Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 5464 of 2002
Golam Easin being dead his heirs:
1(a) Rowshanara and others
.....petitioners
-Versus-
Khodeza Begum and others
.....opposite parties

Mr. Humayun Bashar with
Ms. Zubaida Gulshan Ara, Advocates
.....for the petitioners

No one appears for the opposite parties

Heard on: 02.09.2025, 04.09.2025, 20.10.2025 and 21.10.2025

Judgment on: 22.10.2025

In the instant revision rule was issued calling upon the opposite parties 1-11 to show cause as to why the impugned judgment and decree dated 10.06.2002 passed by the learned Joint District Judge, 1st Court, Manikganj in Title Appeal Number 130 of 1989 allowing the appeal thereby reversing the judgment and decree dated 23.04.1988 passed by the Assistant Judge, Doulatpur, Manikganj in Title Suit Number 70 of 1984 decreeing the suit should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The petitioner Golam Easin (now dead) as plaintiff filed Title Suit Number 70 of 1984 in the Munsif Court of Manikganj on 02.03.1974 and the suit was subsequently transferred to the court of Assistant Judge, Doulatpur Upazila, Manikganj for partition of the joint property.

The case of the plaintiff petitioner in short is that the suit property originally belonged to Kanai Peada. He had two wives named Fuljan and Pakiza. He died leaving behind first wife Fuljan and her two daughters named Gandi and Mooti and second wife Pakiza with her two sons named Noser alias Ibrahim and Dhukhi. Dhukhi died leaving behind his mother Pakiza and brother Ibrahim. Then Pakiza died leaving her only son Ibrahim and accordingly Ibrahim owned 10 anna 6 gonda 2 kora 2 kranti share with other co-sharers in respect of the suit property. Fuljan died leaving behind her daughters Gandi and Mooti. Mooti died leaving behind her husband Kaser Ullah and two sons named Yusuf who is defendant 1 and son Hamed and one daughter Shuratan. Hamed died leaving behind his father Kaser Ullah and Kaser died leaving behind son Yusuf and daughter Shuratan. Thereafter Shuratan died leaving behind her husband Nakumuddin, daughter Golapi and brother defendant 1 Yusuf. Then Golapi died leaving behind

her father Nakumuddin who died leaving behind his brother Kadari and brother in law Yusuf defendant 1. Then Kadari died leaving behind defendants 3-6. It is further case of the plaintiff that Gandi died leaving behind her son Yakub, daughter Meheran and Jameran. Yakub died leaving behind his sisters Maheran and Jameran. In the above mentioned position defendant 1 got 2 anna 2 gonda 2 kora 4 kranti and Maheran and Jameran got 8 anna 1 kora 1 kranti share in respect of the suit khatian and maintained possession amicably. Maheran and Jameran sold their total share on 24.06.1946 by a kabala deed to Ibrahim and thus Ibrahim got 9 anna 6 gonda 2 kora 2 kranti by inheritance and 2 anna 11 gonda 2 kora 2 kranti by purchase which in total aggregate 13 anna 3 gonda 2 kranti share. Ibrahim died leaving behind his son plaintiff Golam Easin and three daughters defendant 12 Bachatan, defendant 13 Sukkuri and defendant 11 Khantojan. Bachatan died leaving behind his husband, son and three daughters. Accordingly the plaintiff by virtue of inheritance from his father owned 1 anna 12 gonda 2 kranti share. At the time of district settlement the property of schedules 5 and 6 of the plaint was wrongly recorded in the name of Fuljan who was the first wife of Kanai Peada. In fact Kanai Peada

purchased the property of schedules 5 and 6 of the plaint from Birbona and his wife Gandi Bewa on 13.10.1908 by a registered deed by his own money and for his own interest. Fuljan was never the owner in possession of the property. There was no partition by metes and bounds amongst co-sharers in respect of the suit property of Kanai Peada. There was inconvenience in possession for which plaintiff asked for partition but defendant did not pay any heed to such request and denied partition. Hence the suit was filed.

The predecessor of opposite parties 1-11 named Yusuf contested the suit by filing a written statement denying the material averments made in the plaint contending *inter alia* that admittedly Kanai Peada was the original owner of the suit property. He died leaving behind his first wife Fuljan and her two daughters named Gandi and Mooti and second wife Pakiza and her two sons named Ibrahim and Dhukhi. Dhukhi died leaving behind his mother Pakiza, brother Ibrahim and step mother Fuljan and step sisters Mooti and Gandi. Thereafter Pakiza died leaving behind her son Ibrahim and Fuljan also died leaving behind her two daughters Gandi and Mooti and step son Ibrahim. Mooti then died leaving behind her husband Kaser and two sons named Yusuf and Hamed and

one daughter Shuratan. Then Hamed died leaving behind his father Kaser, brother Yusuf and sister Shuratan. Then Shuratan died leaving behind her father Kaser, daughter Golapi and brother Yusuf. Golapi then died leaving behind her brother Yusuf and Gandi died leaving behind her sons Yakub and two daughters Jameran and Maheran. Thereafter Gandi made an oral gift of her share in favour of defendant 1 Yusuf around 45(forty five) years ago and for such reason the heirs of Ibrahim gave up their claim in that particular land and accordingly executed and registered a deed of relinquishment in favour of defendant 1 Yusuf on 01.05.1954. For such reason plaintiff is not entitled to get any saham in the above mentioned land. It is the further case of defendant 1 that on 15.11.1992 he filed an additional written statement and made out a further case that the land of schedules 5 and 6 to the plaint was purchased by Fuljan by a deed dated 14.11.1908 from Gandi and Bachanna and her name was recorded in the C.S. khatian. Thereafter Kaser died leaving behind defendant 1 son Yusuf. It is the further case of defendant that the land lord Nishikanto and others filed a rent suit in respect of the land of schedules 5 and 6 along with other lands and accordingly Execution Case 52 of 1952 started and then

defendant 1 purchased the land of schedule 6 as mentioned in the schedule to the plaint through auction and got possession through court and thereafter defendant 1 gave settlement of the said land to his sons. Plaintiff has got no title in the said land and he is not entitled to get any share of the land of schedules 5 and 6. The suit being false is liable to be dismissed with costs.

At the time of hearing of the suit defendants 42 and 43 (opposite parties 52, 53) and defendants 7-10/12 (opposite parties 17, 20 and 22) upon payment of court fee separately prayed for their saham.

The trial Court framed as many as four issues as to maintainability, whether the suit suffers defect of party and hotchpot, whether plaintiff has title and possession in the disputed khatians and whether plaintiff can get the decree of partition as prayed for.

During the course of trial plaintiff examined himself as PW 1 and defendant 1 also examined himself as DW 1, defendant 42 examined himself as DW 2 and on behalf of defendants 7-10/12 DW 3 was examined. Plaintiff, defendant 1 and defendant 42 adduced documentary evidence in order to prove their respective cases. The trial Court upon hearing the

parties and perusal of the pleadings and evidence of record decreed the suit in preliminary form allotting saham of 3.54 acres of land to the plaintiff by judgment and decree dated 23.04.1988.

As against the same the descendants of defendant 1 preferred Title Appeal Number 130 of 1989 in the court of District Judge, Manikganj which on transfer was heard by the Joint District Judge, 1st Court, Manikganj who after hearing the appeal was pleased to allow the same by judgment and decree dated 10.06.2002.

Being aggrieved by and dissatisfied with the judgment passed by the appellate court plaintiff as petitioner came before this court with this revision and obtained the instant Rule on 27.10.2002.

Learned Advocate Mr. Humayun Bashar along with Ms. Jobaida Gulsan Ara appearing on behalf of the plaintiff petitioner submits that the appellate court passed the impugned judgment by violating the provisions laid down in order 41 rule 31 of the Code of Civil Procedure and the same is never a proper judgment of reversal and being perverse and misconceived is liable to be set aside outright. He further submits that the learned appellate court failed to appreciate the

principles laid down in disposing of the suit of partition and since the genealogy of both the parties are admitted the instant suit can never be dismissed and at best the share if so considered may be reduced or enhanced and since the appellate court failed to appreciate this aspect of the case this impugned judgment is bad in law thus the appellate court committed error of law resulting in an error in such decree occasioning failure of justice. He then submits that the findings of the appellate court that the suit land contained in schedules 5 and 6 is indefinite and unidentified is serious misreading and misconstruction of the documentary evidence which cannot be sustained thus the court committed error of law resulting in an error in such decree occasioning failure of justice. He very strongly submits that the deed of relinquishment does not confer any title and the trial court rightly observed and discussed about the deed of relinquishment following the provisions and principles of law and as such the impugned judgment is bad in law. He then contends that the finding of the appellate court that the suit was not maintainable without declaration of title is absolutely misconceived because in a partition suit the complicated question of title can be resolved and in support of his such

submission he referred the case of Cinmoy Chowdhury vs. Mridul Chowdhury, reported in 55 DLR(AD) 115 and since the lower appellate court could not appreciate the principle laid down in the decision the impugned judgment cannot be sustained. He also submits that the trial court explicitly mentioned the share along with quantum of land of each of the co-sharers which having not been reversed by the appellate court the impugned judgment brings up miscarriage of justice thus the appellate court committed error of law resulting in an error in such decree occasioning failure of justice. He points out that exhibit-2A dated 13.10.1908 executed in favour of Kanai Peada is the document of 30(thirty) years old and as such the presumption that the document was duly attested and executed under section 90 of the Evidence Act stands good which the appellate court failed to appreciate thus the Court committed error of law resulting in an error in such decree occasioning failure of justice. He lastly submits that exhibit-B the D.S. khatian 89 published in the name of Fuljan Bibi who was one of the wives of Kanai Peada has got no basis because according to the contention of defendant 1 the document dated 14.11.1908 was not even produced before the court and this C.S. khatian has no presumption of correctness being without

basis and this exhibit-B does not help to support the case of the defendant which the appellate court failed to consider thus the appellate Court committed error of law resulting in an error in such decree occasioning failure of justice. He concludes that the Rule having merit may be made absolute.

No one appears to oppose the Rule. The order dated 03.12.07 and 07.04.08 show that notice was duly served upon the opposite parties but they did not appear. Accordingly the rule was ready for hearing on 07.04.08 but opposite parties did not appear to contest the Rule till today.

Before getting into the merit of the case it is to be mentioned here that defendant 1 in his written statement at one stage stated that in the event of any decree granted by the court he is entitled to have his share and it also appears from reading of the written statement that the genealogy as given in the plaint is also admitted by the defendant.

Plaintiff claims that Kanai Peada solely acquired the property by exhibit-2A dated 13.10.1908. On the other hand defendant claims that Fuljan who was one of the wives of Kanai Peada acquired the property by document dated 14.11.1908. From reading of the schedule of the plaint it

reveals that the partible land belonging to Kanai Peada is 12.64 acres.

Plaintiff as PW 1 stated that Kanai Peada purchased the land of schedules 5 and 6 by kabala dated 13.10.1908 and had been in possession. Plaintiff filed the certified copy of that document which was marked in evidence as exhibit-2A. Exhibit-2A shows that the certified copy of the same was obtained on 14.12.1948. Therefore it cannot be said that the certified copy was obtained in anticipation of this suit rather it was obtained long long ago and duly tendered and marked in evidence without any objection. Since the district settlement was not done at that relevant time in 1908 the land was sold by mentioning the boundary of the schedule which was duly incorporated in the schedule to the plaint and defendant never says that there is inconsistency in that schedule. Defendant 1 as DW 1 also did not deny this document exhibit-2A. In the written statement it is apparently admitted that Kanai Peada was the owner in possession in the land described in the schedules to the plaint along with other lands. Therefore defendant 1 cannot deny that the land actually did not belong to Kanai Peada exclusively.

It is the case of the defendant 1 that the land containing in schedules 5 and 6 was the acquired property of the first wife of Kanai Peada named Fuljan and that particular schedules were purchased by Fuljan from one Gandu and Badullah by kabala dated 14.11.1908 and she maintained possession therein. But unfortunately DW 1 neither produced such document in court nor explained away for such non-production in support of his particular case and for such reason it is discerned that defendant 1 failed to prove his claim that his grandmother acquired the property by such document.

Defendant 1 amended his written statement on 16.02.1987 and made out a case that the land of 7 bighas acquired by Fuljan was gifted by registered deed on 16.10.1916 in favour of her daughter Mooti Begum. This gift document dated 16.10.1916 is exhibit-B but schedules 5 and 6 show that the total land is 1.66 acre. Therefore it can easily be held that since the basis of exhibit-B which is claimed to be the document dated 14.11.1908 was not filed and proved in evidence the gift made by this exhibit-2 falls through.

It is the further claim of defendant 1 that her maternal aunt made an oral gift of her entire share in favour of defendant 1 for which defendants 7-10 who are the successive

heirs of plaintiff executed a deed of relinquishment in favour of defendant 1 and that deed of relinquishment dated 01.05.1954 is exhibit-C. Under the Mahomedan Law gift is making of another person owner of the corpus of property without taking its consideration from the vendor. There are some major essentials in the gift made under Mohammedan law. In a gift under the Muslim law there must be clear evidence that there was a declaration by the donor and the declaration purported to make a gift of the property and the evidence must show what exactly the declaration was. In the absence of any such defence evidence the court cannot decide whether the alleged declaration was sufficient to constitute a valid gift. There must also be proof of acceptance and delivery of possession. In the instant case the record does not anywhere show any time, place, person, manner of whose presence the declaration was made and the gift was accepted and the possession was delivered. Since defendant 1 failed to make out any such definite case with respect to oral gift the subsequent deed of release as shown to have been claimed by defendant 1 does not bear any importance. A deed of relinquishment by itself does not create a new title in favour of the releasee rather it operates to extinguish the right title and

interest of the executant in the property and enlarges or consolidates the pre-existing title of the person in whose favour it is executed. In other words a relinquishment does not confer title when none previously existed but it transfers or merges the executant's existing interest into the share of the releasee. Therefore the releasee's title becomes complete or absolute only if he or she already had a subsisting interest in the property. If the executant had no valid title to the property at the time of execution the deed of relinquishment cannot convey or confer any title whatsoever as no one can transfer a better title than he himself possesses. Thus under the Transfer of Property Act and the Registration Act a duly executed and registered deed of relinquishment does not independently confer title but it legally perfects or enlarges the title of the existing co-owner or claimant in whose favour the relinquishment is made but in the instant case it is evidently clear that the oral gift was never ever proved in evidence. So this deed of relinquishment gave nothing to defendant 1.

As discussed above the oral gift claimed to have been made by Fuljan in favour of defendant 1 is not proved in evidence. On the other hand plaintiff claims that the grand daughters of Fuljan named Maheran and Jameran transferred

1.95 acres out of $2.20\frac{1}{2}$ acres of land from their share in favour of plaintiff Ibrahim by sale deed dated 24.06.1945 which was tendered and marked in evidence as exhibit-2. Defendant 1 did not raise any objection when exhibit-2 was taken in evidence. Even defendant as DW 1 did not deny the execution and registration of exhibit-2. It appears from the record that the certified copy of exhibit-2 was obtained on 17.02.1947 and it also cannot be said that the certified copy of exhibit-2 was obtained in anticipation of this suit filed in 1974.

Admittedly the original owner Kanai Peada died leaving behind two wives named Fuljan and Pakiza. Fuljan had two daughters named Gandi and Mooti. Pakiza had two sons named plaintiff Ibrahim and Dhukhi. The total partible land is 12.64 acres from which the first wife Fuljan acquired $\frac{1}{16}$ share which is equivalent to .79 acres and the second wife Pakiza also acquired the same. Daughter Gandi acquired $\frac{7}{48}$ share which figures at 1.84 acres of land and Mooti as like as Gandi acquired the same share and quantum of land. Son Ibrahim who is the plaintiff in the suit acquired $\frac{7}{24}$ which is equivalent to 3.69 acres and son Dhukhi also got the same share and

quantum of land as plaintiff. Thus Fuljan, Gandi, Mooti acquired 4.47 acres of land and Pakiza, Ibrahim and Dhukhi altogether acquired 8.17 acres of land. As discussed earlier Ibrahim purchased 1.95 acres of land by exhibit-2 dated 24.06.1945. Subsequently Ibrahim after the death of mother Pakiza and brother Dhukhi acquired the entire 8.17 acres of land by inheritance. Thus he acquired in total 10.12 acres of land by inheritance and purchase. Ibrahim died leaving behind defendant 11 wife Khantojan, son plaintiff Golam Yeasin, daughter defendant 12 Bachatan, daughter defendant 13 Sukkuri and daughter Basiron who died leaving behind defendants 7-10. According to the law of inheritance wife Khantojan got $\frac{1}{8}$ share amounting to 1.25 acres and defendant 12, defendant 13 and mother of defendants 7-10 acquired the share of $\frac{7}{40}$ each which is equivalent to 1.77 acres of land solitarily and the same amounts to 5.31 acres altogether and plaintiff also got the share of $\frac{14}{40}$ which figures at 3.56 acres of land.

The trial Court finding the discrepancies and reasons in contradictory statements failed to figure out the correct share

and quantum of land of defendants 7-10/12 along with defendants 42/43 and accordingly their saham has been refused by the trial Court against which these defendants neither preferred any appeal nor came before this court in revision showing their grievance.

The appellate court did not at all advert to the findings passed by the trial court and made out some strange findings on the allegation of vagueness of the land. Where it is found that the entire patible land and the suit land are easily identifiable and not denied by any of the parties this strange finding does not lead anywhere. Relay of the land is necessary in case where the suit land is not identifiable but in the instant case defendant never claims that the land appertaining to schedules 5 and 6 is unidentifiable rather claims that the same was purchased by Fuljan. As noticed earlier that the oral gift allegedly claimed to be made by Gandi in favour of defendant 1 was not proved in evidence and consequently the deed of relinquishment in view to establish such oral gift also falls through. The finding of the appellate court in this respect is absolutely misconceived and a complete violation of the provision laid down in order 41 rule 31 of the Code of Civil Procedure. This is a suit among the family

members and as such the question of maintainability that without declaration of title the suit is not maintainable as found by the appellate court is also against the law. The *ratio* laid down in Cinmoy Chowdhury case reported 55 DLR(AD) 115 is relevant and applicable in this case because the genealogy given by plaintiff is admitted and question of title is not at all complicated in the instant case and further that record in the name of persons having no title bears no value because this being a partition suit does not require much importance on ascertainment of possession because law is settled that possession of one co-sharer is the possession of all the co-sharers.

It appears that the partition suit is essentially an equitable remedy the object whereof to enable the co-sharers to have their respective lawful shares demarcated and to enjoy peaceful possession thereof without obstruction or interference. The defendants in their attempt to claim a greater portion of the property have placed contentions and evidence which are not sustainable in law. Upon careful examination of the pleadings and materials on record this court finds that the plaintiff has successfully established his lawful entitlement to the share as claimed in the plaint.

Perusal of the record reveals that defendant 1 also filed an additional written statement on 15.11.1982 and has narrated an auction proceeding and claimed that he purchased the suit land in auction on 22.05.1952 and obtained delivery of possession through court and having remained in possession as owner of the land described in schedule 6 subsequently settled the said land in favour of his sons. It further appears that the defendant has made different and inconsistent claims at different times which cast serious doubt upon the authenticity of the D.S. record which was marked as exhibit-A. Owing to such inconsistencies the said record cannot be accorded with any presumptive value in the eye of law. Moreover the defendant instead of instituting a case upon a specific claim in respect of a specific subject matter has approached the court on multiple occasions with varying and contradictory assertions which clearly indicate that his case has not been proved in accordance with law.

The findings and decision of the learned appellate court appear to be irrelevant, misdirected and inconsistent with the facts and circumstances along with evidentiary materials available on record.

Accordingly the judgment and decree passed by the appellate court are hereby set aside. It is declared that the plaintiff is entitled to the relief claimed in the suit in accordance with law. The finding arrived at by the trial court is based on proper appreciation of evidence which cannot be interfered with in this revision.

I therefore find merit in this rule. Accordingly, the rule is made absolute.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J:

Naher-B.O