

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

Present :

Mr. Justice Dihider Masum Kabir

CIVIL REVISION NO. 850 OF 2007

IN THE MATTER OF:

An application under Section 115(1) of the
Code of Civil Procedure, 1908.

-AND-

IN THE MATTER OF:

Ayub Hossain being dead his legal heirs Md.
Jahangir Hossen and others

.... Defendants-Respondents-Petitioners

- Versus –

Rahmat Ullah and others.

..... Plaintiffs-Appellants-Opposite Parties

Mr. Lokman Karim, Advocate

.....For the Petitioners

No one appears

.....For the Opposite Parties

Heard on 13.01.2026 & 26.02.2026

Judgment delivered on 12.03.2026

The Rule was issued calling upon the opposite party Nos.1-10 to show cause as to why the impugned judgment and decree dated 19.10.2006 passed by learned Joint District Judge, 2nd Court, Jhenaidah in Title Appeal No.100 of 2005 allowed the appeal reversing the judgment and decree dated 21.08.2005 passed by the learned Senior Assistant Judge, Kotchandpur, Jhenaidah in Title Suit No.86 of 2003 dismissed the suit should not be set aside and/or pass such other or further order or orders as this Court may deem fit and proper.

The facts relevant for the disposal of this Rule, as set out in the civil revisional application, in short, are that opposite parties as plaintiffs filed above suit for declaration of title and partition of 67 decimals land seeking a saham for 33.50 decimals land alleging that above 67 decimals land belonged to Megai Nikari and Manik Nikari in equal shares and their names were recorded in CS Khatian No.1236. Plaintiffs are the heirs of Megai Nikari and the defendants Nos.1-13 are the heirs of Fakir Chand who obtained settlement of kayemi patta of 46 decimals land on 28.06.1943 from the heirs of Manik Nikari. Both the parties possessed above land in equal shares but above property have not been partitioned by meets and bounds and on 20.11.2003 the defendants refused to effect an amicable partition and disclosed that in S A khatian 46 decimals land has been recorded in their names.

Defendants Nos.1-13 contested the suit by filing a written statement denying the plaintiff's claims and alleging that above land belonged to Megai Nikari and Manik Nikari which were equally recorded in their names in CS Khatian No.1236. SA Khatian No.492 consists of 67 decimals, 61 decimals at Plot No.437 and 6 decimals at Plot No.433. After CS record Megai and Manik mutually agreed to an amicable partition where Manik possessed 46 decimals out of 61 decimal from Plot No.437 and Megai possessed 6 decimal from Plot No.433 and remaining land from Plot No.437. Thereafter, Fakir Chand, Kayem Ali and Makbul Hossain acquired 46 decimals from Plot No.437 from two heirs of Manik Nikari vide settlement of kayemi patta deed on 28.06.1943 and Mokbul Hossain purchased 7

decimals vide Deed No.1379, executed on 20.03.1979 and registered on 06.07.1984 from another legal heir of Manik namely Jarimun Nessa. They claimed SA Khatian No. 492 was rightly recorded in their names and paying Govt. tax regularly. They also claimed that their names were also recorded in DP khatians.

During the trial, plaintiffs examined three witnesses (PW 1 to PW 3). In response, defendants examined three witnesses (DW 1 to DW 3). Documents produced and proved by the plaintiffs were marked as Exhibits 1 to 3 and that of defendants were marked as Exhibits Ka to Gha.

Upon consideration of the facts and circumstances of the case and evidence on record, the learned Senior Assistant Judge, Kotchandpur Court, Jhenaidah dismissed above suit.

Being aggrieved by above judgment and decree, plaintiffs as appellants filed an appeal in the Court of District Judge, Jhenaidah which was transferred to the Court of Joint District Judge, 2nd Court, Jhenaidah who allowed above appeal and thereby set aside the judgment and decree passed by the trial Court and decreed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of appeal below, above defendants as petitioners moved to this Court and filed this Civil Revision and obtained this Rule.

Learned Advocate Mr. Lokman Karim, appearing on behalf of the petitioners submits that plaintiffs filed above suit for declaration of title and partition without seeking recovery of possession which is not maintainable. Defendants have been possessing the suit land by way

of settlement which is a registered document over 60 years old and no question has been raised as to the genuineness of above deed which has been marked as Exhibit-Ka. SA and RS khatians were recorded in the names of the petitioners with the knowledge of plaintiffs-opposite parties which proves the absolute possession of the defendants over the suit property. He further submits that the Court of appeal below acted illegally in not considering the fact that the plaintiff without giving specification of the land in the schedule claimed 33.5 decimals land out of 67 decimals which is hit by order 7 Rule 3 of the Code of Civil Procedure, even the suit has not been properly valued and stamped. As such the impugned judgment and decree suffers from highly illegality and hence the same is liable to be interfered by this Hon'ble Court for proper adjudication.

No one appears on behalf of the opposite parties, despite notice was served properly and the matter being fixed for hearing in the daily cause list for several consecutive days.

I have considered the submissions of the learned Advocate appearing on behalf the petitioners and carefully examined the impugned judgment and decree passed by the learned Joint District Judge, 2nd Court, Jhenaidah as well as all other materials on record.

Admittedly 67 decimals land belonged to Megai Nikari and Manik Nikari in equal shares which were recorded in their names in CS Khatian No.1236. Although SA Plot No.433 and 437 consist of 6 decimals and 61 decimals land respectively, only 21 decimals instead of the entitled 33.5 decimals were recorded in the SA khatian in the names of the plaintiffs, who are the successive heirs of Megai Nikari.

Consequently, the plaintiffs claim 8-anna share from above land. Defendants Nos.1-13 claim that they were the successive heirs of Fakir Chand who obtained settlement of kayemi patta for 46 decimals land on 28.06.1943 from the heirs of Manik Nikari. Both the parties possessed the land as per CS khatian.

The learned Judge of the trial Court failed to appreciate that the plaintiffs, as the successive heirs of Megai Nikari, are entitled to 8-anna (50%) share of 67 decimals land by operation of the law of inheritance. This title remained intact and could not be reduced, as the plaintiffs never alienated any portion of the suit land through sale, nor did they execute any deed of partition or exchange (awajbodai). The property remained ejmali (jointly held) in nature.

The trial Court placed undue emphasis on the kayemi patta (settlement deed) dated 28.06.1943, erroneously viewing its age exceeding 60 years as proof of an amicable partition. Learned Judge of the trial Court failed to appreciate the legal position of an amicable deed of partition. An amicable partition must involve all co-sharers to be valid. In this instance case, no partition ever took place between Megai Nikari and Manik Nikari, and Megai Nikari was neither party nor witness, or even identifier of the deed dated 28.06.1943.

As far as the registered deed of settlement (*kayemi patta*) dated 28.06.1943 is concerned, it is admitted that the lawful title was for only 33.5 decimals. However, a settlement of 46 decimals was granted in Plot No. 437. In above document (Exhibit-Ka), Manik Nikari was in possession of 52 decimals out of 67 decimals based on an amicable partition with Megai Nikari. Subsequently,

the heirs of Manik Nikari settled 46 decimals of land in Plot No.437 to Fakir Chand Biswas.

However, an amicable partition does not transfer title to immovable property, Even if above amicable partition is true, Manik Nikari never acquired legal title to 52 decimals of land. Therefore, his heirs cannot validly settle 46 decimals in Plot No. 437 to Fakir Chand Biswas. Under the principle of *nemo dat quod non habet*, one cannot transfer a better title than one actually possesses.

Dakhila produced by the defendants (Exhibit-Ga) indicates provisional one and rent payment made on 17.11.2004 for the year Bangla 1411 (English 2004) after filing of Title Suit No.86 of 2003.

Moreover, mere entry in the record of right shall not create any right and title over any property without any corroborative evidence and materials. This proposition of law gets support from the view taken by the Appellate Division in the case reported in 28 DLR (AD) 61. A "Record-of-Rights" creates a presumption of possession but does not extinguish a valid title or possession.

After meticulous discussion and proper evaluation of the evidence on record and the judgment and decree of the learned trial Court, the Court of appeal below rightly allowed the appeal and set aside the judgment and decree of the learned trial Court after discussing the finding of each and every points found by the learned Judge of the trial Court. Judgment of the Court of appeal below is well discussed and well founded and there is no omission or material irregularity, there is no ground warranting interference by this Court.

In above view of the facts and circumstances of the case and materials on record, I am unable to find any substance in this Civil Revision and the Rule issued in this behalf is liable to be discharged.

As such, the Rule is hereby discharged and the order of stay granted earlier is recalled and vacated.

However, there is no order as to costs.

Let a copy of this judgment, along with the Lower Court Records (LCR), be sent to the concerned Court immediately.