

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 3445 of 2007

Jamila Khatun being dead her heirs:

1(a) Mst. Anwara Begum and others

.....petitioners

-Versus-

Asad Miah being dead his heirs:

1(a) Mohammad Ali and others

.....opposite parties

No one appears for the petitioners

Mr. Md. Mubarak Hossain with

Mr. Rajib Kanti Aich, Advocates

..... for opposite parties 1 and 2

Judgment on 21.03.2024

This Rule at the instance of defendant 1 was issued calling upon opposite parties 1 and 2 to show cause as to why the judgment and decree of the Joint District Judge, Court No.1, Cumilla passed on 17.08.2006 in Title Appeal No.05 of 2005 allowing the appeal setting aside the judgment and decree of the Senior Assistant Judge, Daudkandi, Cumilla passed on 28.09.2004 in Title Suit No.97 of 1993 decreeing the suit for partition in part should not be set aside and and/or such other or further order or orders passed to this court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that the plaintiffs instituted the suit stating that Zainuddin was the CS recorded tenant of the land of CS Khatian 74, plots 133, 134 and 138. He transferred his 50% share to his wife Kadbhanu and thereafter died leaving behind a wife, 3 sons and a daughter.

Kadbhanu gifted .23 acres to her daughter Zanodi and died leaving behind a son and 3 daughters. For nonpayment of rents Kadbhanu's land was put into auction. Sagarjan and others then took the land lease from the then Talukders and the same were recorded in their names accordingly. The remaining quantum of land measuring 1.15 acres was recorded in the names of plaintiffs and defendant 1. Zanodi sold out her share measuring .23 acres to Salamuddin by a *kabala* dated 10.03.1932 and handed over possession thereof. Salamuddin died leaving behind 4 sons including plaintiffs 1 and 2 and daughter defendant 1 and Foyjon. The son Kalu died leaving his mother Chandra Bhanu, a wife and plaintiff 2. Another son Younus died leaving his mother, 2 brothers and a sister. Chandra Bhanu died leaving behind 2 sons Mofizuddin and plaintiff 1 and a daughter defendant 1. Foyjon died leaving plaintiff 1 and defendant 1. Mofizuddin died leaving behind plaintiff 1 as brother and defendant 1 sister. Esah Bibi, Safar Jan and Kalar Maa sold out .98 acres to Chand Miah. Mohar Ali, Lal Mian and Kafiluddin by a registered *kabala*. Chand Miah sold out .30 acres to Lal Mia, Momtaz uddin alias Rahimuddin. Lal Mia died leaving behind Mohar Jan and Khorshed. Kali Bibi died leaving a son and 2 daughters. Khorshed sold .14 acres to Fazlu Miah, Abdul Baten and Abdul Khaleque. Plaintiff 1 purchased .135 acres from Montaj Uddin and Mohar Jan; .07 acres from Abdur Rashid; .11 acres from Khorshed; .04 acres from Almas; .02 acres from Ambia; .07 acres

from Fazlu and .07 acres from Abdul Khaleque. Wahid Mia and Puteswari sold out .04 acres to plaintiff 2. Therefrom, plaintiff 1 sold .06 acres to plaintiff 2, plaintiff 1 further sold out .09 acres and thus the plaintiffs became the owner and possessor of .885 acres. Hence the suit for partition of land measuring 2.30 acres claiming plaintiffs' saham to the extent of .885 acres.

Defendant 1 contested the suit stating that Zainuddin was the owner and possessor of 50% share of the aforesaid *khatian*. He died leaving behind a wife, 3 sons and 6 daughters. Kadbanu gifted her share measuring .23 acres to daughter Zanodi and the latter sold out the same to Salim Uddin by a *kabala* dated 10.03.1932. Salim Uddin died leaving his wife Chandra Bhanu, 4 sons, Mofizuddin, Kalu, Younus and plaintiff 1 and 2 daughters defendant 1 and Foyjon Bibi. Rabiullah sold out some lands to Rahimuddin, Montaj Uddin and Asgar Ali. These defendants purchased .075 acres from Abdul Hashem and Abdul Malek; .34 acres from Lal Miah; .01 acres from Rahimuddin and .155 acres from Esha Bibi. In this way she became the owner in possession of .6485 acres. The plaintiffs have no title and share in any part of the suit land and as such the suit would be dismissed.

Defendants 2-14 filed another set of written statement where they admitted the fact that Zainuddin was the original owner of the suit land who died leaving behind a wife, 3 sons and 3 daughters. They also admitted that Kadbanu gifted her .23 acres to Zanodi.

Kadbhanu died leaving behind Rabiullah a son and 4 daughters, Zanodi, Esha, Kali and Safarjan. Zanodi died leaving one daughter Arafaternessa. The predecessors of these defendants Kafiluddin purchased .18 acres from Momtaj Uddin; .075 acres and .72 acres, i.e., .795 acres from Abul Hasem and Abdur Malek. He died leaving behind one daughter Arafater Nessa, 3(three) sons defendants 2-3 and Ramizuddin and 4(four) daughters defendants 4-6 and Nurjahan. Ramizuddin died leaving behind defendants 7-11 and Nurjahan died leaving defendants 12-14. Arafatenness died leaving defendants 2-14. Defendants 3 and 7 purchased .01 acres from Abdul Wahab Khandaker. These defendants thus became owner of 1.645 acres in the suit *jote*. The statement made in the suit is false and as such the suit would be dismissed.

Defendant 36 in his written statement contended that Zainuddin had 1.15 acres of land who died leaving behind a wife, 3 sons Solimuddin and others and 6 daughters. Solimuddin became owner of .17 acres. He further purchased .23 acres from Zanodi and became owner of .40 acres. He died leaving behind a wife Chandra Bhanu, 2 daughters Fayjan and Zamila and 4 sons Kalu, Yunus, Mafiz and pliantiff. Chandra Bhanu died leaving behind her sons and daughter. Subsequently, Foyjon, Younus and Mofiz became the owner of .41 acres. Kalu became owner of .16 acres and died leaving behind this defendant only son. Plaintiff 1 Asad Miah sold .075 acres to him by a registered *kabala* and thus he became owner

of .235 acres. Consequently, he prayed for *saham* to the extent of .235 acres.

On pleadings, the trial Court framed only 3 issues. Among those the main issue was whether the plaintiffs are entitled to have decree as prayed for. In the trial, the plaintiffs examined 1 witness and their documents were exhibits-1 to 1(Uma), 2 to 2(Gha) and 3 to 4(Tha). Defendant 1 examined 1 witness DW1 and her documents were exhibits-Ka-1, Kha-1 to Kha-3, Ga-1 to Ga-2. Defendants 2-14 examined 1 witness DW 2 and their documents were exhibits-2 Kha-2Uma and defendant 36 examined 1 witness DW3 and his documents were exhibits-Ga-2 and Gha-1. However, the Assistant Judge by its judgment and decree dated 28.09.2004 decreed the suit in part allocating *saham* to the plaintiffs to the extent of .55 acres. The trial Court also allocated *saham* to defendant 36 to the extent of .235 acres.

Against the aforesaid judgment and decree the plaintiffs preferred appeal before the District Judge, Cumilla. The appeal was heard on transfer by the Joint District Judge, Court No.1, Cumilla. The transferee Court by its judgment and decree dated 17.08.2006 allowed the appeal, set aside the judgment and decree passed by the trial Court and allocated *saham* to the plaintiffs for .80 acres. The appellate Court reduced the *saham* of defendant 36 allocated by the trial Court from .235 acres to .135 acres.

Being aggrieved by defendant 1 approached this Court with this revision challenging the judgment and decree passed by the appellate Court upon which this Rule was issued.

No one appears for the petitioners, although the matter has been appearing in the daily cause list for couple of days with the name of the learned advocate for the petitioner.

Mr. Md. Mubarak Hossain appearing with Mr. Rajib Kanti Aich, Advocates for opposite parties 1 and 2 submits that these plaintiff-opposite parties totally purchased .785 acres by way of 10 registered *kabals* of different dates and they further got .16 acres by way of inheritance. Although, the trial Court in the discussion hold that they got .1328 acres by way of inheritance but miscalculated in the ordering part in not considering that actually they inherited .16 acres and thus allocated share to the extent of total .55 acres only which was erroneous. The plaintiffs then preferred appeal before the District Judge and the appellate Court scrutinizing the *kabals* of the plaintiffs through which they purchased the share and the land they inherited decreed the suit to the extent of .80 acres. The findings and decision of the appellate Court is based on materials on record and there is nothing to interfere with the said judgment and decree. He further submits that against the judgment and decree passed by the Assistant Judge allocating *saham* to the plaintiffs in part, defendant 1 did not prefer any appeal. The appeal was preferred by the plaintiffs for allocating

inadequate *saham*. Since defendant 1 did not prefer any appeal against the part decree passed by the trial Court he is not entitled to file this revision before this Court challenging the judgment and decree of the lower appellate Court. In the revision no such ground has been taken that the appellate Court in deciding the matter misread the evidence on record. The rule, therefore, having no merit would be discharged.

I have considered the submissions of Mr. Hossain, gone through the judgments passed by the Courts below, grounds taken in the Rule petition and the documents exhibited. In the plaint the plaintiffs prayed *saham* of .885 acres out of 2.30 acres of CS *Khatian* 47 corresponding to SA *Khatians* 78-82. They claimed a part of the land as gradual heirs of Zainuddin. As per their claim they totally got .16 acre by way of inheritance. The aforesaid share as allocated to the plaintiffs by the appellate Court appears to me correct on calculation. The plaintiffs claimed that they purchased .135 acres on 16.01.1969 through exhibit-‘3Gha’ from Maherjan and Hossain; they further purchased .07 acres through *kabala* dated 16.06.1978 exhibit-‘3Uma’; .06 acres from Khorshed through *kabala* dated 06.06.1980 exhibit-‘3Cha’; .04 acres from Aslam through *kabala* dated 06.11.1968 exhibit-‘3Chha’; 02 acres from Ambia through *kabala* 21.04.1961 exhibit-‘3Ja’; .07 acres from Fazlu through *kabala* dated 17.09.1955 exhibit-‘3Jha’; .05 acres from Khorshed through *kabala* dated 22.04.1981 exhibit-‘6Yeo’;

.07 acres through another *kabala* dated 21.04.1984 from Khalaque exhibit-‘3Ta’; .04 acres from Wahid Miah and Kalu through *kabala* dated 17.12.1976 exhibit-‘3Tha’. They further purchased .14 acres through *kabala* dated 09.03.1978 exhibit-‘3Umo’ and .09 acres through *kabala* dated 15.12.1980 exhibit-‘3Cha’. It appears from the aforesaid documents, which were exhibited duly without any objection from the defendants, that the plaintiffs purchased totally .785 acres of land. The plaintiffs admitted that he sold out .15 acres from their purchased land and, therefore, it remains .635 acres in their possession. In this way the plaintiffs totally entitled to $.160 + .635 = .795$ acres of the suit land. In the aforesaid premises, I find that the Court of appeal below correctly assessed the oral evidence and documents of the parties and allocated *saham* to the plaintiffs to the extent of .795 acres. The appellate court ought to have decreed the suit for .7950 acres but it decreed the suit for .80 acres to the plaintiffs which seems to me a little bit erroneous. But the findings and decision taken by the appellate Court is found correct in allocating *saham* to the plaintiffs.

Therefore, I find no grounds to interfere with the judgment and decree of the appellate Court. The grounds taken in the revisional application are not tenable in law for which the judgment and decree passed by the appellate Court can be interfered with.

This rule thus bears no merit and accordingly it is discharged. The judgment and decree passed by the appellate Court

is hereby affirmed in the modified form, i.e., the plaintiffs will get .7950 acres of land out of the suit land measuring 2.30 acres.

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