

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.1887 OF 2013.

Asma Akhter Khanom and another
..... Plaintiff-Petitioners.

-VERSUS-

Mst. Khaleda Akhter Khanom and others
..... Defendants-Opposite parties.

Mr. Faruk Ahmed, Senior Advocate with
Mr. Mohammad Bakir Uddin Bhuiyan,
Advocate
-----For the petitioners.

Mr. Rafiqul Islam Mehedi, Senior
Advocate with Mr. Liton Acharjeea,
Advocate
---- For the opposite party No.7.

Mr. Md. Zahedul Bari, Senior Advocate,
with Mr. A.T.M. Mizanur Rahman,
Advocate
----- For the opposite party No.6.

**Heard on 10.08.2025, 11.08.2025,
19.08.2025, 20.08.2025 and
24.08.2025.**

Judgment on 26.08.2025

By this Rule, the opposite parties were called upon to
show cause as to why the impugned Judgment and decree
dated 27.01.2013 passed by the learned Additional District

Judge, Kishoregonj in Other Class Appeal No.275 of 2010 dismissing the appeal and affirming the Judgment and decree dated 25.10.2010 passed by the learned Joint District Judge, 1st Court, Kishoregonj rejecting the prayer for buy-up under Section 4 of the Partition Act and decreeing the Other Class Suit No. 86 of 2008 in preliminary form should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The facts, in brief, for the disposal of Rule are that the petitioners herein as plaintiffs instituted Other Class Suit No.86 of 2008 before the Joint District Judge, 1st Court, Kishoregonj for partition of the ejmali properties with a prayer for buy-up of share of the stranger purchaser i.e. defendant opposite party Nos.8 and 9, contending, inter alia, that one Abdus Samed Bhuiyan and others were the owner of a land measuring .306 acres in Mouza Kishoregonj, Police Station- Kishoregonj, appertaining to S.A. Khatian No.4415, Kharija Khatian No. 17536, Settlement Dag No. 10120, S.A Dag No. 12926 among the co-shares, who sold the same to Zahirul Haque Khan and his wife Amena Khatun by a registered Sale Deed dated 06.10.1958 and handed over possession to them. They died, leaving the Plaintiffs Nos. 1-2 and the defendants Nos. 1-7 as

three sons and six daughters who inherited the said land. Thereafter, while possessing the first schedule land through an amicable settlement among themselves, the six daughters received 0.153 acres, along with the homestead, and the defendant, Nons 5-7 (three sons), received the rest of the homestead. The defendant Nos. 5-7 obtained the first scheduled suit land measuring 0.153 acres, and the plaintiffs and the defendant Nos. 1-4 received 0.153 acres of land from the southern portion of the second schedule suit land and homestead. Thereafter, the plaintiffs and the defendant Nos. 5-7 mutated the suit land in their names vide Mutation Case No. 420(IX-1)05-06 and possessed the same. Then, the defendant No. 8 purchased 0.065 acres of land from the defendants Nos. 1-3 vide a Sale Deed dated 05.12.2006, and the defendant No.9 purchased .041 acres of land vide Sale Deed dated 31.01.2007 from the defendant Nos. 2, 4, and 5. During the pendency of the suit, the Plaintiffs, by amending the plaint, claimed to buy-up the above land under Section 4 of the Partition Act.

The defendant Nos. 1-5, 8, and 9 contested the suit by filing three separate written statements, contending nearly identical points, which demonstrate that the defendant Nos. 5-7 as three sons, the plaintiffs, and the defendant Nos. 1-4, as six

daughters, inherited the property left by their parents; subsequently, by an amicable family settlement, the plaintiffs and defendant Nos.1-4 obtained their 0.0153 acre of land from the southern side, and the defendant Nos. 5-7 obtained their 0.0153 acre of land from the northern side. Subsequently, by way of amicable settlement between the plaintiffs and defendant Nos. 1-4 obtained .00765 acres of land including in the saham of defendant Nos. 1-3 excluding road; that there is a ten-foot wide road on the Northern side of the land owned by the plaintiffs and the defendants; that defendant Nos. 1-3 transferred 6.5 decimals of land from the South-east side of the suit plot in favour of defendant no. 8 vide sale deed, being no. 6682 dated 05.12.2006; that the three brothers of the plaintiffs were witness of the said deed; that defendant No. 8 inducted in to possession of his purchased land to the knowledge of all wherein he erected boundary wall and constructed residential house and also took gas, electricity connection in his name; On the other hand, defendant No. 2, 4 and 5 transferred 4.1 decimals of land in favour of defendant No. 9 by a sale deed dated 25.01.2007 and the defendant No.9 enjoying the same by mutation of his name.

The learned Joint District Judge of the 1st Court, Kishoregonj, framed the necessary issues to substantiate the dispute between the parties.

Subsequently, the learned Joint District Judge of the 1st Court, Kishoregonj, by the Judgment and decree dated 25.10.2010, decreed the suit, though gave the saham, rejected the prayer to buy-up the suit land of defendant No.8 and 9.

Being aggrieved by and dissatisfied with the above Judgment and decree, the plaintiffs, as appellants, preferred Other Class Appeal No. 275 of 2010 before the District Judge, Kishoregonj. Eventually, the learned District Judge of Kishoregonj, by the Judgment and decree dated 27.01.2013, disallowed the appeal and affirmed those passed by the trial Court below.

Being aggrieved by the above Judgment and decree, the plaintiffs, as petitioners, preferred this Civil Revision under Section 115(1) of the Code of Civil Procedure before this court and obtained the instant Rule with an order of stay extended from time to time.

Mr. Faruk Ahmed, the learned Senior Advocate appearing on behalf of the petitioners, submits that the instant suit was filed for partition, along with a prayer for buy-up of the suit

land. The trial Court, as well as the appellate Court below, though gave the saham, rejected the prayer to buy-up the suit land, thus committed an error of law resulted in an error in the decision, occasioning a failure of justice in passing the impugned Judgment and decree.

Mr. Rafiqul Islam Mehedi, the learned Senior Advocate appearing on behalf of the opposite party No. 7, submits that the suit is not maintainable in its present form, as the instant suit was not filed by the stranger-opposite parties Nos. 8 and 9 under Section 4 of the Partition Act.

Mr. Md. Zahedul Bari, the learned Senior Advocate appearing on behalf of the opposite party No. 6, adopted the submission made by Mr. Rafiqul Islam Mehedi, adding that the petitioners are the female members of the family who were marring and going to live in their husbands house belonging to the family so they will not entitle to the benifit of section 4 of partition act.

We have carefully considered the submissions advanced by the learned advocate for both parties and reviewed the Judgment of the courts below, as well as the oral and documentary evidence and other materials on the record.

It appears that the petitioners herein, as plaintiffs, instituted the instant suit for partition and for preemption under Section 4 of the Partition Act to buy-up the suit land of defendants Nos. 8 and 9.

In order to prove the case, the plaintiffs examined as many as 4(four) witnesses and produced necessary documentary evidence marked as exhibits. On the other hand, the defendants examined as many as 3(three) witnesses and produced the documentary evidence marked as exhibits.

We have anxiously scrutinized each deposition and cross-examination of the witnesses and considered the material evidence on record. It appears that the trial Court below, by its Judgment and decree, granted a share to the respective parties as per their claims, but rejected the plaintiff-petitioners' prayer to buy-up the land of defendants Nos. 8 and 9 as per the proviso so enumerated in section 4 of the Partition Act, which has been upheld up to the appellate court below.

To substantiate the submission advanced by the Bar, the relevant law may be quoted as follows:-

Section 4 of the Partition Act provided that "4. (1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such

family and such transferee sues for partition, the court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If in any case describes in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the court shall follow the procedure prescribed by sub-section (2) of the last foregoing section."

The basic conditions for an application under Section 4 of the Partition Act are that the property must be a dwelling-house of an undivided family and the transferee must sue for partition. This view gets support from the case of Haji Shamsul Alam Vs. Dr. Ashim Sarker and others reported in 11 SCOB (AD) 7 wherein their Lordships of the Appellate Division held that:-

The purchasers must file the partition suit. That is one of the basic conditions for the applicability of section 4 of the Partition Act, which has been expressly mentioned in the section, that the stranger transferee must sue for partition

and separate possession of the undivided share transferred to him by the co-sharer.

In the instant case, it appears that the defendant, No. 8, purchased $6\frac{1}{2}$ decimals of land from defendant Nos. 5-7, vide sale deed dated 05.12.2006, and the defendant No. 9 purchased $4\frac{11}{10}$ decimals of land from defendant Nos. 2, 4, and 5, vide sale deed dated 31.01.2007. Consequently, it appears that defendants Nos. 8 and 9 are the transferees of the suit land who did not file any suit for partition, so the prayer for buying up the suit land by the plaintiffs is not at all maintainable as per the provisions so enumerated in Section 4 of the Partition Act.

Further, it is a settled principle of law that a female member of an undivided family, upon marrying and moving to live in the husband's house, prima facie gives up her intention of residing in the old family house and, as such, she is not entitled to get the benefit of Section 4 of the Partition Act to buy-up the land of a undevided family. This view gets support from the case of Khandakar Belayet Hossain Vs. Umma Ayesa Siddika Chowdhury and others reported in 13 DLR (HCD) 230 wherein it was held that-

"It is settled law that the expression "undivided property" occurring in section 4 is not confined to joint Hindu

families nor to families of other religions which happen to have adopted Hindu notions of jointness. It also includes Mohamedans who are undivided in the sense in which the expression is used in section 4.

A female member of an undivided family marrying and going to live in her husband's house prima facie gives up her intention of residing in the old house belonging to the family, and as such she is not entitled to the benefit of section 4 with reference to the house."

In the instant case, it appears from the record that the plaintiffs are the daughters of the undivided dwelling family/homestead, who are married and have moved to live in their husbands' homes. They have, prima facie, given up their intention of continuing to reside in their old house, so their prima facie, no longer extended members of the old, undivided family/homestead. Consequently, they are not entitled to get benefits under Section 4 of the Partition Act.

Considering the facts, circumstances, and discussion made herein above, we are of the firm view that the appellate court below, having considered all aspects of the matter correctly and judiciously concurrent the finding of the trial court below rejected the buy-up prayer of the plaintiffs to buy-up the

land of the defendant Nos. 8 and 9, so we do not find any reason to interfere with the Judgment and decree passed by the appellate court below. Thus, we do not find any merit in the Rule.

Resultantly, the Rule is discharged with cost.

Communicate the Judgment and send down the Lower Courts' Records at once.

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(Md. Salim, J).

Kabir/BO