

Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 2519 of 2013
Md. Saman Mollah being dead, his legal heirs:
1(a) Md. Siraj Ali Mollah and others....Petitioners
-Versus-
Md. Abdul Karim....Opposite party
Mr. Alamgir Mostafizur Rahman, Advocate
....For the petitioners
Mr. Md. Sultan Mahmud, Advocate
....For the opposite party
Heard on 11.05.2026, 12.05.2026 and 13.05.2026
Judgment delivered on 14.05.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 at the instance of the plaintiff-petitioner Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 20.03.2013 (decree signed on 27.03.2013) passed by the Joint District Judge, Court No. 2, Rajshahi in Title Appeal No. 333 of 2011 affirming the judgment and decree dated 28.07.2011 (decree signed on 03.08.2011) passed by the Senior Assistant Judge, Mohanpur, Rajshahi in Other Class Suit No. 18 of 2008 decreeing the suit should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The plaint case, in a nutshell, is that Kheju Mollah, the predecessor of the plaintiff and defendant, was the C.S. recorded tenant of 4.28 acres of land of C.S. Khatian No. 18. Kheju Mollah died intestate leaving behind his sons Meku Mollah and Jan Box. Meku Mollah died intestate, leaving behind his son, the defendant Saman Mollah. Jan Box Mollah died intestate, leaving behind his only son Abdul Karim Mollah. Jan Box Mollah died before preparing the S.A record, for which the land of Hedu Mollah was recorded after his death in the S.A. and R.S. khatian in the name of Meku Mollah and Abdul Karim Mollah. Meku Mollah sold 64 decimals of land of C.S. Khatian No. 18, C.S. Dag Nos. 85, 105 and 641 to Nonibala by registered deed No. 2656 dated 28.03.1947 (exhibit 2). In the said deed, it was stipulated that Meku Mollah is entitled to 50% of the S.A. Dag Nos. 74, 449 and 482, and if any dispute arises, he will adjust his share on compromise. After that, by registered deed No. 787 dated 07.02.1950, Meku Mollah also sold 12 decimals of land of C.S. Khatian No. 18, Dag No. 536 to Boli Mondal and Oli Mondal. Before S.A. operation, Meku Mollah waived 11 decimals of land of C.S. Khatian No. 18, C.S. Dag No. 778, S.A. Khatian No. 18, S.A. Dag No. 778 in favour of Jan Box due to earlier additional sale of 12 decimals of land but during S.A. record, equal land was wrongly recorded in the name of Meku Mollah and Abdul Karim Mollah and both of them obtained 36 decimals of land each out of

total 73 decimals of land. During the R.S. record, 42 decimals of land were recorded in R.S. Khatian No. 13, in the name of Abdul Karim since Meku Mollah earlier sold additional 12 decimals of land by deed No. 787 dated 07.02.1950 and 31 decimals of land were recorded in R.S. Khatian No. 74, R.S. Dag No. 867 in the name of Meku Mollah. After the R.S. khatian, the defendant Md. Saman Mollah, son of Meku Mollah, claimed in a salish that 5.5 decimals of land was additionally recorded during R.S. khatian in the name of Abdul Karim Mollah and in that salish, the plaintiff claimed that Meku Mollah earlier by two deeds sold additional property and he got the less share for which during R.S. khatian the total land inherited by Abdul Karim and Meku Mollah was rightly recorded but he could not show the title deeds regarding the transfer of additional land by Meku Mollah in 1948 and 1950. He undertook in the salish to return 5.5 decimals of land in favour of Md. Saman Mollah. Subsequently, he executed and registered the Nadabi deed No. 2634 dated 14.06.1999 (exhibit 1). After the Nadabi deed No. 2634 dated 14.06.1999, the petitioner came to know about the registration of the said two deeds and collected the copy of the deeds on 04.10.2005 executed by Meku Mollah. Lastly, on 10.02.2008, the plaintiff requested the defendant No. 1 to register the kabala regarding 5.5 decimals of suit land, but he refused to register the deed in favour of the plaintiff. Consequently, on 11.02.2008, he filed the case.

The sole defendant, Md. Saman Mollah, contested the suit by filing written statement denying the execution of the deed No. 2656 dated 28.03.1947 and deed No. 787 dated 07.02.1950 transferring 64+16 decimals of land respectively by Meku Mollah and asserted that after death of Heddu Mollah, S.A. record was correctly recorded in the name of Meku Mollah, son of Khedu Mollah and Abdul Karim Mollah, son of Jan Box, who are the son and grandson respectively of Heddu Mollah and R.S. record was not correctly recorded for which a salish took place on 04.06.1999 and in the said salish, it was decided to give a nadabi deed regarding 5.5 decimals of land less recorded in the name of the defendant No. 1 and following the decision of the said salish, the plaintiff voluntarily executed and registered Nadabi Deed No. 2634 dated 14.06.1999 and as per the Nadabi deed, the plaintiff waived 5.5 decimals of land of R.S. Khatian No. 13, Dag No. 867 and the said Nadabi deed was correctly executed and registered following law for which there is no scope to cancel the disputed deed.

During trial, the plaintiff examined 3 P.Ws, and the defendant No. 1 examined 4 D.Ws to prove their respective cases. After concluding trial, the Senior Assistant Judge, Mohanpur Thana, Rajshahi by judgment and decree dated 28.07.2011 decreed the suit cancelling the registered Nadabi deed No. 2634 dated 14.06.1999 holding that the defendant filed Other Class Suit No. 53 of 2005

regarding 16 decimals of land out of 32 decimals of land of C.S. Dag No. 74 and R.S. Dag No. 38 and he could not prove his title and possession on 16 decimals of land for which the said suit was dismissed and that the suit for cancellation of deed was filed within three years under Article 91 of the schedule of the Limitation Act, 1908 and that Meku Mollah transferred 12 decimals of land of C.S. Dag No. 536 by registered deed No. 787 dated 07.02.1950 (exhibit 4) and no excess land was recorded in the name of plaintiff in R.S khatian and that the plaintiff could not collect the sale deed executed by Meku Mollah at the time of salish and registration of Nadabi deed No. 2634 dated 14.06.1999 (exhibit 1).

Against the said judgment and decree passed by the trial Court, the defendant filed Title Appeal No. 333 of 2011 in the Court of District Judge, Rajshahi. The Joint District Judge, Court No. 2, Rajshahi heard the appeal and by impugned judgment and decree dated 20.03.2013 affirmed the judgment and decree passed by the trial Court holding that the transfer of 12 decimals of land of C.S. Dag No. 536 by Meku Mollah is admitted by D.W. 1 for which the record of 31 decimals of land in the name of Meku Mollah and 42 decimals of land in the name of the plaintiff was rightly recorded and that the defendant failed to prove his title in Other Class Suit No. 18 of 2008 and the plaintiff did not execute the disputed nadabi deed voluntarily for which the trial Court rightly passed the impugned judgment and decree.

Learned Advocate Mr. Alamgir Mostafizur Rahman appearing on behalf of the defendant-petitioner submits that the plaintiff failed to prove that Meku Mollah transferred 12 decimals of land by deed No. 787 dated 07.02.1950 by adducing the attesting witnesses of the said deed, and said deed was not proved during trial of the case and the plaintiff could not show any transaction of Meku Mollah in the salish for which he voluntarily executed the Nadabi deed. Having drawn the attention of this Court to the S.A. Khatian Nos. 43 and 39, exhibits Kha and Kha(1), respectively submits that during S.A. khatian, the equal share was recorded in the name of Meku Mollah and the plaintiff but the subsequent R.S. khatian was wrongly recorded for which the plaintiff voluntarily executed the nadabi deed and no allegation is made by P.W. 1 that he did not execute and register the nadabi deed dated 14.06.1999 and the Courts below on misreading and non-reading of the material evidence illegally passed impugned judgment and decree and thereby committed an error of law resulting in a error in the decision occasioning failure of justice. In support of his submission, the learned Advocate relied on the decision made in the case of Md. Joynal and ors. Vs Md. Rustam Ali Mia & ors. reported in 36 DLR (AD) 240 and the decision made in the case of

Sova Rani Guha alias Sova Rani Gupta reported in 47 DLR (AD) 45. He prayed for setting aside the impugned judgments and decree passed by the Courts below.

Learned Advocate Mr. Md. Sultan Mahmud appearing on behalf of the plaintiff-opposite party submits that Meku Mollah transferred 12 decimals of land by registered deed No. 787 dated 07.02.1950 of C.S. Khatian No. 18, Dag No. 536 (exhibit 4) and 5.5 decimals of land was additionally recorded in the name of Meku Mollah during S A records and during R.S records, half of 12 decimals of land was additionally recorded in the name of Meku Mollah for which during R.S. record, 6 decimals of additional land sold by Meku Mollah in 1950 was less recorded and 42 decimals of land was correctly recorded in the name of plaintiff and 31 decimals of land was rightly recorded in the name of Meku Mollah and during life time, Meku Mollah did not raise any objection regarding the R.S. records. He further submits that at the time of salish held before execution and registration of the disputed deed dated 14.06.1999 (exhibit 1), the plaintiff could not collect the deed No. 787 dated 07.02.1950 and the deed No. 2656 dated 28.03.1947 (exhibit 2) by which Meku Mollah transferred total 64 decimals of land inherited by him and said salish forcibly compelled the petitioner to execute the disputed nadabi deed regarding 5.5 decimals of land. He also submits that the defendant earlier filed Other Class Suit No. 18 of 2008 and he failed to prove his title on 16 decimals of land and after collecting the deed No. 787 dated 07.02.1950, the plaintiff filed the suit and both the Courts below on correct assessment and evaluation of the evidence adduced by both the parties legally arrived at a concurrent finding of fact as to the execution of the deed No. 787 dated 07.02.1950 (exhibit 4) by Meku Mollah. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Alamgir Mostafizur Rahman who appeared on behalf of the defendant-petitioner and the learned Advocate Mr. Md. Sultan Mahmud who appeared on behalf of the plaintiff-opposite party, perused the evidence adduced by both the parties, the impugned judgments and decrees passed by the trial Court and the records.

Admittedly, the plaintiff Md. Abdul Karim is the grandson of Kheju Mollah and son of Jan Box Mollah, and the defendant Saman Mollah is the grandson of Meku Mollah, son of Kheju Mollah. During trial, the plaintiff proved the registered deed No. 787 dated 07.02.1950 as exhibit 4 by which Meku Mollah sold 12 decimals of land of C.S. Khatian No. 18, Dag No. 536 to Boli Mondal and Oli Mondal. Although the execution of the said deed No. 787 is disputed by the defendant, during cross-examination, D.W. 1 stated that he is not aware whether Meku Mollah transferred the land to Boli Mondal and another. He admitted that

his father and uncle were equal owners of 12 decimals of land of C.S. Dag No. 536. He also affirmed that he did not take any step against the record of the land of C.S. Dag No. 536 in the name of Boli Mondal. During cross-examination, D.W. 2 Md. Nayeb Ali, son of Ali Mondal and nephew of Boli Mondal, admitted that in the deed of 1950, his father and uncle were the purchasers and Meku Mollah transferred 12 decimals of land. From the above evidence, it is proved that Meku Mollah transferred 12 decimals of land by registered deed No. 787 dated 07.02.1950 (exhibit 4) of C.S. Khatian No. 18, Dag No. 536 to Boli Mondal and Oli Mondal.

After the R.S. record, Meku Mollah, father of the defendant Saman Mollah, was alive, and during his lifetime, he never raised any objection regarding the R.S. khatian. Meku Mollah transferred 12 decimals of land by the said deed, although he was the owner of 50% of 12 decimals of land. I am of the view that in R.S. khatian, 5.5 decimals of additional land was legally recorded in the name of the plaintiff due to sale of 12 decimals of land of C.S Dag No. 536 alone by Meku Mollah by Deed No. 787 dated 07.02.1950 (exhibit 4).

In the plaint, it has been asserted that at the time of the salish held regarding the additional record of 5.5 decimals of land in the name of the plaintiff, he could not show the deed (exhibits 4) for which he executed the disputed nadabi deed (exhibit 1). P.W. 1 stated that at the time of demand of the defendant regarding the additional recording of the land in R.S. khatian, he could not produce the transfer deed by Meku Mollah for which, as per the decision of the salish, he executed the disputed deed. Subsequently, on 04.10.2005, he collected the said deed from Boli Mondal and Oli Mondal, but the defendant refused to register the deed on 12.02.2008. No cross-examination has been made by the defendant to the P.W. 1 regarding the cause of filing the suit and the delay in filing the suit, for which the trial Court rightly decided the issue of limitation in favour of the plaintiff.

D.W. 4 Md. Amjad Hossain is a witness of the salish held between the plaintiff and the defendant regarding the additional record of 5.5 decimals of land. He stated that he signed the salishnama. He proved the signature on the salishnama as Exhibit Ga(3), and following the decision of the salishnama, the subsequent disputed deed was registered. During cross-examination, he admitted that Meku Mollah sold a few lands, but he did not disclose anything about the sale in the said salish. D.W. 2 admitted that the plaintiff is a pious man. D.W. 3 admitted in cross-examination that the salish parishad requested the plaintiff to show the sale deed executed and registered by Meku Mollah but he could not show the deed which corroborate the evidence of P.W. 1 that at the time of said

salish, he could not show the sale deed No. 787 dated 07.02.1950 executed by Meku Mollah regarding sale of 12 decimals of land and due to lack of said deed, he executed the disputed nadabi deed No. 2634 dated 14.06.1999 (exhibit 1).

In view of the above evidence, findings, observations and the proposition, I am of the view that both the Courts below, on correct assessment and evaluation of the evidence, arrived at a concurrent finding of facts that Meku Mollah alone sold 12 decimals of land of C.S Khatian No. 18, C.S Dag No. 536 by deed No. 787 dated 07.02.1950 (exhibit 4), although Janbox Mollah, father of Md. Abdul Karim, was the owner of 6 decimals of land of C.S Khatian No. 18, C.S Dag No. 536 for which at the time of R.S. record, 41 decimals of land in the name of plaintiff and 31 decimals of land in the name of the father of the defendant was correctly recorded due to additional sale of 6 decimals of land by the Meku Mollah, grandfather of the defendant and at the time of salish, execution and registration of nadabi deed No. 2634 dated 14.06.1999 (exhibit 1), the plaintiff could not collect the deed No. 787 dated 07.02.1950 (exhibit 4) and he did not voluntarily execute and register the said nadabi deed (exhibit 1). I do not find any misreading and non-reading of material evidence.

I find no merit in the Rule.

In the result, the Rule is discharged.

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

However, there will be no order as to costs.

Send down the lower Court's records at once.