

**Present:**

**Mr. Justice Md. Kamrul Hossain Mollah**

**Civil Revision No.75 of 2017**

**IN THE MATTER OF:**

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

- AND -

**IN THE MATTER OF:**

Md. Hanif Hawlader and others

... Defendant-Petitioners

-Versus –

Most. Nurjahan Begum and others

...Plaintiff -Opposite Parties

Mr. Md. Moniruzzaman, Advocate with

Mr. Md. Rashadul Islam, Advocate

....For the petitioners

Mr. Md. Ikram Hossain, Advocate

...For the Opposite Parties

**Heard on 08.11.2023,16.11.2023**  
**and Judgment on 21.11.2023**

**Md. Kamrul Hossain Mollah, J:**

On an application filed by the petitioners, under section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite parties No.1-8 to show cause as to why the judgment and decree dated 20.10.2016 (decree signed on 27.10.2016) passed by the learned Joint District Judge, 1<sup>st</sup> Court, Patuakhali in Title Appeal No.71 of 2015 dismissing the Appeal and thereby affirming the judgment and decree dated 19.03.2015 (decree signed on 22.03.2015) passed by the learned Assistant

Judge, Galachipa, Patuakhali in Civil Suit No.32 of 2005 decreeing the suit 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 necessary for disposal of the Rule, in short, are that the 12.40 acres of land appertaining to C.S. khatian No.53 under Basbaria Dariabad Mouja within Galachipa Upazilla of Patuakhali district was correctly recorded at the name of Eman Ali. On demise of Eman Ali, two sons name Kanchan Ali and Fayjor Ali and a daughter named Gadejan Bibi left behind. After passing away of Fayjor Ali. One son named A. Mojid and one daughter named Paribanu left behind. On demise of A. Mojid one daughter named Hanufa that defendant No.7 inherited the property. On demise of Parivanu two sons and one daughter that were 4-6 No. defendants left behind. On demise of Gadejan Bibi, daughter of Eman Ali, two sons named Akabbor and Gonjer and one daughter named Moirromjan Bibi left behind. So, every son inherited 99 decimals and daughter inherited 50 decimals of land. After passing away of Gonjer one daughter named Ajufa, wife named Julekha, brother named Akabbor and sister named Moirromjan left. On demise of Ajufa mother Julekha, paternal uncle Akabbor and paternal aunt Moirromjan, wife Josna and step brother Hajrot Ali inherited. After passing away of Josna, husband Nurul Haque and daughter Saleha inherited and on demise of Hajrot Ali only sister named Moirromjan inherited the property. In those ways Moirromjan inherited 1.89 acres of land from which 90 decimals land was transferred to her granddaughter named Nurjahan by Heba on 17.03.1970. The rest amount 99 decimals of land was inherited by two daughters named Ashia and

Nurjahan and husband named Moyzuddin after the death of Moiromjan 25 decimals of land was inherited by 4 sons and two daughters. The plaintiffs No.306 and 7-8 from Moiromjan, wife of Moyzuddin. Accordingly, the plaintiff inherited 1.89 acres of land. Total 12.40 acres of land of C.S. khatian No.53 was increased to 13.20 acres and recorded to S.A. khatian No.308 as well as R.S. khatian No.174. In that record 2.26 acres and 22 decimals of land was recorded incorrectly in the name of two sons and two brothers of Gedijan respectively. But that should be recorded 50 decimals of land in the name of Moiromjan, daughter of Gedija to the R.S. khatian No.174. The plaintiff No.1 inherited 34 decimals of land from her parents, by heba she got 90 decimals of land and by kabala she also got 37 decimals of land from Nurul Haque and Saleha. In this way, the plaintiff No.1 possessing total 1.77 acres of land, plaintiff No.2 named Ashia possessing 56 decimals of land, plaintiffs No.3-6 possessing 24 decimals of land and plaintiffs No.7-8 possessing 6 decimals of land. Total 2.64 acres of land is possessing by them existing as ejmali to the exclusion of the defendant's title. For the convenience of possession, the plaintiffs have asked the defendants for partition, but the same was denied on 29.12.2004 which gives rise to the cause of action. The suit properties have not undergone partition. The plaintiffs, thus, have been bound to set up the claim of partition over the disputed land.

On the other hand, the defendant-petitioners contested in the suit by filing written statement. According to the written statement of the 1(Ka)-1(Uma)/2/3/7 Nos. defendants the main contention of the said defendants is that Eman Ali was the recorded owner of C.S. Khatian No.53. On demise

of Eman Ali, two sons name Kanchan Ali and Fayjor Ali left behind. After passing away of Fayjor Ali, one son named A. Mojid, one daughter named Parivanu and wife named Fulvanu left behind. On demise of A. Mojid one daughter named Hanufa defendant No.7, mother Kodvanu and sister Parivanu inherited the property. On demise of Kodvanu two daughters named Parivanu, Jorina, granddaughter Hanufa and husband Abul Hasem Gazi left behind. After passing away of Parivanu two sons defendants No.4/5 and one daughter defendant No.6 left behind. Kanchan Ali died leaving behind defendants No.1-3 one son named Meher Ali and two daughters named Rabeya and Sufia. The land was recorded incorrectly in the name of Gangor Ali and Akbor Ali. The defendant party enjoys the 9.41 acres of land by succession and kabala. The plaintiff has no right, title and interest over the disputed land. As such, the suit filed by the plaintiffs is liable to be dismissed. According to the written statement of the defendants No.4-6 the main contention is that 12.40 acres land of C.S. khatian No.53 was recorded to increased to 13.20 acres and recorded to S.A. khatian No.308 as well as R.S. khatian No.174. The R.S. and S.A. record was correct. The plaintiffs has brought the suit by falsehood and fabricated story. As such, the suit filed by the plaintiffs is liable to be dismissed.

After hearing both the parties and considering the materials on record, the learned Assistant Judge, Galachipa, Patuakhali passed the judgment and decree dated 19.03.2015 (decree signed on 22.03.2015) in Civil Suit No.32 of 2005 decreeing the suit.

Being aggrieved by and dissatisfied with the judgment and decree dated 19.03.2015 (decree signed on 22.03.2015) passed by the learned Assistant Judge, Galachipa, Patuakhali in Civil Suit No.32 of 2005 decreeing the suit, the petitioners preferred Title Appeal No.71 of 2015 before the learned Court of District Judge, Patuakhali. Thereafter, the said appeal was transferred to the learned Additional District Judge, Patuakhali for hearing and disposal. After hearing both the parties, the learned Additional District Judge, Patuakhali dismissed the Title Appeal No.71 of 2015 and thereby affirmed the judgment and decree dated 19.03.2015 (decree signed on 22.03.2015) passed by the learned Assistant Judge, Galachipa, Patuakhali in Civil Suit No.32 of 2005 decreeing the suit by his judgment and decree dated 20.10.2016 (decree signed on 27.10.2016).

Being aggrieved by and dissatisfied with the judgment and decree dated 20.10.2016 (decree signed on 27.10.2016) passed by the learned Additional District Judge, Patuakhali in the Title Appeal No.71 of 2015, the petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Md. Moniruzzaman, the learned Advocate appearing for the petitioners submits that the learned Court below did not frame the issues of the case according to law and did not explain the framed issues properly and judiciously. If all the facts of issues were framed properly and satisfactory explanations of those were provided, the appellants get the benefit. Gedijan was not the successor of recorded owner named Eman Ali and the plaintiffs had no legal effect. In this regard, the impugned judgment and decree are liable to set-aside.

He further submits that the learned trial Court should consider that the plaintiffs did not prove their succession as provided by genology of the plaintiff. The plaintiffs did not provide documentary evidence about the existence of Gedigan daughter of Eman Ali. The submitted certificate of the Chairman about the existence of Gedigan did not proved directly by the plaintiffs. In spite of the learned trial Court committed an error to consider the exhibit No.8 in that regard.

He next submits that the plaintiffs have claimed her title as successor and kabala purchaser where as the contesting defendants have asserted that Eman Ali had no daughter. The learned Judge of the lower Court below should have been given a specific finding in this regard. The learned lower Court below provided those decisions related to exhibit-8 was not true. The plaintiff-opposite parties did not submit the true succession certificate in the Court, as the exhibit-8 was false and fabricated.

The learned Advocate lastly submits that the exhibit-8 submitted by the plaintiffs is a succession certificate showing that Eman Ali had died leaving behind two sons and one daughter, which was issued by the Chairman, not the person who has authorized the death register. The learned judge of the trial Court and Appellate Court below committed error of law by not considering the main controversy of the suit i.e. the plaintiffs have claimed title as successor and kabala purchaser where as the contesting defendants have asserted that Eman Ali had died leaving behind two sons, i.e. predecessor of the defendants as heir. Hence, the impugned judgment and decree is liable to be set-aside. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Md. Ikram Hossain, the learned Advocate appearing for the opposite parties submits that the 12.40 acres of land appertaining to C.S. khatian No.53 under Basbaria Dariabad Mouja within Galachipa Upazilla of Patuakhali district was correctly recorded at the name of Eman Ali. On demise of Eman Ali, two sons name Kanchan Ali and Fayjor Ali and a daughter named Gadejan Bibi left behind. After passing away of Fayjor Ali, one son named A. Mojid and one daughter named Paribanu left behind. On demise of A. Mojid one daughter named Hanufa that defendant No.7 inherited the property. Paribanu died leaving behind defendants No.4-6, two sons and one daughter. On demise of Gadejan Bibi, daughter of Eman Ali, two sons named Akabbor and Gonjer and one daughter named Moiomjan Bibi left behind. So, every son inherited 99 decimals and daughter inherited 50 decimals of land. After passing away of Gonjer one daughter named Ajufa, wife named Julekha, brother named Akabbor and sister named Moiomjan left. On demise of Ajufa mother Julekha, paternal uncle Akabbor and paternal aunt Moiomjan, wife Josna and step brother Jajrot Ali inherited. After passing away of Josna husband Nurul Haque and daughter Saleha inherited and on demise of Hajrot Ali only sister named Moiomjan inherited the property. In those ways Moiomjan inherited 1.89 acres of land from which 90 decimals land was transferred to her grand-daughter named Nurjahan by Heba on 17.03.1970. The rest amount 99 decimals of land was inherited by two daughters named Ashia and Nurjahan and husband named Moyzuddin after the death of Moiomjan 25 decimals of land was inherited by 4 sons and two daughters. The plaintiffs No.306 and 7-8 from Moiomjan, wife of

Moyzuddin. In these ways the plaintiff inherited 1.89 acres of land. 12.40 acres of land of former C.S. khatian No.53 was recorded to increased 13.20 acres to S.A. khatian No.308 that R.S. khatian No.174. In that record 2.26 acres and 22 decimals of land was recorded incorrectly in the name of two sons and two brothers of Gedijan respectively. But that should be recorded 50 decimals of land in the name of Moiomjan, daughter of Gedija to the R.S. khatian No.174. The plaintiff No.1 inherited 34 decimals of land from her parents, by heba she got 90 decimals of land and by kabala she also got 37 decimals of land from Nurul Haque and Saleha. It is possessed by the plaintiff No.1 is total 1.77 acres of land, plaintiff No.2 named Ashia 56 decimals of land, plaintiffs No.3-6 of 24 decimals of land and plaintiffs No.7-8 of 6 decimals of land. Total 2.64 acres of land is possessed by them existing as ejmali to the exclusion of the defendant's title. For the convenience of possession, the plaintiffs have asked the defendants for partition, but the same was denied on 29.12.2004 which gives rise to the cause of action. The suit properties have not undergone partition. The plaintiffs, thus, have been bound to set up the claim of partition over the disputed land and the plaintiffs-opposite parties filed the Civil Suit No.32 of 2005 following all legal formalities and the learned Joint District Judge, 1<sup>st</sup> Court Patuakhali passed the judgment and decree dated 20.10.2016(decree signed on 27.10.2016) in Title Appeal No.71 of 2015 rightly, which is maintainable in the eye of law. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and decree of the Courts' below, the submissions of the learned Advocate

for the petitioners and the submissions of the learned Advocate for the opposite parties, the papers and documents as available on the record.

It appears from the record that, the 12.40 acres of land appertaining to C.S. khatian No.53 under Basbaria Dariabad Mouja within Galachipa Upazilla of Patuakhali district was correctly recorded at the name of Eman Ali. On demise of Eman Ali, two sons name Kanchan Ali and Fayjor Ali and a daughter named Gadejan Bibi left behind. After passing away of Fayjor Ali. One son named A. Mojid and one daughter named Parivanu left behind. On demise of A. Mojid one daughter named Hanufa that defendant No.7 inherited the property. On demise of Parivanu two sons and one daughter that were 4-6 No. defendants left behind. On demise of Gadejan Bibi, daughter of Eman Ali, two sons named Akabbor and Gonjer and one daughter named Moiomjan Bibi left behind. So, every son inherited 99 decimals and daughter inherited 50 decimals of land. After passing away of Gonjer one daughter named Ajufa, wife named Julekha, brother named Akabbor and sister named Moiomjan left. On demise of Ajufa mother Julekha, paternal uncle Akabbor and paternal aunt Moiomjan, wife Josna and step brother Jajrot Ali inherited. After passing away of Josna husband Nurul Haque and daughter Saleha inherited and on demise of Hajrot Ali only sister named Moiomjan inherited the property. In those ways Moiomjan inherited 1.89 acres of land from which 90 decimals land was transferred to her grand-daughter named Nurjahan by Heba on 17.03.1970. The rest amount 99 decimals of land was inherited by two daughters named Ashia and Nurjahan and husband named Moyzuddin after the death of Moiomjan 25 decimals of land was inherited by 4 sons and two daughters.

The plaintiffs No.306 and 7-8 from Moirromjan, wife of Moyzuddin. In these ways the plaintiff inherited 1.89 acres of land. 12.40 acres of land of former C.S. khatian No.53 was recorded to increased 13.20 acres to S.A. khatian No.308 that R.S. khatian No.174. In that record 2.26 acres and 22 decimals of land was recorded incorrectly in the name of two sons and two brothers of Gedijan respectively. But that should be recorded 50 decimals of land in the name of Moirromjan, daughter of Gedija to the R.S. khatian No.174. The plaintiff No.1 inherited 34 decimals of land from her parents, by heba she got 90 decimals of land and by kabala she also got 37 decimals of land from Nurul Haque and Saleha. It is possessed by the plaintiff No.1 is total 1.77 acres of land, plaintiff No.2 named Ashia 56 decimals of land, plaintiffs No.3-6 of 24 decimals of land and plaintiffs No.7-8 of 6 decimals of land. Total 2.64 acres of land is possessed by them existing as ejmali to the exclusion of the defendant's title. For the convenience of possession, the plaintiffs have asked the defendants for partition, but the same was denied on 29.12.2004 which gives rise to the cause of action. The suit properties have not undergone partition. The plaintiffs, thus, have been bound to set up the claim of partition over the disputed land and the plaintiffs-opposite parties filed the Civil Suit No.32 of 2005 following all legal formalities.

From the exhibit-5 (awaj Heba deed No.3255 dated 17.03.1970) it appears that Moirromjan Bibi handed over the plaintiff-opposite party No.1 90 decimals of land as gift through aforesaid deed. Further, from the exhibit-6 (sub kabala deed No.12225 dated 03.10.1983) it appears that Nurul Haque and Saleha Khatun handed over 38 decimals of land to the

plaintiff No.1 through aforesaid kabala deed. So, as inheritance of Gedigan Bibi the plaintiff-opposite parties are entitled to get 2.64 acres of suit land and the possession of the plaintiff-opposite parties are admitted in the suit land as per evidence on record.

Considering the above facts and circumstances, I find that the possession and title of the plaintiff-opposite parties is admitted in 2.64 acres of suit land. Therefore, the judgment and decree dated 20.10.2016 (decree signed on 27.10.2016) passed by the learned Joint District judge, 1<sup>st</sup> Court, Patuakhali in Title Appeal No.71 of 2015 dismissing the Appeal and affirming the judgment and decree dated 19.03.2015 (decree signed on 22.03.2015) passed by the learned Assistant Judge, Galachipa, Patuakhali in Civil Suit No.32 of 2005 decreeing the suit rightly and is maintainable in the eye of law and I do not find any substance to interference into the said judgment and decree and I find substance in the submission of the learned Advocate for the opposite parties.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and decree dated 20.10.2016 (decree signed on 27.10.2016) passed by the learned Joint District judge, 1<sup>st</sup> Court, Patuakhali in Title Appeal No.71 of 2015 dismissing the Appeal and affirming the judgment and decree dated 19.03.2015 (decree signed on 22.03.2015) passed by the learned Assistant Judge, Galachipa, Patuakhali in Civil Suit No.32 of 2005 decreeing the suit is hereby upheld and confirmed.

Send down the L.C.R. along with a copy of this judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej  
Bench Officer