

**Present:**

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

**Civil Revision No.05 of 2015**

**IN THE MATTER OF:**

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

- AND -

**IN THE MATTER OF:**

Mosammat Fatema Begum and others  
... Plaintiff-Petitioners

-Versus –

Siddiqur Rahman and others  
... Defendant-Opposite Parties

Mr. Md. Akmol Hossain, Advocate  
.... For the petitioners

Mr. Sazzad-Ul-Islam, Advocate  
...For the Opposite Parties

**Heard on 21.01.2024 and  
Judgment on 05.02.2024**

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

On an application filed by the petitioner, under section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite parties No.1 and 2 to show cause as to why the judgment and decree dated 28.08.2014 (decree signed on 04.09.2014) passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Cumilla in Title Appeal No.151 of 2012 dismissing the Appeal and thereby affirming the judgment and decree dated 13.10.2010 (decree signed on 20.10.2010) passed by the learned Senior

Assistant Judge, Laksham, Cumilla in Title Suit No.05 of 2005 decreeing the suit in part should not be set-aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court stayed the further proceedings of Title Execution Case No.1 of 2012, now pending in the Court of learned Senior Assistant Judge, Laksham Cumilla till disposal of the Rule.

Facts necessary for disposal of the Rule, in short, are that the present petitioners as plaintiff instituted the instant Title Suit No.05 of 2005 for partition the suit land against the present opposite parties impleading them as defendants contending in brief inter alia that the predecessor of the plaintiffs namely Abdul Mannan and the defendants No.1-4 became owner and possessor of the suit 1<sup>st</sup> and 1<sup>st</sup> kha schedule land to the plaintiff by way of registered exchange deed No.7821 executed on 27.03.1990 and registered on 28.03.1990 vide Ex(P) Case No.2273 of 1968-1969. Abdul Mannan being owner in possession of 1.206 acres of land in his 1/5<sup>th</sup> share and he died leaving behind the plaintiff No.1 as his wife, the plaintiffs No.2/3 as his two sons and the plaintiff No.4 as his daughter. In this way the plaintiffs became owner and possessor of 1.206 acres of land by way of inheritance and have been possessing the same in ejmali with the defendants. The suit property is not partitioned by metes and bounds. It is very urgent need to partition the property for peaceful use and possession. The plaintiffs requested the defendants to partition the disputed property repeatedly but the defendants did not pay any heed to the request and as such the plaintiffs constrained to file this suit for partition.

Being notified the defendants No.1 and 2 having entered appearance contested the suit by filing written statement denying all the material allegations made in the plaint contending in brief inter alia that Rajani Kumer Namah, Brindaban Namah, Ashiram Namah sons of Golak Chandra Namah and Prasanna Kumer Namah, Satendra Chandra Namah sons of Gagan Chandra Namah and Dino Bandhu Bhowmik Namah son of Ram Sundra Bhowmik, Chapala Sundari Namah wife of Binod Namah were owner and possessors of the suit land who exchange the same with Syeder Rahman predecessor of the plaintiffs in the year of 1964 by an irrevocable Power deed. Syeder Rahman submitted the said Power deed for registration before the Deputy Commissioner (Revenue) Comilla and accordingly Ex(P) Case No.2273/1968-69 was started. Syeder Rahman sold 203 decimals of land to different persons by registered deeds and gifted 31 decimals of land to his daughter Firoza Begum orally and being owner in possession of the rest 444.24 decimals of land gifted the same orally to his three sons the defendants No.1/2 and A. Mannan by 1<sup>st</sup> wife and to the defendants No.3/4 by his 2<sup>nd</sup> wife and being title less died leaving behind three sons the defendants No.1/2 and A. Mannan predecessor of the plaintiff and three daughters namely Hanufa, Rasheda, Rowshanara by 1<sup>st</sup> wife and two sons the defendants No.3/4 and three daughters namely Chand Bibi, Rahima, Nurunnahar by his 2<sup>nd</sup> wife. The defendants No.3/4 being owner in possession of 177.7 acres of land sold the same to the defendants No.1 and 2 and A. Mannan and others and became title less. The Deputy Commissioner Revenue registered the exchange deed in favour of five sons of Syeder Rahman on 27.03.1990. Among the three sons of

Syeder Rahman by 2<sup>nd</sup> wife Siddiquir Rahman was elder who maintained his younger brothers and sisters with the income of the joint family and for meet up the maintenance and other expenditure of his brothers and sisters he sold 118.75 decimals of land by different kabalas and subsequently he purchased 29.25 decimals of land from the defendants No.3/4 vide saf-kabala deed dated 05.03.1976 with the joint income and in this way they were owner and possessors of 177.95 decimals of land jointly. A. Mannan being owner in possession of 59.16 decimals of land he separated and died leaving behind the plaintiffs as his heirs who got the said land and are in possession thereof but the plaintiffs filed this suit on the basis of series of lies and the suit is liable to be dismissed with costs.

Both the parties adduced witnesses and exhibited documents to prove their case and upon hearing the parties the learned Senior Assistant Judge, Lakshm, Cumilla passed the judgment and decree dated 13.10.2010 (decree signed on 20.10.2010) in Title Suit No.05 of 2005 decreeing the suit in part.

Being aggrieved by and dissatisfied with the judgment and decree dated 13.10.2010 (decree signed on 20.10.2010) passed by the learned Senior Assistant Judge, Lakshm, Cumilla in Title Suit No.05 of 2005 decreeing the suit in part the plaintiff-petitioners filed Title Appeal No.151 of 2012 before the learned District Judge, Cumilla. Thereafter, the said Title Appeal was transferred to the learned Joint District Judge, 3<sup>rd</sup> Court, Cumilla for hearing and disposal. After hearing both the parties and upon considering the materials on record the learned Joint District Judge, 3<sup>rd</sup> Court, Cumilla passed the impugned judgment and decree dated

28.08.2014 (decree signed on 04.09.2014) in Title Appeal No.151 of 2012 dismissed the said Title Appeal.

Being aggrieved by and dissatisfied with the judgment and decree dated 28.08.2014 (decree signed on 04.09.2014) passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Cumilla in Title Appeal No.151 of 2012 dismissing the said Title Appeal and thereby affirming the judgment and decree dated 13.10.2010 (decree signed on 20.10.2010) passed by the learned Senior Assistant Judge, Lakshmi, Cumilla in Title Suit No.05 of 2005 decreeing the suit in part, the petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Md. Akmol Hossain, the learned Advocate appearing on behalf of the petitioners submits that the plaintiffs stated in their plaint that “বাদীগনের পূর্ববর্তী আবদুল মান্নান ও ১-৪ নং বিবাদীগন ১৯৬৮ ইং-১৯৬৯ ইং সনের ২২৭৩ নং EX (P) Case মূলে কুমিল্লা অতিরিক্ত জেলা প্রশাসক রাজস্ব কর্তৃক ২৭/০৩/১৯৯০ ইং তারিখের সম্পাদিত ও ২৮/০৩/১৯৯০ ইং তারিখের রেজিস্ট্রিকৃত ৭৮২১ নং দলিল মূলে নালিশী ১ম ও ১ম (খ) তপছিলোক্ত ভূমিতে প্রত্যেকে ১/৫ অংশে মালিক দখলকার হয় ও থাকে।” and prayed for separate saham in respect of the said 1/5<sup>th</sup> share equivalent to 1.205 acres of land of Abdul Mannan as his heirs out of 6.0250 acres of suit land i.e. the land of deed No.7821 dated 27.03.1990. But both the Court below committed error of law in decreeing the suit in part calculating the share of Abdul Mannan from 444.25 decimals of land after deducting 31+203=234 decimals of land in mentioning that Syeder Rahman transferred the said land without referring any document on the basis of claim by the defendants and in misreading the deposition of the P.W.1. The P.W.1 stated

in her deposition that, “সত্য নয় যে, আমার স্বশুর বিনিময় কৃত ভূমি হইতে ২৯৩ দাগে ৩২ শতক ২১৫ দাগে ৭৮ শতক, ৩২০ দাগে ৩৩ শতক, ২১০ দাগে ৩০ শতক ১৫৯ দাগে ৩০ শতক একুনে ২০৩ শতক বিক্রয় করে দেয়া” and the defendant No.2, A. Salam son of Syeder Rahman as D.W.1 stated in his cross-examination that “আমার বাবা সৈয়দ রহমান। সৈয়দের রহমান পৃথক পৃথক কবলা মূলে যে ভূমি বিক্রয় করে সেই কবলা দাখিল দাখিল করিনি সত্য নয় যে, সৈয়দের রহমান বিক্রয় করেছে মর্মে মিথ্যা বলেছি কি আমি এই মর্মে মিথ্যা বলেছি।” but the learned trial Court distributed the suit land among the five sons of Syeder Rahman after deducting 203 decimals of land in misreading the deposition of the P.W.1 with a finding that, “এমতাবস্থায় দেখা যাচ্ছে যে, বাদীনি তার শ্বশুর সৈয়দের রহমান কর্তৃক দানকৃত ৩১ শতক ও বিক্রিত ২০৩ শতক ভূমির কথা জেরাতে স্বীকার করেছেন। এমতাবস্থায় ৩১ শতক দান ও ২০৩ শতক ভূমি বিক্রয় বাদ বক্রী ৪৪৪.২৫ শতক ভূমি সৈয়দের রহমান মালিক হয় এবং বাদী বিবাদী কর্তৃক স্বীকৃত যে, উক্ত ৪৪৪.২৫ শতক ভূমি সৈয়দের রহমান তার পাঁচ ছেলেকে দান করেন।” and the learned Appellate Court also affirmed the judgment and decree of the trial Court in finding that, “উভয় পক্ষের স্বীকৃত মতে ২২৭৩/১৯৬৮-৬৯ নম্বর বিনিময় মোকদ্দমা মূলে নালিশী ভূমি বাদী ও বিবাদীগন প্রাপ্ত হন। বাদীগনের পূর্ববর্তী সৈয়দের রহমান তার জরুরী আর্থিক প্রয়োজন ২৯৩ দাগে ৩২ শতক, ২১৫ দাগে ৭৮ শতক, ৩২০ দাগে ৩৩ শতক, ২১০ দাগে ৩০ শতক একুনে ২০৩ শতক ভূমি পৃথক পৃথক সাফ কবলা মূলে বিভিন্ন ব্যক্তির নিকট বিক্রয় করে ২৯১ দাগে ৩১ শতক ভূমি ১ম স্ত্রী গর্ভজাত কন্যা ফিরোজা বেগমকে মৌখিক ভাবে দান করে বক্রী ৪৪৪.২ শতক ভূমিতে মালিক দখলকার থেকে ১ম স্ত্রীর গর্ভজাত তিন পুত্র ও ২য় স্ত্রীর গর্ভজাত দুই পুত্র মোট ০৫ পুত্রকে মৌখিকভাবে দান করে নি:স্বত্ববান অবস্থায় মারা যান।”, which resulting in an error in the decision occasioning failure of justice.

The learned Advocate lastly submits that both the Court below failed to consider that Abdul Mannan predecessor of the plaintiffs became owner and possessor of 1.205 acres of land on the basis of registered exchange

deed executed on 27.03.1990 and registered on 28.03.1990 vide Ex (P) Case No.2273 of 1968-69 and also became owner and possessor of 1/3<sup>rd</sup> share of  $.29\frac{1}{4}$  acre = .0975 acre in total 1.3025 acres of land and the plaintiffs became owner and possessor of the same by way of inheritance and the D.W.1 also admitted in his cross examination stated that, “মান্নান যেটুকু সম্পত্তি পাওনা সেটুকু সম্পত্তি বাদীর পাওনা। মান্নান জীবদ্দশায় কোন সম্পত্তি বিক্রয় করেনি।” and also stated that, “আমি ও বাদীগনের পূর্ববর্তী মান্নান সম্পত্তি বিক্রয় করিনি।” and as such the plaintiffs are entitled to get separate saham in respect of the said 1.3025 acres of land, but the Court below did not consider the said matter, which resulting in an error in the decision occasioning failure of justice. Accordingly, he prays for making the Rule absolute.

Mr. Sazzad-Ul-Islam, the learned Advocate appearing on behalf of the opposite parties submits that Rajani Kumer Namah, Brindaban Namah, Ashiram Namah sons of Golak Chandra Namah and Prasanna Kumer Namah, Satendra Chandra Namah sons of Gagan Chandra Namah and Dino Bandhu Bhowmik Namah son of Ram Sundra Bhowmik, Chapala Sundari Namah wife of Binod Namah were owner and possessors of the suit land who exchange the same with Syeder Rahman predecessor of the plaintiffs in the year of 1964 by an irrevocable Power deed. Syeder Rahman submitted the said Power deed for registration before the Deputy Commissioner (Revenue) Comilla and accordingly Ex(P) Case No.2273/1968-69 was started. Syeder Rahmann, sold 203 decimals of land to different persons by registered deeds and gifted 31 decimals of land to his daughter Firoza Begum orally and being owner in possession of the rest

444.24 decimals of land gifted the same orally to his three sons the defendants No.1/2 and A. Mannan by 1<sup>st</sup> wife and to the defendants No.3/4 by his 2<sup>nd</sup> wife and being title less died leaving behind three sons the defendants No.1/2 and A. Mannan predecessor of the plaintiff and three daughters namely Hanufa, Rasheda, Rowshanara by 1<sup>st</sup> wife and two sons the defendants No.3/4 and three daughters namely Chand Bibi, Rahima, Nurunnahar by his 2<sup>nd</sup> wife. The defendants No.3/4 being owner in possession of 177.7 acres of land sold the same to the defendants No.1 and 2 and A. Mannan and others and became title less. The Deputy Commissioner Revenue registered the exchange deed in favour of five sons of Syeder Rahman on 27.03.1990. Among the three sons of Syeder Rahman by 2<sup>nd</sup> wife Siddiquir Rahman was elder who maintained his younger brothers and sisters with the income of the joint family and for meet up the maintenance and other expenditure of his brothers and sisters he sold 118.75 decimals of land by different kabalas and subsequently he purchased 29.25 decimals of land from the defendants No.3/4 vide saf-kabala deed dated 05.03.1976 with the joint income and in this way they were owner and possessors of 177.95 decimals of land jointly. A. Mannan being owner in possession of 59.16 decimals of land he separated and died leaving behind the plaintiffs as his heirs who got the said land and are in possession thereof but the plaintiffs filed this suit on the basis of series of lies. Therefore, he prays for discharging the Rule.

I have heard the submissions of the learned Advocates for the parties, perused the revisional application, the impugned judgment and



decree of the Courts' below, the papers and documents as available on the record.

It appears from the record that the plaintiff-petitioners claimed that they will get 203 decimals of suit land. On the other hand, the opposite parties claimed that the predecessors of the petitioners sold 203 decimals of suit land, but they did not submit any deed before the trial Court in support of their claim. But, they filed a counter affidavit along with photocopies of the four sale deeds of the predecessor of the petitioners in this Court mentioning that some portion of land in kabala deed No.5675 dated 02.09.1967 measuring area is 15 decimals in C.S. Dag No.215, Kabala Deed No.1634 dated 12.02.1968 measuring area is 33 decimals in C.S. Dag No.320, Kabala Deed No.5599 dated 26.09.1970 measuring area is 30 decimals in C.S. Dag NO.59 and Kabala Deed No.5994 dated 27.09.1970 measuring area is 39 decimals in C.S. Dag No.215 total area of land is 117 decimals have been sold out by late Sayedur Rahman father of the opposite party No.2.

In the light of the above discussion, it appears that this case needs to be remanded to determine by evidence whether the sale of the plaintiff's predecessors is correct or not and it is also to be proved by submitting certified copies of the said documents and also to be marked as exhibits.

Considering the above facts and circumstances and materials on record, I think that it will be best served for ends of justice, if I send back this case to the learned concerned Appellate Court for further hearing and disposal on basis of the oral and documentary evidences.

In the Result, the Rule is disposed of with direction.

The judgment and decree dated 28.08.2014 (decree signed on 04.09.2014) passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Cumilla in dismissing the Title Appeal No.151 of 2012 and thereby affirming the judgment and decree dated 13.10.2010 (decree signed on 20.10.2010) passed by the learned Senior Assistant Judge, Laksham, Cumilla in Title Suit No.05 of 2005 decreeing the suit in part is hereby set-aside.

The learned Appellate Court, Cumilla is hereby directed to give opportunity both the parties for submitting the additional evidence and upon hearing the parties to disposed of the Title Appeal No.151 of 2012 within 01(one) year from the date of receipt of this judgment and order.

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

Send down the LCR along with a copy of this judgment and order to the learned concerned Appellate Court at once.