

*Present:-*

*Mr. Justice Mahmudul Hoque*

**Civil Revision No. 2228 of 2014**

Mohammad Younus and another  
... Petitioners

-Versus-

Hajee Abdul Nabi being dead his heirs;  
1(a) Hasana Khatun and others

...Opposite-parties

Mr. Ashfaque Rahman for

Mr. Hassan M.S. Azim, Advocates

...For the petitioners

Mr. Md. Moniruzzaman with

Mr. Gazi Giash Uddin and

Mr. Mohammad Osman, Advocates

...For the opposite-party No. 1.

**Heard on 08.01.24, 25.04.24, 30.04.24,  
09.05.2024 and Judgment on 16<sup>th</sup> May, 2024.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioners calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 05.03.2014 passed by the learned Additional District Judge, 3<sup>rd</sup> Court, Chattogram in Partition Appeal No. 10 of 2006 allowing the appeal in part and thereby modifying the judgment and decree dated 16.11.2005 passed by the learned Senior Assistant Judge, Rangunia, Chattogram in Partition Suit No. 33 of 2000 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.

Shorn of unnecessary details, fact of the case lies in a very narrow compass. The petitioners, as plaintiff, filed Partition Suit No. 33 of 2000 in the Court of Senior Assistant Judge, Rangunia, Chattogram against the opposite-party, as defendant, praying for partition of R.S. Plot Nos. 11553, 11555, 11550, 11554 appertaining to R.S. Khatian No. 2483 of Mouza and Police Station-Rangunia and also R.S. Plot Nos. 11553/12643 appertaining to R.S. Khatian No. 2484 under Schedules 1, 2 and 3 land. The land of R.S. Plot Nos. 11553 and 11555 belonged to one Misrijan, wife of Ochi Uddin which was recorded in R.S. Khatian No. 2483 showing 6 annas share in the title column. Misrijan was the original owner of 27 decimals of land under 1<sup>st</sup> schedule of the plaint and, accordingly, R.S. Khatian No. 2483 prepared and published in her name. Admittedly, the said Misrijan sold 3.25 decimals of land from R.S. Plot No. 11555 to the grandfather of the plaintiffs namely Bacha Mia vide a Registered Sale Deed No. 4152 dated 05.12.1947. Misrijan transferred 12 decimals of land to her grandson namely Nazu Mia

vide a Registered Gift Deed No. 4153 dated 05.12.1947 (3·50 decimals from R.S. Plot No. 11555 and 8·50 decimals of land from R.S. Plot No. 11553). Thus, Misrijan had remaining interest over 12 decimals land. The said Misrijan had two sons namely, Amin Ullah and Wahab Miah. Amin Ullah had two wives and he died before his mother Misrijan. Nazu Miah is the son from the first wedlock of Amin Ullah. Safura Khatun was the 2<sup>nd</sup> wife of Amin Ullah and from this wedlock there were 3 sons namely, Ezhar Miah, Nabab Miah and Sharu Miah. On the death of Misrijan, her son namely, Wahab Miah got 12 decimals of land as her legal heir, as another son died before his mother prior to 1961. Subsequently, Wahab Miah died leaving behind wife namely, Goltaj Khatun, 3 sons namely, Syed Ahmed, Amir Hamza and Md. Shah Alam as his legal heirs. Thereafter, the said heirs of Wahab Mia namely, Goltaj Khatun, Syed Ahmed, Amir Hamza and Md. Shah Alam sold 12 decimals of land to the plaintiffs vide 3 separate Registered Sale Deed Nos. 3818 dated 28.11.1995, 1624 dated 04.06.1996 and 2378 dated 24.07.1996. Nazu Mia, who got 12 decimals of land from his grandmother namely, Misrijan transferred the whole property to one

Bazal Ahmed vide a Registered Patta Deed No. 2258 dated 04.06.1951. Subsequently, Bazal Ahmed sold 06 decimals of land to Sofura Khatun vide Registered Sale Deed No. 3399 dated 30.07.1958 and was in possession of the rest 6 decimals of land. On the death of Bazal Ahmed, his first wife (defendant No. 24), 5 sons i.e. defendant Nos. 20-23 and one Abul Kasem inherited the property as his legal heirs. Said Abul Kashem died leaving his heirs who are impleaded as defendant Nos. 25-29. Thereafter, the defendant Nos. 20-21, 23-24 and 27-29 sold 3·50 decimals of land to the plaintiff No. 2, defendant Nos. 3 and 30 vide a Registered Sale Deed No. 4276 dated 30.12.1997.

After death of Safura Khatun her 3 sons namely, Ezhar Miah, Nabab Miah and Sharu Miah inherited her 6 decimals of land as legal heirs. Ezhar Miah died leaving defendant Nos. 34-42 as his legal heirs and they transferred their shares to the plaintiffs vide a registered Ewaznama Deed No. 2524 dated 08.07.1997. Shuru Miah, the defendant No.43, sold his share to the plaintiffs vide a registered Sale Deed No. 1582 dated 27.05.1996. Bacha Miah got 3·25 decimals of land who died leaving Abdul Hakim (father of the

plaintiffs), defendant Nos. 1-6 and 1 daughter named, Halima Khatun. Abdul Hakim transferred his share to plaintiff Nos. 2-5 vide a registered Deed of Gift No. 1015 dated 27.05.1996. Thus, the plaintiffs got in total  $19\frac{53}{84}$  decimals of land under 1<sup>st</sup> schedule to the plaint and prayed for saham.

Defendant No. 3 contested the suit by filing written statement denying the claim of the plaintiffs contending inter alia that Misrijan was the original owner of 27 decimals of land under 1<sup>st</sup> schedule of the plaint and, accordingly, R.S. Khatian No. 2483 was prepared and published in her name. Misrijan sold 3.25 decimals of land from R.S. Plot No. 11555 to the grandfather of the plaintiffs named Bacha Miah vide registered Sale Deed No. 4152 dated 05.12.1947 and by a registered Deed of Gift No. 4153 dated 05.12.1947 transferred 12 sataks land in favour of Nazu Miah. After death of Misrijan, her 2 sons namely, Wahab Miah and Amin Ullah got  $5\frac{57}{100}$  decimals of land each from remaining 12 decimals land. After death of Amin Ulla, his 2<sup>nd</sup> wife named Safura Khatun, his son Nazu Miah (by his 1<sup>st</sup> wife), and other 3 (three) sons namely, Nabab Miah, Ezhar Miah

and Shuru Miah (son of his 2<sup>nd</sup> wife) got his property as his legal heirs. The alleged Patta Deed dated 04.06.1951 is forged, fabricated and void and thus they denied the transfer to Safura back in 1958. The defendants mainly asserted that Nazu Miah transferred 7 decimals land to Bacha Miah vide Deed No.5233 dated 09.11.1956.

Wahab Miah disappeared at the relevant time and after treating him civilly dead, his brother Amin Ullah got his property as his legal heir. Subsequently, B.S. Khatian No. 1531 prepared and published in the name of Nazu Miah and Safura Khatun. After death of Safura Khatun, her 3 (three) sons namely, Nabab Miah, Ezhar Miah and Shuru Miah got her property. Said Nabab Miah transferred 2 decimals of land to the defendant No.3 by an exchange deed. Ezhar Miah died leaving his wife, sons and daughters who got his property. One of his sons named Osman Goni sold 1(one) decimal land to one Mohammad Idris vide sale deed dated 16.06.1997 and, subsequently, said Mohammad Idris transferred 0.50 decimal land to defendant No. 3 vide exchange deed dated 01.10.1997. Said Nazu Miah sold 7 decimals of land from R.S. Plot No. 11555 to Bacha Miah vide sale deed dated 09.11.1956. After death of said Nazu Miah, his legal

heirs i.e. Shamsul Alam and others got his remaining property. Shamsul Alam and others transferred 6 decimals of land by ewaznama deed. After death of said Bacha Miah, his legal heirs including the defendant No. 3 got his property and, thus, the defendant No. 3 got  $1\frac{86}{100}$  decimals. In this manner, the defendant No. 3 acquired  $9\frac{96}{100}$  decimals land under 1<sup>st</sup> schedule to the plaint and has been possessing the same by constructing a rice mill, shop, homestead and by cultivation any prayed for saham.

The trial court framed 6(six) issues for determination of the dispute between the parties. In course of hearing, the plaintiff examined 7(seven) witnesses as P.Ws and the defendant No. 3 himself along with 3 others deposed as D.Ws, added-defendant No. 48 deposed on behalf of defendant Nos. 44-48 as D.W.5 along with D.Ws 6-8. Both the parties submitted some documents in support of their respective claim which were duly marked as Exhibits. The trial court after hearing by its judgment and decree dated 16.11.2005 decreed the suit in part allotting saham to the plaintiff for 16.64 sataks from schedule 1, 4.08 sataks from schedule 2 and .56 sataks

from schedule 3 and also allotted saham to the defendant No. 3 for 3·91 sataks from schedule 1, 4·08 sataks from schedule 2 and ·56 sataks from schedule 3 and also allotted saham to defendant Nos. 42-48 measuring ·95 sataks from schedule 1.

Being aggrieved by and dissatisfied with the impugned judgment and decree of the trial court, only defendant No. 3 Hajee Abdul Nabi preferred Partition Appeal No. 10 of 2006 before the Court of learned District Judge, Chattogram against the judgment and decree of the trial court. Eventually, the said appeal was transferred to the Court of learned Additional District Judge, 3<sup>rd</sup> Court, Chattogram for hearing and disposal who upon hearing by the impugned judgment and decree dated 05.03.2014 allowed the appeal and set aside the judgment and decree passed by the trial court by modifying the judgment and decree reducing saham of the plaintiff and increasing saham of the defendant No. 3 to the extent that the plaintiff in suit will get 12·48 sataks from schedule 1 land, 4·08 sataks from schedule 2 land and ·56 sataks from schedule 3 land and the defendant No. 3 was allotted saham for 8·96 sataks from schedule 1 in place of 3·91 sataks maintaining the rest allotted by the



trial court. At this juncture, the plaintiff-respondent-petitioners, moved this Court by filing this revisional application and obtained the present Rule and order of stay.

Mr. Ashfaqur Rahman, learned Advocate appearing for the petitioners submits that genealogy as stated in the plaint are more or less admitted by both the parties with some variation. The case was decided by the trial court as well as by the appellate court agreeing with the genealogy given by both the parties. Consequently, no dispute now arises in respect of saham given by both the courts below to the plaintiff and defendant No. 3 as well as defendant Nos. 47-48 from schedules 2 and 3 lands. Only dispute between the parties remains in respect of schedule 1 land originally owned by Misrijan. He submits that it is not disputed that Misrijan was owner of R.S. Plot Nos. 11553 and 11555 recorded in R.S. Khatian No. 2483 showing 6 annas share in the title column measuring 27 decimals. Misrijan had 2 sons namely, Amin Ullah and Wahab Miah. Amin Ullah predeceased his mother Misrijan leaving 2 wives. Amin Ullah had 2 sons namely, Shahed Miah and Nazu Miah by 1<sup>st</sup> wife and 3 sons namely, Ezhar Miah, Nabab Miah and Sharu Miah by 2<sup>nd</sup>

wife Safura Khatun. Misrijan executed and registered a deed of gift in favour of her grandson Nazu Miah transferring 12 sataks of land. Nazu Miah got delivery of possession. After death of Misrijan her son Wahab Miah inherited remaining quantum of land measuring 11.75 sataks out of 25 sataks. Nazu Miah transferred his gifted property to one Bazal Ahmed by a registered Patta No. 2258 dated 04.06.1951 at a consideration of Tk. 90/-.

He argued that only question to be decided in the present Rule whether transfer of property by Nazu Miah in favour of Bazal Ahmed by registered Patta No. 2258 dated 04.06.1951 is valid in law. He submits that predecessor of plaintiff and defendant is Bacha Miah. Defendant No. 3 admitting validity of patta of the year 1951 exchanged some property with the owner who claimed the property by virtue of that patta. The trial court considering evidences both oral and documentary finally decided that the patta is a valid document and it was acted upon by admission of the defendant. On appeal the appellate court held that the patta executed by Nazu Miah in favour of Bazal Ahmed is a unilateral document which is hit by Section 107 of the Transfer of Property Act. The appellate court while allowing

the appeal and setting aside the judgment of the trial court and modified the quantum of land allotted to the plaintiff from schedule 1 reducing the same to 12·48 sataks in place of 16·64 sataks ignoring the patta deed. He submits that the patta deed of the year 1951 executed by Nazu Miah is valid document under Section 117 of the Transfer of Property Act, as the property in question is agricultural land and it was settled in favour of Bazal Ahmed for the purpose of agriculture and not for the purpose of business, as such, the patta in question was not required to be executed by both the lessor and lessee. He candidly submits that in the event of finding the patta deed is valid one then saham allotted by the trial court in favour of the plaintiff measuring 16·64 sataks from schedule 1 land shall stand correct and in the event of finding the patta invalid, the quantum of land given by the appellate court to the defendant No. 3 from schedule 1 land measuring 8·96 sataks shall stand good.

He strongly argued that in the patta in question purpose of settlement of the property has not been clearly stated but the lessee Bazal Ahmed was admittedly a cultivator as described in the deed itself. Therefore, it can be easily presumed that the property was

settled to Bazal Ahmed for the purpose of cultivation. He submits that the Bengal Tenancy Act, 1885 defined homestead and as per definition where a homestead was held by a raiyat or an under-raiyat as part of agricultural holding is agriculture land. In support of his such submissions he has referred to a catena of cases *Abdul Khaleque Vs. Abdul Noor and others* reported in *10 BLC (AD) 222*, *Md. Aftabuddin Vs. Abdul Musabbir and others* reported in *9 LM (AD) 24*, *Hazrat Ali (Md) Vs. Government of Bangladesh and others* reported in *47 DLR 246* and *Sardamoni Debi Vs. State of Bihar and others* reported in *AIR 1979 Patna 106*. He finally argued that the appellate court finding the patta deed void has committed error of law. The deed in question was executed by the lessor relating to agricultural land which was leased out to the lessee for the purpose of cultivation, as such, the deed in question is valid deed as per provision of Section 117 of the Transfer of Property Act.

Mr. Md. Moniruzzaman with Mr. Mohammad Osman, learned Advocates appearing for the opposite-party No. 1 at the very outset conceded that there is no dispute regarding saham allotted to the parties in respect of schedules 2 and 3, but the question left for

decision is whether a patta deed dated 04.06.1951 is a valid document in respect of schedule 1 land. He submits that admittedly, Nazu Miah acquired 12 sataks land from his mother Misrijan by way of gift. The plaintiff claimed that Nazu Miah by registered patta deed dated 04.06.1951 settled the said property in favour of Bazal Ahmed. Bazal Ahmed by a Registered Deed No. 3399 dated 30.07.1958 transferred 6 sataks of land in favour of Safura Khatun stepmother of Nazu Miah. Before that, Nazu Miah by a Registered Sale Deed No. 5233 dated 09.11.1956 sold 7 sataks of land to Bacha Miah predecessor of plaintiff and defendant No. 3. The defendant No. 3 claimed that patta deed of the year 1951 being void has not been acted upon. Consequently, S.A. khatian and subsequent khatian prepared in the name of Bacha Miah and in the name of his heirs.

He submits that if the patta deed dated 04.06.1951 is a void deed the purchase of Bacha Miah in the year 1956 shall stand valid and subsequent transfer by Bazal Ahmed to Safura Khatun also will be invalid. Subsequently, there has been some inter transfers between the parties, but because of exchange of a minimum quantum of land by defendant No. 3 with the owner of property by virtue of

patta cannot give validity of the patta deed. He submits that the nature of the property as described in the schedule to the patta as well as recorded in khatian is Bhati land and a quantum of 3·50 sataks is nal land. It was incumbent upon the plaintiff to prove that the property was leased out to Bazal Ahmed for the purpose of cultivation. But the plaintiff could not prove the same before the trial court by evidences both oral and documentary. Therefore, patta deed dated 04.06.1951 is hit by Section 107 of the Transfer of Property Act as it was not executed by both the parties. The trial court failed to notice Section 107 of the Transfer of Property Act and considering the patta as valid one allotted saham for 16·64 sataks, but the appellate court while allowing the appeal and modifying the judgment and decree of the trial court reducing saham of the plaintiff rightly held that as per Section 107 of the Transfer of Property Act, the patta deed dated 04.06.1951 ought to have been executed by both the lessor and the lessee. Since the deed is unilateral document the same is not a valid document in accordance with law.

Therefore, the appellate court rightly reduced quantum of saham given to the plaintiff by the trial court and it has committed no

illegality or error in the decision occasioning failure of justice. In support of his submissions he has referred to the cases of *Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Planning and another Vs. Sayed Mahabubul Karim* reported in *16 SCOB (AD) 46*, *Syed Imteyazuddin Hossain Vs. Md. Abdul Majid* reported in *22 DLR 451*, *Md. Abul Kasem Vs. Government of Bangladesh, represented by the Deputy Commissioner, Mymensingh and others* reported in *16 MLR (AD) 32*, *Md. Bedarul Islam being dead his heirs; Kulsuma Khatun and others Vs. Md. Zakaria and others* reported in *15 ADC 859*, *Md. Idris Ali and another Vs. D.C. Jamalpur* reported in *16 BLD 303* and *Most. Laila Begum and another Vs. Most. Maleka Khatun and another* reported in *20 DLR 475*.

Heard the learned Advocates of both the parties, have gone through the revisional application, plaint, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree passed by both the courts below.

Fact of the case need not be reproduced as no dispute between the parties in respect of allotment of saham from schedules 2 and 3 land. The dispute between the parties is limited within the property described in schedule 1 which originally belonged to one Misrijan measuring 27 sataks under R.S. Plot Nos. 11553 and 11555, R.S. Khatian No. 2483. Misrijan gifted 12 sataks of land to her grandson Nazu Miah by his predeceased son Amin Ullah by a registered Deed of Gift No. 4153 dated 05.12.1947 (Exhibit-3). Both the parties did not dispute that Nazu Miah by way of gift acquired 12 sataks of land from aforesaid 2 plots (3.50 decimals from Plot No. 11555 and 8.50 decimals from Plot No. 11553). Dispute mainly cropped out from the fact that Nazu Miah by a registered Deed of Patta No. 2258 dated 04.06.1951 (Exhibit-7) settled the said 12 sataks land in favour of one Bazal Ahmed. Bazal Ahmed by a Sale Deed No. 3399 dated 30.07.1958 transferred 6 sataks of land to one Safura Khatun stepmother of Nazu Miah. Then Bazal Ahmed died leaving defendant Nos. 22-23 sons, defendant No. 24 wife and another son named Abul Kashem who died leaving defendant Nos. 25-29. Defendant Nos. 20-21, 23-24 and 26-29 by a Sale Deed No. 4276



dated 30.12.1997 transferred 3·56 sataks of land to plaintiff No.2 and defendant Nos. 3 and 30. Safura Khatun died leaving 3 sons Ezhar Miah, Nobab Miah and Suru Miah. Thereafter, Ezhar Miah died leaving defendant Nos. 34-42 who exchanged their share with the plaintiff by a registered Deed of Exchange No. 2524 dated 08.07.1997 (Exhibit-10). Shuru Miah transferred his share to the plaintiff by a registered Sale Deed No. 1582 dated 27.05.1996 (Exhibit-11). All those transactions as mentioned above are absolutely based on title of Bazal Ahmed by virtue of a registered patta deed dated 04.06.1951. In the meantime, after settlement of the property by Nazu Miah in favour of Bazal Ahmed.

Nazu Miah again by a registered Sale Deed No. 5233 dated 09.11.1956 (Exhibit-Chha) transferred 7 sataks of land to Bacha Miah, predecessor of plaintiff and defendant. After transfer of 7 sataks land as claimed by the defendant No. 3, S.A khatian stands recorded in the name of Bacha Miah not in the name of Bazal Ahmed or Safura Khatuan claiming that patta deed dated 04.06.1951 never acted upon as the deed itself was a void deed. Facts remain that the defendant Nos. 3 and 30 admitting title of Bazal Ahmed and

in his absence title of his heirs, defendant Nos. 20-21, 23-24 and 26-29 purchased a portion of land by registered Deed No. 4276 dated 30.12.1997 jointly with the plaintiff. The plaintiff also on the basis of purchase by Safura Khatun from Bazal Ahmed in the year 1958 exchanged the property with the heirs of Safura Khatun. Admittedly, for long time neither the defendant No. 3 nor any other heirs of Bacha Miah denied title of Bazal Ahmed or Safura Khatun or their heirs on the basis of patta deed dated 04.06.1951.

However, they also claimed the property by purchase by their father Bacha Miah by a registered deed dated 09.11.1956 and also claimed that remaining 5 sataks of land inherited by heirs of Nazu Miah i.e; Shamsul Alam and others who transferred 6 sataks of land by way of exchange and the defendant No. 3 claimed his share from his father Bacha Miah and by exchange from heirs of Shamsul Alam, ignoring patta deed dated 04.06.1951, but in his written statement clearly stated existence of said patta and also claimed his share by purchase from defendant Nos. 20-21, 23-24 and 26-29, the heirs of Bazal Ahmed.

The appellate court while allotting saham to the defendant No. 3 considered the Sale Deed No. 4276 dated 30.12.1997 which the defendant Nos. 3 and 30 purchased from heirs of Bazal Ahmed jointly with the plaintiff No. 2. Only point to be decided in the present case whether patta deed dated 04.06.1951 executed by Nazu Miah alone in favour of Bazal Ahmed is hit by Section 107 of the Transfer of Property Act. As per Section 107 where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee. Contention of opposite-party that the patta deed ought to have been executed by Nazu Miah and Bazal Ahmed, but the same has not been executed by Bazal Ahmed, as such, the patta deed is not a valid deed in the eye of law and by the said patta Bazal Ahmed acquired no title in the property and he had no right to transfer a portion of the land to Safura Khatun in the year 1958 by a registered deed.

To appreciate the legal point raised by opposite-party, I have gone through the patta deed (Exhibit-7), it appears that the deed was executed by Nazu Miah alone. The nature of the property under Plot

No. 11555 measuring 3·50 sataks is nal and the property under Plot No. 11553 measuring 8·50 sataks is Bhiti land, both the plots situated side by side. The profession of the lessee has been stated in the deed itself is a cultivator. Recital of the patta discloses nothing regarding purpose of leasing out the property in favour of Bazal Ahmed. In the absence of non disclosure of purpose of leasing out the property in the deed itself, we are to see the nature of land and the area in which the property situates.

Admittedly, the property situated under Police Station and Mouza Rangunia in rural area. For the purpose of determining the nature of land situated in rural area in many cases, in our jurisdiction it has been held that the land in question even if the case land is deemed to be part of a homestead then also, the legal position is that the property is agriculture land and in a pre-emption case pre-emptable under Section 96 of the State Acquisition and Tenancy Act. As per definition of homestead in Bengal Tenancy Act, the property situated in rural area and used as homestead including agriculture land to be treated as agriculture land which is being used for the purpose of cultivation. Admittedly, property under Plot No. 11555 is

nal land and property under Plot No. 11553 is Bhiti land, profession of the lessee described and disclosed in the deed is a cultivator. Though, no purpose has been disclosed in the recital of the patta it can be presumed from the document that the property was leased out by the lessor in favour of Bazal Ahmed for the purpose of cultivation not for other purpose like business. Moreover, at the time of leasing out the property there was no structure, meaning thereby, homestead of lessor or lessee. Mere nature of a land is Bhiti land in rural area cannot be defined or treated as non-agricultural land.

In view of the above, the patta deed in question has protection of Section 117 of the Transfer of Property Act, which provides that leasing out of agriculture land to the lessee by a patta deed executed by the lessor alone is a valid deed. Therefore, Nazu Miah since transferred his property in favour of Bazal Ahmed on 04.06.1951 by patta deed, he had no title in the schedule 1 property to be transferred to Bacha Miah by a registered Sale Deed No. 5233 dated 09.11.1956.

Apart from this, heirs of Bacha Miah defendant Nos. 3 and 30 admitting said patta deed of Bazal Ahmed purchased some property from his heirs jointly with the plaintiff No. 2. Since the plaintiff and

defendants are full brother and sister they cannot blow hot and cold at the same time in a same case. The trial court while decreeing the suit in part allotting saham to the plaintiff for 16.64 sataks in his judgment rightly considered the patta deed dated 04.06.1951, but the appellate court while modifying the judgment and reducing saham to the plaintiff wrongly took a different view that the patta deed dated 04.06.1951 is not a valid one because it was not executed by both the leesor and the lessee finding that the property leased out to Bazal Ahmed is non-agricultural land and as such, the appellate court has committed error of law in the decision occasioning failure of justice.

Taking into consideration the above, this Court finds merit in the Rule as well as in the submissions of the learned Advocate for the petitioners calling for interference by this Court.

In the result, the Rule is made absolute, however, without any order as to costs.

The impugned judgment and decree of the appellate court is hereby set aside and the judgment and decree of the trial court is hereby restored.

Order of *stay* granted at the time of issuance of the Rule stand vacated.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.

*Helal-ABO*