Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 1202 of 2009
Amina Khatun being dead his heirs
Petitioners 2-6 on record and others
.....petitioners
-Versus-
Iman Ali and others
.....opposite parties

Mr. Md. Abdul Kader Bhuiyan, Advocate
.....for the petitioners

No one appears for the opposite parties

Heard on: 06.01.2026, 29.01.2026 and 25.02.2026

Judgment on: 11.03.2026

In the instant revision Rule was issued on 12.04.2009 calling upon the opposite parties 1-19 to show cause as to why the impugned judgment and decree dated 26.11.2008 passed by the learned Joint District Judge, 1st Court, Chandpur in Title Appeal No. 07 of 2003 allowing the appeal and reversing the judgment and decree dated 14.11.2002 passed by the learned Court of Senior Assistant Judge Faridgonj, Chandpur in Title Suit No. 16 of 1996 decreeing the suit should not be set aside and/or such other of further order or orders passed as to this Court may seem fit and proper.

The petitioners 1-6 and the opposite parties 70-86 as plaintiff instituted Title Suit 56 of 1995 on 15.09.1995 in the Court of the learned Assistant Judge, Sarasti, Chandpur seeking partition of the suit property. Subsequently the suit was transferred to the Court of the Assistant Judge, Faridganj, Chandpur where it was renumbered as Title Suit 16 of 1996.

The case of the plaintiffs in brief is that one Kalimuddin was the owner in possession of 2.00 acres of land appertaining to C.S Khatian No.18 as described in Schedule 1 to the plaint. During his lifetime he sold 0.60 acres of land to his daughter Tolapjan and 0.78 acres of land to Abdul Aziz who is the husband of Tolapjan. After the aforesaid transfers to his daughter and son-in-law 0.62 acres of land remained in Schedule 1 and he was also the owner of 1.43 acres of land described in Schedule 2. Kalimuddin died leaving behind one son Jalaluddin and three daughters namely Tolapjan, Meherjan and Tarikjan as his heirs. On the death of Kalimuddinn his son Jalaluddin inherited 0.82 acres while each of the daughters inherited 0.41 acres of land. Thus Tolapjan having already purchased 0.60 acres from her father and having further inherited 0.41 acres became the owner of 1.01 acres of land in total. Subsequently Tolapjan died leaving behind her husband

Abdul Aziz and her son Ibrahim as heirs whereupon Abdul Aziz inherited 0.17 acres and Ibrahim inherited 0.84 acres. In this manner Abdul Aziz having inherited 0.17 acres from his wife and having earlier purchased 0.78 acres from his father-in-law became the owner in possession of 0.95 acres of land. Thereafter Abdul Aziz died leaving behind three sons and two daughters namely Ibrahim the son born of his first wife and Iman Ali (defendant 4) and Janab Ali (defendant 5) both sons born of his second wife together with two daughters namely Atarun Nessa (mother of defendants 6 to 9) and Mayur Nessa (defendant 16) as his heirs. Upon his death each son inherited 0.24 acres and each daughter inherited 0.12 acres of land. Accordingly Ibrahim as heir of his mother Tolapjan inherited 0.84 acres of land described in Schedules 1 and 2 and as heir of his father Abdul Aziz inherited 0.24 acres thus he became owner in possession of 1.08 acres of land in total. Ibrahim subsequently died leaving behind plaintiffs 1 to 7 as his heirs. Thereafter plaintiffs 2-4 by registered deed 575 dated 25-01-1978 purchased 0.04 acres of land of Schedule 1 from defendant 1 and obtained possession thereof. Thus plaintiffs 1 to 7 became owners in possession of 1.12 acres of land in total.

Thereafter Tarikjan having inherited 0.41 acres of land in Schedules 1 and 2 from her father died leaving behind three sons namely Khalilur Rahman (father of plaintiffs 8-10), Abdul Aziz (father of plaintiffs 11-14) and Ana Mia (father of plaintiff 15 and grandfather of plaintiffs 16-18). After her death plaintiffs 8-18 became owners in possession of the said share.

Similarly another daughter of Kalimuddin named Meherjan inherited 0.41 acres of land and died leaving behind three sons and three daughters as heirs who became owners of the said property. One of her sons Fazar Ali having inherited 0.09 acres of land died leaving behind plaintiffs 10-23 as his heirs who thereafter became owners of the said 0.09 acres of land.

Thus plaintiffs 1-23 together became owners in possession of 1.62 acres of land in total. According to the plaintiffs defendants 1-3 are heirs and successive heirs of Jalaluddin son of Kalimuddin, defendants 4-16 are heirs and successive heirs of Abdul Aziz, defendants 17-24 are heirs and successive heirs of Meherjan and Tarikjan and defendants 25-59 are purchaser co-sharers or their successors. Some of the defendants have allegedly been possessing lands in excess of

their legitimate shares by force and illegally. As no partition by metes and bounds has ever been affected among the co-sharers disputes and disturbances have arisen from time to time. Hence the plaintiffs instituted the present suit for partition claiming 1.62 acres of land.

On the other hand defendants 4, 5, 16, 25, 26, 28 and 30-33 contested the suit by filing written statements. Their case in substance is that the land described in Schedule 1 originally belonged to Kalimuddin who sold 0.78 acres to Abdul Aziz and 0.60 acres to Tolapjan. Subsequently Tolapjan settled her 0.60 acres of land in favour of Ahmed Ali Pandit. Kalimuddin later died while in possession of the remaining 0.62 acres of land leaving behind only one son Azizullah and one daughter Fulbanu as his heirs. Azizullah died leaving behind his wife Atarun Nessa and sister Fulbanu. Thereafter Atarun Nessa transferred 0.12 acres of land to Alijan by a deed of gift dated 15-09-1944. Subsequently Fulbanu sold 0.08 acres to Abdul Aziz and 0.18 acres to Anamia who was the predecessor of defendants 38-43. Fulbanu also sold the remaining portion of her property to Samsul Haque. Thereafter Anamia sold 0.04 acres of land to Ibrahim who is the father of plaintiffs 1-7 and defendants 4 and 5 and their brother Abdul Majid.

Furthermore defendants 38-40 purchased 0.1050 acres of land from Samsul Haque. It is further contended that Abdul Aziz died leaving behind four sons and two daughters and one widow whereupon the widow inherited 0.11 acres and each son inherited 0.15 acres and each daughter 0.075 acres of land.

According to the defendants defendants 4, 5 and 16 are owners of $1.16\frac{1}{4}$ acres of land, defendants 25-34 claim 0.09 acres, defendant 35 claims 0.04 acres, defendants 36 and 37 claim 0.08 acres, and defendants Nos. 38 to 43 claim 0.24½ acres of land. Thus according to the defendants they claim 1.62¾ acres of land by inheritance, successive inheritance and purchase. It is also stated that defendant 27 Momin Uddin died about 30 years ago yet he has been made a defendant in the present suit. The defendants further deny that Kalimuddin had any daughters named Tolapjan, Meherjan or Tarikjan and contend that the plaintiffs have falsely instituted the suit by projecting fictitious persons as heirs. On this ground the suit is liable to be dismissed.

Earlier the suit was decreed in part on 30.07.1998 whereby 0.20 acres of land were decreed in favour of the plaintiffs and the defendants were allotted 1.41 acres of land.

Being aggrieved thereby the plaintiffs preferred Title Appeal 136 of 1998 and the appellate Court by judgment and decree dated 08.05.2001 remanded the suit to the trial Court with certain directions which were thereafter complied with by both the parties.

In the suit the trial court framed as many as five issues as to maintainability, defect of party, hotchpot, whether the plaintiffs have right, title and possession over the scheduled land and whether the plaintiffs are entitled to the reliefs as prayed for.

During the course of trial plaintiffs examined three witnesses while the defendants examined two witnesses and both parties adduced documentary evidence in support of their respective cases.

The trial Court upon perusal of the pleadings and hearing the parties and considering both oral and documentary evidence on record decreed the suit in part holding that the plaintiffs are entitled to 0.8926 acres of land from Schedule 1 and 0.3723 acres of land from Schedule 2 which in total comes to 1.2649 acres of land out of the claimed 1.62 acres.

Being aggrieved by and dissatisfied with the said judgment and decree of the trial court the contesting defendants preferred Title Appeal 07 of 2003 before the District Judge, Chandpur. The appeal upon transfer was heard by the Joint District Judge, 1st Court, Chandpur who was pleased to allow the appeal and set aside the judgment and decree of the trial Court by judgment and decree dated 26.11.2008.

Against the said judgment and decree the plaintiffs preferred the present Civil Revision before this Court and this Court was pleased to issue Rule on 12.04.2009.

Mr. Md. Abdul Kader Bhuiyan, the learned Advocate appearing on behalf of the petitioners submits that the appellate Court committed error of law resulting in an error in such decree occasioning failure of justice inasmuch as the appeal was not disposed of on its merit rather the appellate Court raised and decided the case on a point which had never been raised by the defendants at any stage of the proceedings neither at the time of trial before the trial court nor during the earlier appellate proceedings nor even after remand before the trial Court nor in the memorandum of the present appeal. Consequently the plaintiffs were taken completely by surprise.

He further submits that the impugned judgment has been passed upon misreading and non-consideration of material evidence on record and upon misconception of law and the same is perverse and misconceived. Moreover the judgment does not satisfy the requirements of a proper judgment of reversal as contemplated under Order 41 Rule 31 of the Code of Civil Procedure and therefore the same is liable to be set aside outright. The learned Advocate further submits that the appellate Court allowed the appeal relying upon certain certificates which were not proved in Court by the lawful issuing authority as required by law. Nevertheless the appellate Court *suo motu* and without giving any opportunity to the plaintiffs or issuing notice to them treated those certificates as Exhibit series (Exhibit-X series) and relied upon the same in allowing the appeal. Such a course adopted by the appellate Court according to the learned Advocate is not sanctioned by law and calls for interference by this Court as the said decision has seriously prejudiced the plaintiffs and resulted in gross miscarriage of justice. He further submits that the appellate Court failed to appreciate that the plaintiffs were legally and procedurally entitled to challenge the said certificates but they were completely deprived of that

opportunity. Thus the appellate Court committed an error of law occasioning failure of justice which is amenable to interference by this Court in exercise of its revisional jurisdiction under Section 115(1) of the Code of Civil Procedure. He lastly submits that since the instant Rule has substance and merit the same deserves lawful consideration and may be made absolute.

Although the opposite parties entered appearance none appears to oppose the Rule.

I have heard the learned Advocate for the petitioners and perused the materials on record and also gone through the judgments and decrees passed by the Courts below.

The plaintiffs instituted the present suit seeking partition in respect of the properties described in Schedules 1 and 2 to the plaint. Schedule 1 describes the property appertaining to C.S. Khatian 18 Exhibit-1 corresponding to S.A. Khatian 15 Exhibit-3 while Schedule 2 describes the property of C.S. Khatian 34 Exhibit-2 corresponding to S.A. Khatian 28 Exhibit-4.

Plaintiffs claim that the lands described in both schedules originally belonged to Kalimuddin. It is admitted that the total land of Schedule 1 measures 2.00 acres. The

principal controversy in the case relates to the genealogy of Kalimuddin. The plaintiffs contend that upon the death of Kalimuddin he left behind one son Jalaluddin and three daughters namely Tolapjan, Meherjan and Tarikjan. On the other hand the defendants assert that although Kalimuddin had one son Jalaluddin he had no daughters at all. The suit was earlier remanded by the appellate Court with a direction to the trial Court to determine the genealogy of Kalimuddin. Pursuant to the said direction plaintiffs examined PW 3 Mohammad Yusuf who produced a heirship certificate issued by the concerned Union Parishad on 24.07.2001.

In cross-examination PW 3 stated that he had not personally seen the persons mentioned as heirs in the certificate nor did he have any personal knowledge about them. He further stated that the information was collected by Member Zahurul Haque at the direction of the Chairman and he merely prepared the certificate according to the instructions given to him. He also admitted that no register relating to such information is maintained in their office. It appears that at the time of recording the deposition of PW 3 the trial Court did not mark the said certificate as an exhibit. However at the time of delivery of judgment the trial Court marked the same as

Exhibit-6 and considered it. Upon consideration the trial Court did not rely upon Exhibit-6 and did not accept the contents of the said certificate to the effect that Kalimuddin had three daughters. Although the defendants claimed that Kalimuddin had no daughters but DW 1 in his cross-examination clearly admitted that Tolapjan was the daughter of Kalimuddin and the name of Kalimuddin's son was Jalaluddin. Thus even without relying on Exhibit-6 the trial Court relied upon the admission of DW 1 and arrived at the finding that Kalimuddin had a daughter named Tolapjan.

From the record it further appears that C.S. tenant Kalimuddin sold 0.60 acres of land to Tolapjan and 0.78 acres of land to Abdul Aziz the huband of Tolapjan and thereafter died while owning the remaining 0.62 acres of land. Upon the death of Kalimuddin his daughter Tolapjan inherited 0.21 acres of land and son Jalaluddin inherited 0.42 acres of land.

Subsequently Tolapjan died leaving behind her husband Abdul Aziz and her only son Ibrahim as heirs. The defendants however contended that Tolapjan had settled her 0.60 acres of land in favour of Ahmed Ali Pandit. But no evidence of such settlement has been produced by the defendants. On the contrary the kabala deed dated 29.09.1958 Exhibit-Ja and the

kabala deed dated 05.05.1956 Exhibit-Ta executed by Ahmed Ali in favour of defendants 4 and 5 clearly show that Ahmed Ali Pandit claimed the land by purchase from Tolapjan. Thus the documentary evidence namely Exhibits-Ja and Ta clearly disproves the claim of the defendants. After the death of Tolapjan her husband Abdul Aziz inherited 0.20 acres and her son Ibrahim inherited 0.60 acres of land. Abdul Aziz having earlier purchased 0.78 acres of land from Kalimuddin and having further inherited 0.20 acres from his wife became the owner of 0.98 acres of land in total. Upon his death he left behind three sons namely Ibrahim who was father of plaintiffs 1-7 and Iman Ali father of defendants 4 and 5 and two daughters namely Atar Nessa mother of defendants 6-9 and Mayur Nessa defendant 16. The genealogy narrated by the plaintiffs has also been admitted by DW 1 who in his cross-examination stated that Abdul Aziz died leaving behind three sons and two daughters and Ibrahim was one of his sons. Thus Ibrahim inherited 0.6060 acres from his mother and 0.2466 acres from his father totalling 0.8526 acres of land which was subsequently inherited by plaintiffs 1-7. Furthermore plaintiffs 2-4 acquired 0.04 acres of land by virtue of kabala deed 575

dated 25.01.1978 Exhibit-5 which has not been denied by the defendants.

Thus the total share of plaintiffs 1-7 in respect of schedule 1 stands at 0.8926 acres of land. On the other hand defendants 4-16 as heirs of Abdul Aziz obtained 0.5400 acres of land. Likewise Jalaluddin the son of Kalimuddin inherited 0.4132 acres out of the remaining 0.62 acres. In respect of schedule 2 Talpjan inherited 0.4766 acres of land and upon her death her son Ibrahim inherited 0.3575 acres while her husband Abdul Aziz inherited 0.1191 acres. Consequently Ibrahim acquired 0.3723 acres of land in total in schedule 2 which subsequently devolved upon plaintiffs 1-7. Moreover DW 1 admitted in his deposition that if the plaintiffs 1-7 obtain their share from schedule 2 he has no objection thereto. Accordingly plaintiffs 1-7 are entitled to 0.8926 acres of land from schedule 1 and 0.3723 acres of land from schedule 2. Since the evidence of PW 3 and Exhibit-6 carries no evidentiary value the plaintiffs 8-23 are not entitled to any share in the alleged properties of Meherjan and Tarikjan as claimed. From the above discussion it appears that plaintiffs 1-7 are entitled to a total of 1.2649 acres of land whereas plaintiffs 8-23 are not entitled to any share.

It further appears that the appellate Court did not reverse any of these specific findings of fact recorded by the trial Court. However the appellate Court allowed the appeal upon accepting the submission of the learned Advocate for the appellants that plaintiff number 8 named Iskandar died on 30.09.1992 whereas the present suit was instituted on 15.09.1995. In support of this contention the appellants produced three death certificates and three heirship certificates issued by the concerned Union Parishad Chairman. Although the trial Court had rejected Exhibit-6 the appellate Court merely upon seeing the signatures and seals appearing on those certificates marked them as Exhibit-X, Exhibit-X(1), Exhibit-X(2), ExhibitX(3), Exhibit-X(4) and Exhibit-X(5). Upon consideration of Exhibit-X the appellate Court concluded that plaintiff number 8 had died on 30.09.1992 whereas the suit was filed on 15.09.1995 and therefore the signature of plaintiff 8 on the plaint was forged. On that reasoning the appellate Court held that fraud had been committed observing that fraud vitiates everything and further passed opinion that since a decree had been passed against a deceased person criminal proceedings should be initiated

against the concerned plaintiffs. On that basis the appellate Court set aside the judgment and decree of the trial Court.

However the power of the appellate Court to take additional evidence is neither inherent nor arbitrary but is strictly regulated by Order 41 Rule 27 of the Code of Civil Procedure. Under Rule 27(1)(b) the Court may admit additional evidence only if it requires such evidence to enable it to pronounce judgment or for any other substantial cause. Even where a substantial cause exists for example the death of a party rendering the suit a nullity the appellate Court cannot simply mark the documents as exhibits. Under Order 41 Rule 28 the Court must either take such evidence itself or direct the lower Court to take such evidence. Marking documents *suo motu* without affording the respondent-plaintiff an opportunity to cross-examine the issuing authority or to adduce rebuttal evidence is in clear violation of the fundamental principle of *audi alteram partem* that is hearing the other side.

A certificate issued by a local Union Parishad Chairman is not a self-proving document. Under Sections 61, 62 and 64 of the Evidence Act the contents of a document must be proved by primary evidence and under Section 67 where a document is alleged to be signed or written by any person the

signature or handwriting must be proved to be that of such person. Therefore the Chairman being the issuing authority of the certificates ought to have been summoned as a witness to testify that the certificates were issued in the official course of business and to prove the basis of the information contained therein such as the relevant death register entries and verification of the signature and seal.

Failure to formally prove a document which requires proof by law renders the document inadmissible in evidence. By marking those certificates as Exhibit-X series behind the back of the respondent-plaintiffs the appellate Court committed a jurisdictional error. Evidence cannot be admitted at the appellate stage if it alters the nature of the case without giving the opposite party a fair opportunity to meet such evidence and the respondent-plaintiffs cannot be taken by surprise. The appellate Court was required in accordance with law to record specific reasons explaining why such additional evidence was necessary and to direct the appellants to file a formal application under Order 41 Rule 27 of the Code of Civil Procedure. In that event the appellate Court ought to have summoned the Chairman or the relevant record-keeper of the Union Parishad to prove the documents in accordance with

the Evidence Act and to allow the plaintiffs to cross-examine the witness regarding the date of death and authenticity of the certificates. Instead the appellate Court acted beyond its jurisdiction by marking the documents without formal proof. A document merely produced in Court does not become evidence unless it is proved according to law.

Reliance upon such unproven certificates to declare the suit null and void on the ground of death of a party constitutes a substantial error of law. The judgment founded upon Exhibit-X series is therefore legally untenable and in effect coram non-judice (not before a judge having jurisdiction) in respect of that evidence rendering the decree unlawful. Furthermore the appellate Court also failed to comply with the mandatory provisions of Order 41 Rule 31 of the Code of Civil Procedure. As a result the respondent-plaintiffs were taken by surprise and deprived of the opportunity of cross-examination which amounts to a serious procedural illegality causing failure of justice and such a judgment cannot be sustained. Such a practice adopted by the appellate Court deserves to be strongly discouraged.

In view of the foregoing discussion and considering the facts and circumstances of the case it is manifest that the Rule has merit.

Accordingly the Rule is made absolute.

The judgment and decree passed by the appellate Court being contrary to law are hereby set aside and the judgment and decree passed by the trial Court are restored.

The order of stay passed by this Court stands vacated.

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

Md. Ali Reza, J:

Naher-B.O