

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Ziaul Haque

Civil Revision No. 2836 of 2011

Faruk Hossain and others

....Plaintiffs-Respondents-Petitioners.

-Versus-

Zahida Begum and others

.....Defendants-Appellants-Opposite Parties

None appears

....For the petitioners

Mr. Abdul Haque Gharami, Advocate

..... For the opposite parties

Heard on 05.11.2025, 10.11.2025 and
Judgment on 13.11.2025.

“Bismillahir Rahmanir Rahim (In the name of Allah, the most merciful and the most magnificent.)”

- 1.This Rule was issued at the instance of the plaintiffs-respondents-petitioners against the judgment and decree dated 23-02-2011 passed by the learned Additional District Judge, Jhalakathi in Title Appeal No. 97 of 2007 allowing the appeal and thereby setting aside the judgment and decree dated 23-08-2007 passed by the learned Joint District Judge, 2nd Court, Jhalakathi in Title Suit No. 03 of 2001 decreeing the suit.
- 2.That the facts relevant for disposal of the Rule in short are that the plaintiffs instituted Title Suit No.03 of 2001 for partition of the ejmali property alongwith cancellation of deed described in schedule ‘Kha’ to the plaint stating interalia that the suit land lying in kamdevpur Mouja under

Nalchity Police Station appertaining to S.A. Khatian No. 308/ 158 /156/ 41/147/ 154/ 316/145/148/150/151/152/205/311/195/196/111/157 belonged to Akram Ali and Ekram Ali. Ekram Ali died leaving behind the plaintiff and defendant No. 13. The plaintiff got $2.35 \frac{1}{2}$ acres of land by inheritance. He was living in the said property and cultivating a part thereof. The plaintiff obtained mutation of his name vide Miscellaneous Case No. 23(1)N/94-95. On the contrary, defendant No. 13 obtained mutation vide Miscellaneous Case No. 40(1)N/94-95. The defendant No. 1 filed Miscellaneous Case No. 26N/94-95 challenging the mutation of the plaintiff but the said case was rejected on 30-06-1997 as against which the defendant No. 1 moved Revision No. 19 of 1997 before the Deputy Commissioner (Revenue), Jhalakathi who set aside the order and sent back the case on remand to the Assistant Commissioner (Land) and also set aside the mutation of the plaintiff dated 24.01.2001. The order passed by the Assistant Commissioner (land) dated 24.01.2001 in Miscellaneous Case No. 26N /94-95 is illegal, void and inoperative. It is stated that the defendant No. 1 instituted Title Suit No. 66 of 1996 earlier in which he made admission that Akram Ali and Ekram Ali were in equal shares. The defendant No. 1 withdrawn the suit. The suit land is an ejmali property and the plaintiff requested the defendants for getting partition of the suit land on different occasions; but the defendants delayed the matter and ultimately refused and as such the plaintiff sought for partition on Magh 1407 B.S. and the defendants refused to do so; hence the suit.

3. That the defendant No. 1 contested the suit by filing written statements denying the material allegations brought by the plaintiff. The defense case of the defendant No. 1 are that Ekram Ali and Akram Ali were the owners of 4.87 acres of land of each. Ekram Ali died leaving behind 2 daughters i.e. plaintiff and defendant No. 13 and brother Akram Ali. Akram Ali inherited 1.63 acres from Ekram Ali and thus Akram Ali became owner of 6.50 acres of land; out of which he made a gift of 2.27 acres of land in favour of the plaintiff and his 2 daughters on 26-04-1966. Akram Ali sold away 76 decimals of land on 05-03-1963 in favour of the daughter of the contesting defendant. After transfer, he had 3.47 acres of land. Akram Ali died leaving behind 1 son and 4 daughters and the contesting defendant became owner of .70 decimals of land by way of inheritance of her father and his brother. Thus, the defendant and her daughters became owner of 3.75 acres of land and they are living in a part of the suit property and retain possessing by cultivation. It is stated that the property lying at Ghoradas Road at Barishal City was a joint property acquired by the joint income of the family and thus the claim of the plaintiff is illegal and false. The said house was purchased by the deceased father of the defendant. The plaintiff will get only 1.66 acre of land, nothing more.

4. That the defendant No. 2 prayed for shaham stating inter alia that Akram Ali had 487 acres of land and after his death his property was devolved upon 1 son and 4 daughters i.e. Defendant Nos. 1-3 and Jahanara Begum. Son of Akram Ali died and his shares were devolved upon his only

daughter i.e. the defendant No. 4 and his 4 sisters. As a result, the defendant No. 2 got 78.5 decimals of land from her father and further got 19.50 decimals of land from his brother total .98 decimals. The defendant No. 1 is the full sister of the defendant No. 2 and the defendant No. 1 also got .98 decimals of land like as the defendant No. 2. The Defendant No. 1 has not got 3.76 acres of land and the Miscellaneous Case as well as the order thereto was obtained by planning fraud and the said case was rejected on 30-06-1997 and the order dated 24-01-2001 was illegal and void. The defendant No. 2 therefore claimed shaham for .98 decimals of land.

5. That, the learned Trial Court below framed as many as 6 numbers of issues as such:

I. Is the suit is maintainable in it's present form and nature?

II. Is the suit bad for defect of parties?

III. Is the suit defective for hatch potch?

IV. Has the plaintiff any right title and possession in the suit land?

V. Whether the impugned order mentioned in the schedule of the plaint is fraudulent or not ?

VI. Is the plaintiff entitled to any relief as prayed for?

6. That the learned Trial Court below on consideration of the evidence on record decreed the suit in the preliminary form giving $2.35 \frac{1}{2}$ acres of land to the plaintiff and declared the 'kha' schedule order as collusive, fraudulent and void and directed the defendants to make amicable partition and for giving shaham to the plaintiff within 60(sixty) days vide judgment and decree dated 23-04-2007.
7. That being aggrieved by the said judgment and decree dated 23.04.2007 passed by the learned Joint District Judge, 2nd Court, Jhalakathi in Title Suit No. 03 of 2001 in decreeing the suit in the preliminary form, the defendant No. 1 preferred Title Appeal No. 97 of 2007 before the learned District Judge, Jhalakathi, who transferred the same to the learned Additional District Judge, Jhalakathi for hearing and disposal.
8. That the learned court of Appeal below while allowing the appeal sent back the case to the learned Trial Court below on remand for hearing afresh on the observation that:

মৃত ভাইয়ের স্বত্ব স্বার্থ ও দখলীয় সম্পত্তিতে পুত্র না থাকায় ভাই বা ভ্রাতুষ্পুত্র ফারায়েজ মূলে সম্পত্তি প্রাপ্ত হইবে ইহা অনুধাবন করেন নাই; যাহা প্রতিষ্ঠিত আইন।

The learned Court of appeal below directed the learned trial court below to hear and dispose of the suit on proper scrutiny of the evidence on record and further more to allow additional evidence for proper dispensation of justice. The learned court appeal below further issued

stricture upon the trial court for getting more attentiveness while disposal of the matter.

9. That being aggrieved by and dissatisfied with the said judgment and decree of the learned Court of appeal below in Title Appeal No. 97 of 2007, the plaintiffs-respondents-petitioners moved before this court and obtained the Rule.

10. I have gone through the revisional application and the judgment and decree of the learned courts below. I have also perused the evidence adduced by the P.W. 1- Md. Aminul Islam Alam i.e. son of the plaintiff, P.W.2-Abdul Latif Kha, P.W.3- Abdul Kader Howlader, D.W.1- Momtaz Begum i.e. defendant No. 1, DW.2- Shahajahan Khan, D.W.3- Md. Motiur Rahman Khan, D.W.4- Sayeda Akhter i.e. defendant No.2 etc.

11. That the plaintiff side have produced the relevant khatians, which have been marked as Exhibit Nos. 1, 1(Ka), 1(Kha), 1(Ga), 1(Gha), 1(Umo), 1(Cha), 1(Ja) and (Jha) etc. and also submitted the order sheet of Miscellaneous Case No. 26 /94-95 dated 24-01-2001 (Exhibit No. 2), Khatian Nos. 41,158,196,157,156,148 etc. which have been marked as Exhibit No. 3 series and also the rent receipt (Exhibit No. 5 series) and also the kabala deed dated 25-07-1960 (Exhibit No. ka) and kabala deed dated 05-03-1963 (Exhibit No. Ga) and S.A. Khatian (Exhibit Nos. Kha), (Kha-1) to Kha (16) and some other rent receipts (Exhibit Nos. Umo-1 to Umo-106 series).

12. That, it appears from the record that the learned Trial Court below decreed the suit on the findings that:

“সুতরাং এটা সুস্পষ্ট ভাবে প্রমানিত হয় যে, বাদিনীর পিতার মৃত্যুতে তার ওয়ারিশ থাকেন কেবল মাত্র বাদিনী ও ৩নং বিবাদিনী। এমতামস্হায়, একরাম আলীর মৃত্যুতে তার ভ্রাতা আকরাম আলী কোন সম্পত্তি প্রাপ্ত না হওয়ায় ১ নং বিবাদিনী বাদিনীর পিতা একরাম আলীর ওয়ারিশসূত্রে কোন সম্পত্তি দাবি করিতে পারেন না এবং কোন সম্পত্তির প্রাপ্ত হবেন না।”

This findings is apparently illegal because after death of Akram Ali his property should be distributed amongst 2 daughters $\frac{1}{2} + \frac{1}{2}$ and the rest $\frac{1}{3}$ devolved upon his brother Akram Ali as been residuary according to Mahamadan law of inheritance and thus the distribution made by the learned Trial Court is apparently defective. It appears from the judgment of the learned court of appeal below that the distribution made by the Trial Court is defective and rightly send back the case on remand to the trial court, which have not committed any error of law, resulting error in the decision, occasioning failure of justice.

13. None appears for the petitioners inspite of repeated call.

Mr. Abdul Haque Gharami, the learned Advocate has appeared for the opposite party No.1. The opposite party No.1 filed an application earlier for vacating the order of stay granted on 14-06-2011. He has drawn up the attention of the court on the evidence of the D.W.1, who made admission that “নালিশী জমির মালিক ছিলেন তুল্যাংশে ২ ভাই আকরাম ও একরাম। পরে একরাম আগে মারা গেলে ওয়ারিশ থাকেন তার ২(দুই) কন্যা আয়েশা ও আছিয়া ও ভ্রাতা আকরাম

তাতে আমার পিতা আকরাম একরামের $\frac{2}{3}$ অংশ প্রাপ্ত হন। আর বএলী ২ (দুই) অংশ তার ২(দুই) কন্যা প্রাপ্ত হয়। আমাদের পিতার জীবমানেই উল্লেখিত অংশের জমি আমার পিতা এজমালীতে আমরা ভোগ দখল করিতেছি। ”

14. On perusal of the evidence on record, it appears that the said statement of the D.W.1 is the correct proposition of facts and the judgment of the learned Trial Court is misconceived and illegal. It further appears from the evidence adduced by the D.W.3, who was the local Chairman for three times and all the parties are known to him and he made disposition in the court as such, “ আমি নালিশী এলাকায় সাবেক চেয়ারম্যান ছিলাম। “প্রথম একরাম মারা যায়। পরে আকরাম আলীর জীবদশায় একরাম আলীর ওয়ারীশদের মধ্যে ভাগ বন্টন হয়। উক্ত ভাগ বন্টনে আমি উপস্থিত ছিলাম। মূল সম্পত্তির ৮ আনা করিয়া দুই ভ্রাতার এবং $\frac{1}{3}$ অংশ জমি একরামের অংশ হইতে আকরাম ওয়ারীশ সূত্রে প্রাপ্ত হয় এবং ফারায়েজ মোতাবেক আমরা এই ভাগ বন্টন করি। এবং এভাবেই বাদী-বিবাদী নালিশী জমি ভোগ দখল করে। আমি তিন টার্ম নালিশী এলাকায় চেয়ারম্যান ছিলাম। গত নির্বাচন আমি করি নাই। ----- নালিশী জমি ৯.৭৪ শতাংশ, নালিশী জমিতে মোট ৭(সাত) জন শরীকদার; তার মধ্যে ২.৫৭ শতক বাদী, ১.৬৭ শতক একজন বিবাদী আছি। বেগম। সত্য নয় যে, একরাম আকরামের পূর্বে মারা যায় নাই। নালিশী জমিতে বাদীদের $\frac{1}{3}$ অংশ দখল করে এবং বিবাদীর $\frac{2}{3}$ অংশ জমি ভোগ দখল করে।”

It appears from his statement that he was involved with distribution earlier and after death of Ekram Ali his property was devolved upon his

2(two) daughters and brother Akram Ali, who inherited $\frac{1}{3}$ shares as residuary.

15. In view of the above, the learned Trial Court below has committed error of law and of facts in giving shaham to the parties erroneously. The learned court of appeal below while passing the judgment has pointed out this defect and rightly sent back the case on remand to the trial court for hearing afresh.

16. Considering the facts and circumstances of the case, this court hold that the learned court of appeal below has not committed any error of law in passing the impugned judgment and decree. The Holly Quran is the most authenticated text of the world and the rules of the Holly Quran is the divine law. In Surah An Nissa, Verse No. 11,12 &114, the great Allah Subhanatawala has prescribed the distribution of shares to the heirs of the deceased. According to the Mahamadan law of inheritance, if a deceased left 2 daughters and 1 brother, then 2 daughter will get $\frac{2}{3}$ ($\frac{1}{3}$ each) and the rest $\frac{1}{3}$ will be devolved upon the brother as being the residuary.

17. In view of above, the case is sent back to the trial court for hearing afresh. The parties will be at liberty to adduce further evidence, if so requires. The Rule is discharged without any order as to costs and the judgment and decree of the learned court of appeal below is hereby upheld and the learned trial court below is directed to dispose of the suit within 6(six) months positively without any adjournment. If the parties fails to adduce

further evidence within such period, then the learned trial court below will be at liberty to dispose of the suit relying on the existing evidence available on record.

Send down the Lower Courts Record to the trial court at once.

(Justice Md. Ziaul Haque)