

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

**Civil Revision No. 2690 of 2017**

**IN THE MATTER OF:**

Md. Aroz Ali being dead his legal heirs-

1. Mst. Sofura and others

.....Defendants-Respondents-Petitioners

-Versus-

Md. Abdus Sobhan and 11 others

.....Plaintiffs-Appellants-Opposite parties

Mr. Md. Abdul Haque, Advocate

.....For the petitioners

Mr. Md. Mainul Islam, Advocate

....For opposite party Nos. 1 and 3-12

**Heard on 15.12.22, 18.12.22, 08.01.23**

**and judgment passed on 18.01.2023**

Present:

*Mr. Justice Kazi Md. Ejarul Haque Akondo*

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure, 1908 was issued in the following terms-

*“Records be called for. Let a Rule be issued calling upon opposite party Nos. 1-12 to show cause as to why the judgment and decree dated 16.04.2017 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Mymensingh in Other Class Appeal No. 22 of 2015 reversing the judgment and decree dated 25.11.2014 passed by the learned Senior Assistant Judge, Iswargonj, Mymensingh in Partition Suit No. 170 of 2014 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.”*

The present opposite party Nos. 1 to 12 as the plaintiffs filed Partition Suit No. 124 of 2005 in the Court of Learned Senior Assistant Judge, Nandail, Mymensingh praying for a saham of  $64\frac{2}{3}$  decimals of land out of the suit 3.51 acres of land. Thereafter, the suit was transferred to the Court of Learned Senior Assistant Judge, Iswargonj, Mymensingh and it was numbered Partition Suit No. 170 of 2014.

The case of the plaintiffs, in short, is that Amzad Sheikh and Daulat Sheikh were the owners of 3.51 acres of land of C.S Khatian No. 250. Daulat Sheikh got  $1.75\frac{1}{2}$  decimals of land. Daulat Sheikh died leaving behind 3 daughters Sarbanu, Fulbanu (defendant Nos. 15 and 21), and Tulazan, predecessor of defendant Nos. 16 to 20 and brother Amzad Sheikh. Amzad Sheikh got  $.58\frac{1}{2}$  decimals of land from his deceased brother Daulat Sheikh, and thus Amzad Sheikh became the owner of  $1.75\frac{1}{2} + .58\frac{1}{2} = 2.34$  acres of land. Amzad Sheikh died leaving behind 3 sons, i.e. Sadat Ali, Suruj Ali, and Aroz Ali (defendant No. 3). Sadat Ali died leaving his heirs i.e. defendant Nos. 4 to 10. Suruj Ali died leaving defendant Nos. 11 to 13 as his heirs. Defendant No. 14 is a co-sharer by purchase. The names of the daughters of Daulat Sheikh

were recorded in ROR Khatian No. 218 with other co-sharers. The daughters of Daulat Sheikh sold 79 decimals of land to the plaintiffs and defendant Nos. 1 and 2 vide deed No. 2508 dated 16.03.1987 and they are in ejmali possession. The defendants refused partition and hence, the suit.

Defendant No. 3 contested the suit by filing a written statement denying the averments made in the plaint contending, inter-alia, that there is no cause of action in the suit, the suit is barred by limitation, the suit is bad for defect of parties, the suit is barred by principles of estoppels, acquiescence, and waiver. It has further been stated that Amzad Ali and Daulat Ali were the owners of the suit jote. Amzad Ali died leaving 3 sons Sadat Ali, Suruj Ali, and Aroz Ali. Sadat Ali died leaving 4 sons Abdul Quddus, Abu Bakar, Abu Kalam, Abdus Salam, and 2 daughters Halima Khatun and another. At the death of Suruj Ali, his 2 sons and one daughter got the land of Suruj Ali. Amzad Ali during his lifetime sold his entire property except the homestead. The wife of Amzad Ali purchased  $14\frac{1}{2}$  decimals of land on plot No. 288. Daulat Ali sold his entire property during his lifetime. Aroz Ali purchased 76 decimals of land. The plaintiffs purchased land from a titleless person.

Amzad Ali and Daulat Ali sold .33 decimals of land on plot No. 295.

The defendants prayed for the dismissal of the suit.

After the conclusion of the trial the learned Senior Assistant Judge, Iswargonj, Mymensingh by his judgment and decree dated 25.11.2014 dismissed the suit on the contest against defendant No. 3 and ex-parte against the rest without cost.

Being aggrieved by the said judgment and decree dated 25.11.2014 defendant No. 3 preferred an appeal before the learned District Judge, Mymensingh, and the same was numbered as Other Appeal No. 22 of 2015. Thereafter, the appeal was transferred to the Court of learned Additional District Judge, 2<sup>nd</sup> Court, Mymensingh for hearing and after hearing the same the learned Judge by his judgment and decree dated 16.04.2017 allowed the appeal on the contest against the respondents without cost and set aside the judgment and decree so passed by the learned Trial Judge and decreed the suit in preliminary form on the contest against the contesting defendants and ex-parte against the rest without cost.

Being aggrieved by and dissatisfied with the said impugned judgment and decree dated 16.04.2017 defendant No. 3 as the petitioner

had preferred the instant civil revision before this Court and obtained the present Rule which is before us for consideration.

Anyway, Mr. Md. Abdul Haque, the learned Advocate appearing for the petitioner submits that the Appellate Court below without controverting the findings of the Trial Court and on misreading and non-consideration of the material evidence on record erroneously reversed the judgment and decree of the Trial Court, and decreed the suit, and thereby committed an error of law occasioning failure of justice.

Conversely, Mr. Md. Mainul Islam, the learned Advocate appearing for opposite party Nos. 1, and 3-12 submits that even if the defense case is admitted by the plaintiffs Daulat at the time of death was the owner of  $175-(50+16.50)=108.50$  decimals of land. As per inheritance, 3 daughters of Daulat were joint owners and possessors of 72 decimals of land to the extent of their  $\frac{2}{3}$  shares, and the plaintiffs and defendant Nos. 1-2 were entitled to have 72 decimals of land in their saham. The learned Judge of the Appellate Court below as a last court of facts on consideration of the materials on record rightly decreed the suit and thereby committed no error of law occasioning failure of justice as such; the Rule is liable to be discharged.

I heard the learned Advocates of the contending parties and perused the materials on record. It appears that this is a case of a simple partition of a joint property. The plaintiffs claimed saham of  $64\frac{2}{3}$  decimals of land out of 3.51 acres of land of C.S Khatian No. 250 alleging that the said 3.51 acres of land originally belonged to 02 brothers Amzad and Daulat on equal shares and at the death of Daulat his only 3 daughters inherited 1.17 acres of land including the suit  $64\frac{2}{3}$  decimals of land and ROR Khatian No. 218 was prepared in their names along with others in ejmali possession and thereafter, they transferred 79 decimals of land to the plaintiffs and defendant Nos. 1 and 2 by way of a registered sale deed No.2508 dated 16.02.1987 (exhibit-5) and thus, the plaintiffs got title over the suit land and possession therein in ejmali. In support of their contention, the plaintiffs-opposite parties examined 02 witnesses and produced documentary evidence which were marked as exhibit-1 to 6. On the other hand, defendant No. 3 who is the son of C.S. recorded tenant Amzad claimed that Amzad and Daulat transferred their almost whole shares of the suit jote to others and he purchased .76 decimals of land from those purchasers and entered into possession. The plaintiffs' vendors had no title to sell the suit land, and

the plaintiffs got no possession in any portion of the suit jote. Defendant No.3 to prove his case examined 03 witnesses and adduced documentary evidence, exhibit- Ka to Zha. It appears that exhibit-1 is the C.S. Khatian No.250 in respect of the scheduled land admittedly prepared in the names of Amzad Sheikh and Daulat Sheikh on equal shares. But exhibit-2 S.A. Khatian No.218 of the land was prepared in the names of said Amzad Sheikh, and 03 daughters of said Doulat Sheikh i.e. Fulbanu Bibi, Sarbanu Bibi, and Tulajan Bibi, and 05 others i.e. Girindra Chandra Barman, Indra Chandra Barman, Jitendra Chandra Barman, Momindra Chandra Barman, and Narendra Chandra Barman all sons of Gobinda Chandra Barman, and on the other hand, exhibit-Ga S.A. Khatian No.219 was prepared in the name of one Aswini Kumar Dey in respect of 26 decimals of land of the suit scheduled land. Thereafter, the heirs of Arshini Kumar Dey by registered Kabala deed No. 1924 dated 21.01.1978 (exhibit-Cha) transferred the said 26 decimals land to defendant No.3 Aroz Ali. It also appears from exhibit-Chha Sub-kabala deed No.839 dated 30.01.1928 that Daulat and Samir transferred .50 decimals of land from the suit khatian to others. In the premises, the Trial Court rightly held that the C.S. recorded tenants transferred their shares to 3<sup>rd</sup> parties and their names were recorded in the S.A. Khatian as

such, it cannot be determined how many shares were transferred and how many remained, and actually how much lands were owned by the plaintiffs' vendors and the plaintiffs got how much lands, and thus the plaintiffs failed to prove their title in the suit lands for saham. But the Appellate Court below wrongly held that the plaintiffs-appellants claim that the successive heirs of C.S owner Daulat Sheikh's daughter Tolajan Bibi who is ROR recorded tenant sold the suit land to the plaintiffs by registered deed No. 2508 dated 16.02.1987 (exhibit-5) and Khatian No. 927 was prepared in the name of Tolojan Bibi. So it cannot be said that the plaintiffs have no right to get saham in the suit jote as all the exhibited documents support the claim of the plaintiffs. On going through the materials on record it appears that the finding of the Trial Court regarding possession of the plaintiffs in the suit jote appears to be correct but the Appellate Court below without controverting the findings of the Trial Court wrongly held that the plaintiffs possess the suit land in ejmali. The other findings of the Trial Court which were not controverted by the Appellate Court below appear to be correct in the attending facts and circumstances of the case, and the evidence on record.



Given the above, I find substance in the submissions made by the learned Advocate for the petitioners, and merit in the Rule. Accordingly, the Rule succeeds.

As a result, the Rule is made absolute without cost.

Stay, if any, vacated.

The judgment and decree dated 16.04.2017 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Mymensingh in Other Appeal No. 22 of 2015 allowing the appeal by setting aside the judgment and decree dated 25.11.2014 passed by the learned Senior Assistant Judge, Iswargonj, Mymensingh in Partition Suit No. 170 of 2014 dismissing the suit, and decreeing the suit in preliminary form are hereby set aside, and the original Partition Suit No.170 of 2014 is dismissed and thereby the judgment and decree of the Trial Court dated 25.11.2014 is upheld.

Let a copy of this judgment along with the Lower Court Records be sent to the Court concerned at once.