

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.3804 OF 2014**

In the matter of:

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

And

Moslem Howlader and others

....Petitioners

-Versus-

Shahid Bhuiya and others

....Opposite parties

Mr. Md. Shahidul Islam with

Mr. Md. Asaduzzaman Ansari,

Ms. Papia Sultana, Advocates

.... For the petitioners.

Mr. Awlad Hossain, Advocate

.... For the opposite party No1.

**Heard on 12.11.2024 and Judgment on 13.11.2024**

This Rule was issued calling upon the opposite party Nos1 to show cause as to why the impugned judgment and decree dated 26.11.2013 passed by the learned Additional District Judge, 1<sup>st</sup> Court, Basishal in Title Appeal No.108 of 2012 affirming the judgment and decree dated 20.06.2012 passed by the learned Assistant Judge, Wazipur, Barishal in Title Suit No.61 of 2005 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 in short are that the petitioner as plaintiff instituted above suit for partition in respect of “Ka” schedule land and for declaration that the registered kabala deed of defendant No.85 as described in “Gha” schedule to the plaint is illegal, void and not binding upon the plaintiff.

It was alleged that above property belonged to Eman Uddin in 8 ana share and Amin Uddin and Kamin Uddin in 4 ana share each and accordingly relevant C.S katian was prepared. The Father of Eman Uddin was Surot Hawlader and father of Amin Uddi and Kamin Uddin was Noyon Hawladr and above Surot Howlader and Noyon Howladre were two brothers. As such Eman Uddin was the cousin brother of Amin Uddin and Kalim Uddin.

Above Amin Uddin died leaving 1 daughter Jamila Khatun and 1 wife Alekjan and above Alekjan died leaving only daughter Zamila. As such Zamila inherited 10 ana share of the land left by his father Eman Uddin and remaining 6 anas was inherited by her cousin brothers namely Amin Uddin and Kamin Uddin. Plaintiffs are successive heirs of above Amin Uddin and Kamin Uddin and they are in position in the disputed property peacefully but above land has

been erroneously recorded in the SA Katian in the name of above Jamila Khatun.

Defendant No.85 claimed title in 60 decimal land on the basis of purchases from sons of above Jamila Khatun but before sale of above land to defendant No.85 Jamila Khatun or his sons had no subsisting interest or title in the above land.

The suit was contested by defendant No.85 by filing a written statement alleging that Eman Uddin was not the cousin brother of Amin Uddin and Kamin Uddin. Eman Uddin died leaving 1 son Wahed, 1 daughter Jamila Khatun and 1 wife Alekjan and the defendant did not inherit any property of Eman Uddin. On the basis of purchase from the sons of Jamela Khatun by registered kabala deed dated 24.01.2005 defendant No.85 is in peaceful position in the above land by way of mutating their name and paying rent to the Government. S.A. khatian of the disputed land was correctly recorded and the plaintiff did not have any title and position in the above lands.

At trial Plaintiff examined 6 witnesses and produced and proved documents which were marked as Exhibit Nos.1-11 series. Defendant No.85 examined 3 witnesses and produced and proved documents which were marked exhibit No."Ka"-“Uma”. Defendant

No.84 examined 1 witness but did not produce and prove any document.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree of the trial Court plaintiff preferred Title Appeal No.108 of 2012 to the District Judge, Barisal which was heard by the learned Additional District Judge, 1<sup>st</sup> Court who dismissed the appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of appeal below above appellant as petitioner moved to this Court and obtained this Rule.

Mr. Md. Shahidul Islam, learned Advocate for the petitioner submits that undisputedly Eman Uddin had 8 anas share in the disputed property. Above Eman Uddin died leaving 1 daughter Jamila Khatun and 1 wife Alekjan, as such, his cousin brothers predecessors of the plaintiffs namely Amin Uddin and Kamin Uddin inherited 6 ana share as residuer heirs and plaintiff are in peaceful position in above land. But in the S.A katians of above land was erroneously recorded in the name of Jamila Khatun and on the basis of alleged purchase from 1 son of above Jamila Khatun defendant

No.85 did not acquire any title in 60 decimal land. Above kabala deed was without consideration, illegal and void. Since Jamila Khatu had no subsisting interest in above land and her son did not inherit anything. The plaintiff has succeeded to prove their above claims by consistent evidence of 6 plaintiff witnesses and a bunch of documents at trial. But the learned judge of the trial Court most illegally dismissed above suit and instead of an independent assessment of the evidence on record the learned Judge of the Court of appeal below most illegally dismissed the appeal and affirmed the flawed judgment and decree of the trial Court on conjecture and surmise which is not tenable in law.

The learned Advocate lastly submits that this suit suffers from procedural defects since no specific mention has been made in the plaint as to what was the total quantity of land in relevant C.S recorded and what quantity of land the plaintiff acquired as heirs of Amin Uddin and Kamin Uddin. Above defects in the plaint and deficiencies in the evidence of the plaintiff witnesses caused due to lack of skill of the appointed Advocate and not for the fault of the plaintiff. As such the learned Advocated submits that the plaintiff may be allowed to withdraw this suit with liberty to sue a fresh for the same cause.

On the other hand Mr. Md. Awlad Hossain, learned Advocate for the opposite party No.1 submits that admittedly Eman Uddin was the owner and possessor of the disputed property. Above Eman Uddin died leaving 1 son Wahed 1 daughter Jamila Khatun and 1 wife Alekjan. Above Alekjan and Wahed died leaving Jamila Khatun as the sole heir of Eman Uddin. Jamila Khatun died leaving 2 sons namely Mirazul @ Shirajul Islam and Mojibor. Defendant No.85 purchased 60 decimal land from above Sirajul by registered kabala deed 26.04.2005 (Exhibit No."Ka" series and deed No.1481).

The plaintiffs did not admit the existence of Wahed but above Wahed purchased a land from Mohiuddin Howalder by registered kabala deed dated 02.05.2025 and above original registered document was produced at trial and marked as Exhibit No.Ka/1. After prove of the existence of Wahed the plaintiffs claim that Wahed died before his father Eman Uddin and he did not inherit his property. But the plaintiffs could not prove the same by legal evidence. Admittedly S.A Khatian of the disputed property has been recorded in the name of Jamila Khatun as the heir of Emam Uddin and plaintiffs are in possession in above land on the basis of purchase from Shirajul.

On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the trial Court rightly

dismissed the suit and the learned judge of Court of Appeal below rightly upheld above judgment and decree of the trial Court and dismissed the appeal which calls for no interference.

I have considered the submissions of the learned advocates for the respective parties and carefully examined all materials on record.

It is admitted that Eman Uddin was the owner and possessor of 8 anas share of the disputed properties as described in the schedule to the plaint and remaining 8 anas was owned and possessed by Amin Uddin and Kamin Uddin in equal shares.

Plaintiffs claims that above Eman Uddin was the cousin brother of Amin Uddin and Kamin Uddin and plaintiffs as the successive heirs of Amin Uddin and Kamin Uddin inherited residue share of above Eman Uddin. In this regard the plaintiffs provided a genology in the plaint alleging that the father of Eman Uddin was Surot Ali and the father of Amin Uddin and Kamin Uddin was Nayan and above Surot Howlader and Noyon Howlader were full brothers.

The defendants have denied above genology and stated that Eman Uddin was not cousin brother of Amin Uddin and Kamin Uddin. As such the plaintiffs were required to prove by legal evidence that Amin Uddin and Karim were cousin brothers of Enam Uddin.

Plaintiffs have examined as many as 6 witnesses at trial but none of them stated anything about above genology in their respective evidence. Plaintiff No.10 gave evidence as PW1 but in his evidence he did not mention anything as to how Amin Uddin and Kamin Uddin were cousin brothers of Eman Uddin. In cross examination PW1 stated that he does not have any document to show that the name of the father Eman Uddin was Surot and father of Amin Uddin and Kamin Uddin was Noyon.

As such the concurrent findings of the learned Judges of the Courts below that the plaintiffs have failed to prove by legal evidence that Eman Uddin or Emam Uddin was the cousin brother of Amin Uddin and Kamin Uddin is based on evidence on record.

The second pillar of the case of the plaintiffs is that Eman Uddin died sonless leaving 1 daughter Jamila Khatun and 1 wife Alekjan but above claim has been denied by the defendants and they have stated that Eman Uddin had a son namely Wahed. The plaintiffs did not mention anything in the plaint about above wahed. On the other hand defendants have succeeded to prove the existences of above Wahed by producing original registered kabala deed No. 4135 dated 02.05.1925 marked Exhibit No.Ka/01 which shows that Wahed son of Emam Uddin purchased above land from Ismail.



The plaintiffs without setting up a counter case about above Wahed by amendment of the plaint stated in the evidence of PW1 that above Wahed died in the lifetime of his father and he did not inherit any property of his father. PW1 Ali Hossain did not mention anything about Wahed in his evidence. But in his cross examination he denied a suggestion that Wahed did not die before his father. The plaintiffs did not mention in his plaint as to when above Wahed Howlader allegedly died since after promulgation of Muslim Family Law Ordinance, 1961 a predeceased son was also entitled to inherit the property of his father.

In view of above evidence on record I find substance in the submissions of the learned Advocate for the opposite party that the plaintiffs could not prove by legal evidence that above Wahed died before the demise of his father and he did not inherit any property of Eman Uddin.

As mentioned above the plaintiffs do not admit defendant No.85 as a co-sharer in the disputed joma since they have stated that the registered kabala deed of defendant No.85 was an illegal, void and ineffective document and by above document defendant no.85 did not acquire any title and possession in the disputed joma. On the other hand plaintiffs have impleaded defendant No.85 as a defendant in this suit for partition. It is well settled that in a suit for partition

only the co-sharers are necessary parties and a suit for partition is not maintainable if the plaintiff do not admit the defendant as co-sharer.

As mentioned above today learned Advocate for the petitioner filed a petition under Order 23 Rule 1 of the Code of Civil Procedure for the withdrawal of the suit with right to sue a fresh on the ground of procedural defects. It is true that in the plaint the plaintiffs did not make specific mentions as to the quantity of total land of Eman Uddin referring to relevant C.S katians and the total properties plaintiffs acquired from Amin Uddin and Kamin Uddin and what is the quantity of land they claim from Eman Uddin. But this suit was filed in 2005 and on full trial the same was dismissed by the trial Court and the appeal from above judgment and decree was also dismissed on merit.

It has been found that the plaintiffs could not prove their locus standi to claim the property of Eman Uddin since they could not prove that Eman Uddin was cousin brother of Amin Uddin and Kamin Uddin by legal evidence and they have also failed to prove that Eman Uddin had no son or Wahed Howlader son of Eman Uddin had died during lifetime of his father and he did not inherit the property of Eman Uddin by legal evidence.

On consideration of above materials on record I hold that giving the plaintiffs another opportunity to file another suit for the

same cause will be a futile exercise which will cause unnecessary sufferings and plight to the defendants and shall not meet the ends of justice.

In above view of the facts and circumstances of the case and evidence on record I am unable to find any infirmity or illegality in the impugned judgment an decree passed by the learned judge of the Court of Appeal below calling for interference by this Court. Nor I find any substance in this revisional application under section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to discharged

In the result, this Rule is hereby discharged.

However, there is no order as to costs.

Send down the lower Courts record immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*