

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 5195 of 2002

Maizuddin Sikdar alias Mazid

... Petitioner

-Versus-

Azer Mondal being dead his legal hires:

1(a) Khalil Rahman and others

...Opposite-Parties

Mr. Md. Zahirul Islam, Advocate with

Mr. Md. Mizanur Rahman, Advocate

...For the Petitioner

Mr. Md. Nurul Amin, Senior Advocate with

Mr. Mohammad Mozibur Rahman, Advocate

...For the Opposite-Party Nos.1 and 14-17.

Judgment on 28th May, 2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party Nos.1-2, 11-17, 18-21 and 27 to show cause as to why the impugned judgment and decree dated 12.06.2002 passed by the learned Joint District Judge, 2nd Court, Rajbari in Title Appeal No. 74 of 2001 disallowing the appeal and thereby affirming the judgment and decree dated 27.03.2001 passed by the learned Assistant Judge, Goalando, Rajbari in Title Suit No.11 of 1998 dismissing 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.

The petitioner, as plaintiff, filed Title Suit No.84 of 1994 in the Court of Assistant Judge, Pangsha, Rajbari, on transfer to the court of Assistant Judge, Goalondo, Rajbari renumbered as Title Suit No.11 of 1998 against the opposite parties, as defendants, for declaration of title and partition of the property described in “Kha” schedule to the plaint stating that R. S. Khatian No.92 stand recorded in the name of Nepu Mondal and Jamal Mondal and land of R.S. Khatian Nos.103 and 135 in the names of Nepu Mondal and Goher Mondal son of Jamal Mondal. Said Nepu Mondal owned and possessed 10 annas 13 gondas 1 kara 1 kranti in each khatian and Jamal Mondal 5 annas 6 gondas 2 karas 2 kranties in R. S. Khatian No.92 and Goher Mondal 5 annas 6 gondas 2 karas 2 kranties in R. S. Khatian Nos.103 and 135. Total land in above mentioned 3 R.S. Khatians is 2·37 acres. Thus, Nepu owned and possessed 0·907 acre of land in R. S. Khatian No.92, 0·33 acre of land in R. S. Khatian No.103 and 0·34 acre of land in R. S. Khatian No.135 in total 1·58 acres of land out of 2·37 acres. Nepu Mondal died leaving 3 sons namely Nazer, Tazer and Azer Mondal and 2

daughters Kuturi and Zarina. Thus, 1.58 acres of land to be distributed among them as heirs of Nepu Mondal.

Nazer Mondal died leaving wife Ahirunnesa and daughter Kulsum Bibi. Ahirunnesa got $\frac{1}{8}$, Kulsum $\frac{1}{2}$, the residue devolved upon his two brothers and two sisters. Each brother got $\frac{1}{8}$ and two sisters got $\frac{1}{8}$. Thus total share of land owned by Azer is 0.44351874 acre, Tazer 0.44351874 acre, Kuturi 0.22175937, Zarina 0.22175937 acre, Ahirunnesa and Kulsum Bibi jointly .197175 acre in 3 khatians. Kuturi, Zarina, Ahirunnesa and Kulsum Bibi jointly sold 0.68996249 acre from their share along with other properties measuring in total 1.51 acres to Aftab Uddin Sheikh by a registered Sale Deed No.4267 of 1957. Said Aftab Uddin Sheikh sold 0.83 acre (but had saleable interest in .68996249 acre) to the plaintiff-petitioner Md. Maizuddin Sikder by a sale Deed No.528, executed on 14.12.1959 and registered on 28.01.1960.

The defendant Nos. 1 and 2 contested the suit by filing written statement denying the claim of the plaintiff. But

subsequently, defendant No.2 filed solenama with the plaintiff-petitioner admitting plaintiff's claim for 0.72 acre out of 0.83 acre as agreed between the parties. On the other hand, defendant No.2 prayed saham for .12 acre of land. Subsequently, defendant No.1 by way of amendment prayed saham for 0.79 acre of land before the appellate court to be allotted to the defendant No.1, 14-17.

The defendant Nos.11-17, 18-21 and 27 by filing separate written statements contended that Nepu Mondal died leaving two sons namely Azer and Tazer and two daughters namely Kuturi and Zarina. Jamal Mondal died leaving 3 sons namely Baher, Taher and Goher and daughter Ayton Nesa. Goher died leaving 5 sons, 3 daughters and 1 wife. Ayton Nesa died leaving 5 sons and 2 daughters. Tazer and others transferred the land of R.S. Khatian No.92 to defendant No.3 Ranjit by Patta Deed No.6481 dated 23.12.1948. He sold .78 acre of land of R.S. Plot Nos.2046, 2047, 2048 along with other properties to Tosirun Nesa by Deed No.5381 dated 20.03.1975. Tosiron transferred .26 acre of land of R.S. Plot Nos.2046, 2047 and 2048 to defendant Nos.18-21 and Iman Ali by Sale Deed No.8871. Tosiron transferred 0.52 acre of land to

defendant Nos.2/11-17 by Sale Deed No.8875 dated 18.12.1976.

Tosiron transferred land of R.S. Plot No.1012 to Ayesha. Ranjit transferred 0.26 acre from Plot No.201, .16 acre from Plot No.2013, 0.13 acre of land of R.S. Plot No.1603 to Rawsan Ara by Sale Deed No.869 dated 17.01.1974. But the said defendants did not produce all those documents in support of their claim.

The trial court framed 6(six) issues for adjudication of the matter in dispute. In course of hearing the plaintiff examined 3(three) witnesses as P.Ws and the defendant Nos.1, 14-17 examined single witness and defendant Nos.18-21 and 27 examined single witness. Both the parties submitted documents in support of their respective claim and got them marked as exhibits. The trial court after hearing by judgment and decree dated 27.03.2001 dismissed the suit.

Being aggrieved by and dissatisfied with the impugned judgment and decree of the trial court, the plaintiff preferred Title Appeal No.74 of 2001 before the Court of learned District Judge, Rajbari. Eventually, the said appeal was transferred to the Court of learned Joint District Judge, 2nd Court, Rajbari for hearing and

disposal who after hearing by the impugned judgment and decree dated 12.06.2002 disallowed the appeal and thereby affirmed the judgment and decree passed by the trial court. At this juncture, the plaintiff-petitioner, moved this Court by filing this application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Md. Zahirul Islam, learned Advocate with Mr. Md. Mizanur Rahman, learned Advocate appearing for the petitioner submit that both the courts below wrongly found that stamp used in Deed No.4267 dated 14.09.1957 was purchased after the execution of the deed. But from perusal of Deed No.4267, it appears that all the stamps were purchased on 08.07.1957. The deed was executed on 02.09.1957 and registered on 14.09.1957. Therefore, findings of the courts below that before purchase of the stamps, executed the deed and registered the same which is beyond probability is absolutely contrary to the actual state of affairs of the deed. Similarly, both the courts below unfortunately, fell in error in respect of registered Deed No.528 dated 28.01.1960 finding that the deed was executed and registered before purchase of the stamps on

14.12.1959 and failed to find that 27.08.1966 B.S. was written at the back of the stamp, it was Bengali year and the said deed (Exhibit-1) also shows that stamp was purchased on 14.12.1959 and on the same day the deed was executed and it was registered on 28.01.1960. Had both the courts below considered aforementioned 2(two) sale deeds (Exhibit Nos.1 and 2) correctly the suit would have been decreed in favour of the plaintiff, but failed to do so and wrongly dismissed the suit, as such, committed illegality and error of law in the decision occasioning failure of justice.

He candidly submits that the plaintiff claimed saham for 0·83 acre of land out of the suit plots, but after calculation, it appears that the plaintiff is entitled to get only 0·69 acre. It is submitted that the dispute between the parties only relating to share of Ahirunnesa, wife of Aftabuddin and Kulsum Bibi, daughter of Ahirunnesa. The plaintiff claimed that Nepu Mondal died leaving 3 sons namely, Nazer, Tazer and Azer Mondal, 2 daughters Kuturi and Zarina, they inherited 1·58 acres of land from their father Nepu Mondal. Nazer Mondal died leaving wife Ahirunnesa and daughter Kulsum Bibi. Thus, Ahirunnesa got $\frac{1}{8}$ share of Nazer Mondal and Kulsum

got $\frac{1}{2}$ share of the property left by her father Nazer Mondal. The residue devolved upon his 2(two) full brothers and 2(two) sisters. According to plaintiff, Ahirunnesa after death of her husband Nazer Mondal got 2nd time married with Aftab Uddin Sheikh and then Ahirunnesa and Kulsum transferred their inherited property from Nazer Mondal to Aftab Uddin Sheikh. On the other hand, the defendants claimed that during life time of Nazer Mondal his wife Ahirunnesa left his family and eloped with Aftab Uddin Sheikh and subsequently, got married with him and Kulsum is daughter of Aftab Uddin Sheikh. Therefore, Ahirunnesa and Kulsum got no property from Nazer Mondal. However, at the time of hearing, both the parties candidly conceded that the trial court as well as the appellate court unfortunately misinterpreted and misconstrued the Exhibit-1 and Exhibit-2 wrongly finding that those deeds were executed and registered before purchase of the stamp papers as appearing from endorsement at the back, whereas, those deeds actually have no anomalies as observed by the courts below and also conceded that in the absence of any evidence contrary to the claim of the plaintiff, Ahirunnesa and Kulsum inherited the

property of Nazer Mondal. But the plaintiffs claimed saham in the property beyond his entitlement measuring 0.83 acre instead of 0.69 acre. The plaintiff-petitioner agreed with the submissions of the learned Advocate for the opposite parties.

It is also agreed by the parties that in the event of praying saham by defendant Nos.1 and 14-17 they will be entitled to get .76 decimals land jointly. The defendant Nos.1 and 14-17 filed an application before the appellate court praying for their saham, but that was not accepted as the appeal was dismissed.

Mr. Md. Nurul Amin, learned Senior Advocate with Mr. Mohammad Mozibur Rahman, learned Advocate appearing for the opposite party Nos.1 and 14-17 submits that since the plaintiff is entitled to get 0.69 acre of land in their saham and the defendants also entitled to get 0.76 acre, this Court can direct the trial court to allot saham for the said quantum of land to the defendants.

Heard the learned Advocates of both the parties, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure and the impugned judgment and decree of both the courts below.

Admittedly, the property belonged to 2(two) brothers Nepu Mondal and Jamal Mondal in equal share in R.S. Khatian No.92. R.S. Khatian Nos.103 and 135 stand recorded in the names of Nepu Mondal and Goher Mondal, son of Jamal Mondal. In both the khatians total property is measuring 2·37 acres out of which Nepu Mondal was owner of 1·58 acres. Nepu Mondal died leaving 3 sons and 2 daughters who inherited the same. Out of 3 sons Nazer Mondal died leaving wife Ahirunnesa and daughter Kulsum who jointly inherited ·197175 acre. Kuturi, Zarina, Ahirunnesa and Kulsum Bibi jointly acquired 0·69 acre in 3 khatians. They jointly sold their share along with other non-suited property measuring 1·51 acres to Aftab Uddin Sheikh by a registered Sale Deed No.4267 dated 14.09.1957. Aftab Uddin Sheikh while in possession and enjoyment transferred ·83 acres of land to the plaintiff-petitioner Maizuddin Shikder by a registered Sale Deed No.528 dated 28.01.1960, but Aftab Uddin had saleable interest in ·69 acre only. Both the parties unequivocally admitted that said quantum of land to be held in the share of the plaintiff. The defendant No.2 entered into a Solehnama with the plaintiff admitting entire claim

of the plaintiff in suit and claimed saham for 12 decimals land, although he inherited .4435 acre of land. Defendant Nos.1 and 14-17, as admitted by the plaintiff are entitled to get saham for 0.76 acre of land as per their share. Heir of Jamal Mondal named Goher Mondal is entitled to 0.79 acre of land subject to any alienation made by him to any other person.

Therefore, I find that the trial court and the appellate court while dismissing the suit and appeal failed to consider all those documents of the parties in their true perspective and misconceived the fact and circumstances of the case and the documents filed by the parties. Thus, making a third case of their own unfortunately dismissed the suit and appeal.

In view of the facts and circumstances stated hereinabove, I find that both the parties to the proceeding are entitled to get their respective saham and the suit is liable to be decreed, however, for less quantum of land than the claim of the plaintiff and defendants. I find that both the courts below in dismissing the suit and appeal committed illegality and error of law in the decision occasioning failure of justice.

Taking into consideration the above, I find merit in the Rule as well as in the submissions of the learned Advocate for the petitioner.

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

The judgment and decree of both the courts below are hereby set aside. The suit is decreed in part in preliminary form. The plaintiff is entitled to get 0.69 acre of land in his saham. The defendant Nos.1 and 14-17 are entitled to get saham for 0.76 acres. Defendant No.2 is entitled to get .4435 acres. Goher Mondal, son of Jamal Mondal is entitled to get 0.79 acre out of the suit property.

The defendants who got saham are directed to pay court fees for their respective saham in accordance with law.

The parties are hereby directed to get the property partitioned amicably within 60(sixty) days from the date of receipt of this judgment and order, failing which all the parties to the proceeding shall be entitled to get their saham through court.

The order of *stay* granted at the time of issuance of the Rule and extended from time to time stands vacated.

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