indian property of the predecessors of plaintiffs and defendants namely Meherullah Sheikh, Abdul Munaf, Nurul Haque, Moqbul Hoq, Ashraf Ali, Rokeya Bewa and Most. Jamful Bibi. In support of above exchange above Koilash Chandra Gosh and Satish

Chandra Gosh executed a Power of Attorney in favor of Abdul Munaf who executed a registered sale deed in favor of above seven recipients of the exchange on 13.12.1954. Since above seven persons had different quantity of land in India they did not acquire land of above kabala deed equally but proportionately to the quantity of their Indian land. Plaintiffs predecessor Rokeya Begum had only 3 biga land in India which she exchanged along with other six recipients of above kabala deed and Rokeya Bewa acquired title and possession only 3 biga land which was rightly recorded in her name in relevant R.S. and S.A. Khatian.

At trial plaintiffs examined 2 witnesses and their documents were marked as Exhibit Nos.1 and 2 series. On the other hand defendants examined 4 witnesses and their documents were marked as Exhibit Nos.A - G.

The learned Senior Assistant Judge dismissed the suit and being aggrieved by above judgment and decree of the trial Court above plaintiffs preferred Title Appeal No.100 of 2006 to the District Judge, Chapai Nawabgonj which was heard by the learned Joint District Judge who allowed the appeal, set aside the judgment and decree of the trial Court and decreed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondents as petitioners

moved to this Court with this revisional application under Section 115(1) of the Court Civil Procedure and obtained this Rule.

Mr. Md. Zahangir Alam, learned Advocate for the petitioners submits that the plaintiffs could not substantiate the claim that the recipients of registered kabala deed of 13.12.1954 acquired land equally and not in proportion to their land in India. Rokeya Bewa had only 3 biga land in India and she rightly got only 3 biga land by above kabala deed and that was correctly recorded in her name in relevant R.S. and S.A. Khatin. The defendants have succeeded to prove that above property was amicably partitioned by metes and bounds.

On consideration of above materials on record the learned judge of the trial Court rightly dismissed the suit but the learned Judge of the Court of Appeal below has failed to appreciate above evidence on record properly and most illegally allowed the appeal and set aside the judgment and decree of the trial Court and decreed the suit which is not tenable in law.

On the other hand Mr. Mohammad Eunos, learned Advocate for the opposite party Nos.2 and 4-11 submits that admittedly title of both the plaintiffs and defendant predecessors are based on registered kabala deed dated 13.12.1954 which was executed by Abdul Munaf on behalf of Koilash Chandra Gosh and Satish Chandra Gosh and Rukeya Bewa predecessor of the plaintiffs had  $\frac{1}{7}$ th share in 27.05 acres land transferred by above kabala deed. But in relevant S. A. and R. S. khatian

only 3 biga land was recorded in the name of Rokeya Bewa. As such the plaintiffs filed the suit for declaration of title for above land which were not recorded in the name of Rokeya Bewa. Since the defendant and plaintiffs are co-shares and there was no partition of above land by meets and bounds the plaintiffs also seeks a decree for partition. But unfortunately in the schedule of the land of the plaint total 27.05 acres land have not been brought into hotchpotch nor the land described in "Kha" schedule for a declaratory decree has not been specified by mentioning of boundary. Above deficiency in the plaint was caused due to lack professional experience and skill of the appointed Advocate for the plaintiffs at trial Court and the plaintiffs should not made to suffer for the same. The learned Advocate further submits that the impugned judgment and decree may be set aside and the suit may be remanded for retrial after giving the plaintiffs an opportunity to amend the plaint and adduced further evidence.

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

As mentioned above plaintiffs have sought a decree for declaration of title for "Ka" schedule land and a decree for partition in respect of "Kha" schedule land of the plaint but both above schedules are unspecific not intelligible and not specified.

It is admitted that the predecessor of the plaintiffs and defendants acquired 27.05 acres land by registered kabala deed dated 13.12.1954

and Rokeya Bewa predecessor of the plaintiffs is 1 of the 7 recipients of above kabala deed.

Plaintiffs sought  $\frac{1}{7}$  th share of Rokeya Bewa out of total 27.05 acres. But in the plaint above total land 27.05 acres has not been brought in to the hotchpotch of the plaint. In "Kha" schedule only 3.9719 acres land which the plaintiffs claim as their share has been brought in to the hotchpotch. In a suit for partition all disputes centering the ejmali or joint property between the co-shares are determined and there is no need to seek separately a decree for declaration of title. But plaintiffs have sought a decree for declaration of title in respect of land separately shown in the "Ka" schedule of the plaint. As such, the plaintiffs should have specified above land of "Ka" schedule for which a decree for declaration of title was sought but the plaintiffs did not provide any specification of above "Ka" schedule land. Due to above deficiency in the plaint the plaintiff cannot be given a decree for declaration of title or a decree for partition even if he succeeds to prove his claim of title in  $\frac{1}{7}$  th share of 27.05 acres land.

The learned Advocate for the opposite parties conceded to above deficiencies in the plaint and rightly pointed out that above shortcoming in the plaint cannot be attributed to the plaintiffs who are village people but the same was caused due to the error or lake of skill

of the appointed Advocate and the plaintiffs should not be made to suffer for the same.

On the other hand the learned Advocate for the petitioners also sought remand of the suit to the trial Court for retrial on the ground that both the parties to this proceedings are close relatives and they can make an endeavour for settlement of the dispute by mediation or conciliation.

On consideration of above facts and circumstances of the case and submissions made by the learned Advocates for both the parties I hold that the ends of justice will be met if the impugned judgment and decree of the Court of Appeal below is set aside and the suit is remanded back to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

In above view of the materials on record I find substance in this petition under Section 115 of the Code of Civil Procedure and the rule issued in this connection deserves to be absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 11.10.2010 passed by the learned Additional District Judge, Chapai Nawabgonj in Title Appeal No.100 of 2006 reversing the judgment and decree dated 30.03.2006 passed by the learned Senior Assistant Judge, Sadar, Chapai Nawabgonj in Other Class Suit No.106 of 1993 decreeing above suit is

set aside and above suit is remanded to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduced further evidence.

The learned Senior Assistant Judge is directed to conclude the trial of the above suit expeditiously within a period of 06 (six) months from the date of receipt of this judgment.

However, there is no order as to costs.

Send down the lower Courts records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*