

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

Present:

Mr. Justice S M Kuddus Zaman

***CIVIL REVISION NO.609 OF 2019 WITH
CIVIL REVISION NO.618 OF 2019.***

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Gobinda Mridha and others

... Petitioners

-Versus-

Md. Kamal Moral and others

... Opposite parties

Mr. Ranjan Chakrabarty, Advocate

... For the petitioners of both the
Civil Revisions.

Mr. Mohammad Eunos, Advocate

....For the opposite party Nos.1 and
3-7 of Civil Revision No.609 of 2019 and for the
opposite party Nos.3-7 of Civil Revision No.618 of 2019

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Heard and Judgment on 23.04.2025.

This Rule was issued calling upon the opposite party Nos.1-7 to show cause as to why the impugned judgment and decree dated 03.09.2018 passed by the learned Joint District Judge, Madaripur in Title Appeal No.102 of 2015 enhancing the saham of the plaintiff/appellant/opposite parties modifying the judgment and decree dated 12.08.2015 passed by the learned Assistant Judge, Rajoir, Madaripur in Title Suit No.142 of 2013 should not be set aside and/or

other or further order or orders as to this Court may seem fit and proper.

And another Rule was issued calling upon the opposite party Nos.1-7 to show cause as to why the impugned judgment and decree dated 03.09.2018 passed by the learned District Judge, Madaripur in Title Appeal No.104 of 2015 enhancing the saham of the plaintiffs/appellants/opposite parties modifying the judgment and decree dated 12.08.2015 passed by the learned Assistant Judge, Rajoir, Madaripur in Title Suit No.142 of 2013 should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Civil Revision No.609 of 2019 and 618 of 2019 having arising out of the identical judgment and decree dated 03.09.2018 passed by the learned District Judge, Madaripur in Title Appeal No.102 of 2015 and Title Appeal No.104 of 2015 allowing Title Appeal No.104 of 2015 and disallowing Title Appeal No.102 of 2015 and accordingly modifying the judgment and decree dated 12.08.2015 passed by the learned Assistant Judge, Rajoir, Madaripur in Title Suit No.142 of 2013 both above Civil Revisions and the Rule issued thereunder are heard together and being disposed of by the single judgment.

The opposite party as plaintiff instituted above suit for partition of 1.94 acres land appertaining to R. S. Khatian No.895 corresponding to S. A. Khatian No.850 seeking a separate saham for 98 decimal land

alleging that above property belonged to Jogendra Mridha, Mohendra Mridha, Narayan Mridha and Modhu Mridha each had three ana share and Jogomaya Mridha in four ana share and R. S. Khatian No.895 was correctly recorded. Modhu Mrida died leaving one son Potishor Mrida and Jogomaya who became owner of 48.50 decimal land and transferred 35 decimal land to above Kutishwar Mridha by registered deed of gift No.5120 dated 29.11.2052 and delivered possessions. Above Potishwar Mrida by inheritance and above gift was owning and possessing 71.37 decimal land and the same was correctly recorded jointly with Jogomaya Mrida in S. A. Khatian No.850 and he died leaving only son Kiron Chandra Mrida who transferred 35 decimal land by registered kabla deed dated 20.05.1995 to Anil Chandra and others who in their turn transferred above land to the plaintiff No.1 by registered kabla deed dated 09.10.1993. Above Jogendra died leaving one son Joydeb Mrida who transferred 46 decimal land by registered kabla deed dated 12.12.1993 to plaintiff Nos.1 and 2 and delivered possession. Above Kiran Chandra transferred 17 decimal land by two registered kabla deed dated 18.05.1995 to the plaintiffs. By way of purchase by above kabla deeds plaintiffs became owners of 98 decimal land and possessing above land by erecting dwelling huts and planting trees. Above property has not been partitioned by meets and bounds the defendants refused to affect an amicable partition.

Defendant No.1-4 contest above suit by filling a joint written statement alleging that they are the successive heirs of R. S. recorded tenant Mohendra Mridha and they acquired 54.56 decimal land by inheritance and transferred 10 decimal to others and they are in possession in 0.4456 decimal. Jogomaya Mridha died leaving only daughter Monorama who died leaving only son Gourango Baroi who transferred 35 decimal land to the defendants by registered kabla deed dated 03.08.1977. Thus defendant Nos.1-4 are owning and possessing 79.50 decimal land and they seek separate saham for above land.

At trial plaintiffs examined four witnesses and defendants examined 5. Documents of the plaintiffs were marked as Exhibit No.1 series and 2 series and those of the defendants were marked as Exhibit No. "Ka" to "Gha" series.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge decreed the suit in part and allotted separate saham for 0.8237 decimal land to the plaintiffs and defendant Nos.1-4 were allotted separate saham for 44.56 decimal land.

Being aggrieved by above judgment and decree of the trial Court defendant No.1-4 as appellants as preferred Title Appeal No.102 of 2015 and the plaintiffs filed Title Appeal No.104 of 2015 to the learned District Judge, Madaripur who heard above two appeals together and allowed Title Appeal No.204 of 2015 and enhanced the share of the

plaintiffs to 98 decimal land and dismissed the appeal preferred by defendants No.1-4.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below appellants of Title Appeal No.102 of 2015 as petitioners moved to this Court with two petitions under Section 115(1) of the Code of Civil Procedure and obtained these Rules.

Mr. Ranjan Chakrabarty, learned Advocate for the petitioners of two Civil Revisions submits that admittedly defendant No.1-4 as successive heirs of R. S. recorded tenant Mohendra acquired by inheritance 44.50 decimal land. Above defendants purchased 35 decimal land from successive heir of Jogomaya namely Gourango by a registered kabla deed dated 06.08.1977 (Exhibit No."Kha"). It is not disputed that above Jogomaya died leaving one daughter Monorama who died leaving only son Gourango. Thus by inheritance and purchase defendants acquired title and possession in 79.5 decimal land and sought separate saham for above land. The learned Advocate further submits that Jogomaya was not the full and real owner of 48.50 decimal land but she had only life estate in above land which originally belonged to her husband Panchanon Mrida. Since Jogomaya did not have full ownership over above land she had no legal right to transfer above land by deed of gift to Putishor and Putishor did not acquired any valid title in above 35 decimal land of Gourango. The defendants produced and proved certified copies of above C. S. Khatian No.1225

and 761 which were marked as Exhibit No. "Gha" and "Gha2" respectively but the learned Judge of the trial Court utterly failed to appreciate correct meaning of above legal evidence on record and most illegally granted separate saham to above defendants only for 44.56 decimal land which is not tenable in law. The Court of Appeal below also failed to realize that Jogomaya had limited interest in above 48.50 decimal land as the wife of deceased Panchanon Mrida and most illegally held that Jogomaya had lawful authority to transfer 35 decimal land by deed of gift to Putishor which was purchased by the plaintiff and on above erroneous perception of facts and laws most illegally enhanced the share of the plaintiff to 98 decimal which is not tenable in law.

Mr. Mohammad Younus, learned Advocate for the opposite parties of both the Civil Revisions submits that while giving evidence as DW1 defendant No.1 Gobingda Mrida has admitted that 48.50 decimal land was recorded in the name of Jogomaya in both R. S. Khatian No.895 and relevant S. A. Khatian and after her demise above property was inherited by her only daughter Monorama Mirda who died leaving only son Gourango Baroi as her heir. Above witness did not dispute the correctness of above R. S. and S. A. Khatian. Nor he has made any claim that Jogomaya was not the full owner of above 48.50 decimal land but she had only life estate in above land as the wife of deceased Ponchanon Mrida. Above witness did not claim that above 48.50

decimal land originally belonged to Panchanon Mrida not Jogomaya. In order to prove that Panchanon was the owner of above land and C. S. Khatian No.1225 was recorded in his name the defendants have produced and proved above C. S. Khatian but above Khatian does not show the name of Panchanon Mrida as a tenant. The defendants also claim property of Jogomaya by way of purchase from the heir of Jogomaya namely Gourango. As such the claim of the defendant that above property originally belonged to Panchanon does not have any leg to stand. There is no dispute that by way of purchase plaintiffs acquired title and possession in 63 decimal land from other co-shares of above R. S. Khatians. Defendant No.1-4 had disputed title and possession in 35 decimal land which belonged to Jogomaya. Jogomaya transferred above land to Putishor the elder brother of her husband by registered deed of gift dated 29.11.1952 (Exhibit No.Gha2) and plaintiff purchased above land from the son of above Putishor namely Kiron by registered kabla deed dated 20.05.1995 (Exhibit No."Uma2"). But the defendants have miserably failed to prove by legal evidence that Jogomaya had life interest and not full ownership over above 48.50 decimal land. On consideration of above facts and circumstances of the case and evidence on record learned Judge of the Court of Appeal below has rightly allowed Title appeal No.104 of 2015 and enhance the share of the plaintiff to 98 decimal land which calls for no interference.

I have considered the submissions the learned Advocate for the respective parties and carefully examined all materials on record.

It is admitted that 1.94 acres land appertaining to R. S. Khatian No.895 was recorded in the names of Jogendra, Mohendra, Narayan and Madhu in three ana share each and remaining 4 ana share was recorded in the name of Jogomaya and in the S. A. Khatian in a group comprising Jogomaya, Potishor and Kiron Chandra Mrida 7 ana land was recorded in S. A. Khatian No.850 and the plaintiffs or defendants none disputed the correctness and effectiveness of above Khatians.

It is also admitted that the plaintiff purchased 56 decimal land by registered kabla deeds which were produced at trial and marked as Exhibit Nos. "2Ka", "2Kha" and "2Ga" respectively. Defendants No.1-4 did not dispute title and possession of the plaintiffs in above 56. decimal land. It is also admitted that as the successive heir of R. S. recorded tenant Mohendra defendants acquired 54.56 decimal land and they transferred 10 decimal land to others and they are owning and possessing remaining 44.56 decimal land.

In this suit the sole dispute arises out of 48.50 decimal land of Jogomaya Mridha. Defendant Nos.1-4 has claimed to have purchased 35 decimal land from Gourango who was the only son of only daughter of Jogomaya namely Monorama. Defendants claimed that Gourango inherited above 35 decimal land from his maternal grand mother Jogomaya Mridha. Defendants did not claim that Gorango was a

reversioner heir of Ponchanon Mridha, the husband of Jogomya or Jogomaya had only life estate or limited ownership in above land.

While giving evidence as DW1 defendant No.1 has in his evidence admitted title and possession of Jogomaya in 48.50 decimal land and claimed that after her demise the same was inherited by her only daughter Monoroma and after demise of Monoroma the same was inherited by Gourango. The correctness of R. S. and S. A. Khatian of above land which stand in the name of Jogomaya have not been disputed by the defendants.

In spite of above materials on record the learned Advocate for the petitioner repeatedly stated that above property originally belonged to Panchanon and after his demise his wife Jogomaya acquired the same in life estate. As such she had no legal authority to transfer above land by a deed of gift to Putishor. It is true that the defendants has produced two C. S. Khatians being Nos.1225 and 761 to show that disputed property originally belonged to ponchanon Mrida the husband of Jogomaya but in C. S. Khatian No.1225 the name of Ponchanon Mrida does not exist. As far as C. S. Khatian No.761 is concerned that khatian does not relate to the property of disputed Hogla village. As such the defendants No.1-4 has miserably failed to substantiate the claim that above 48.50 decimal land originally belonged to Ponchanon Mridha and after his demise the same was inherited his wife in life estate.

On consideration of above evidence of record I hold that the plaintiffs have succeeded to prove that above 48.50 decimal land was owned acquired property of Jogomaya Mridha.

The plaintiffs have claimed 35 decimal land out of 48.50 decimal on the basis of registered deed of gift dated 29.11.1952 executed by Jogomaya to Potishor (Exhibit No."Gha"). The learned Advocate for the petitioners have repeatedly stated that above gift was not at all acted upon and above document was a void document but no such claim was made by defendant No.1 while giving evidence as DW1. In fact no defendant witness mentioned anything touching the correctness, genuinity and effectiveness of above registered deed of gift dated 29.11.1952. As such the claim of the defendants that Jogomaya did not have any legal authority to transfer 35 decimal land by registered deed of gift to Putishor or above deed of gift was not acted upon do not have leg to stand. In above view of the materials on record I hold that the learned District Judge on correct appreciation of materials on record rightly held that the plaintiffs have succeeded to prove their title and possession in 98 decimal land and accordingly granted a separate sahum for above land to the plaintiffs.

The gemology of Jogomaya as provided by the defendants in their written statement and reiterated by DW1 in his evidence that Jogomaya died leaving daughter Monorama who died leaving one son Gouranga has not been specifically denied by the plaintiff. Above Gourango has

given evidence as DW2 and claimed that he was the successive heir of Jogomaya and he transferred 35 decimal land to the defendants by registered kabla deed dated 06.08.1977 (Exhibit-“Kha”). By above kabla deed the defendants acquired title in 13.50 decimal land of Jogomaya which remained after transfer of 35 decimal land to Potishor by register deed of gift dated 29.11.1952. As such defendant No.1-4 are entitled to get 44.50 decimal land as successive heir of Mohendra and 13.50 decimal land by purchase from Gourango by above registered kabla deed and they are entitled to get separate saham for 58.06 decimal land but the learned District Judge failed to appreciate above facts and circumstances of the case and evidence on record and most illegally affirmed the flawed judgment and decree of the trial Court which is not tenable in law.

In above view of the materials on record I find substance in these Civil Revision applications and the Rules issued in this connection deserve to be made absolute.

In the result, these Rules being Civil Revision Nos.609 of 2019 and 618 of 2019 are hereby made absolute.

The impugned judgment and decree dated 03.09.2018 passed by the learned District Judge, Madaripur in Title Appeal Nos.104 of 2015 102 of 2015 are modified in part. Plaintiffs saham for 98 decimal land is upheld and the saham of defendant Nos.1-4 is enhanced to 58.06 decimal from 44.56 decimal land. Both the parties are directed to

partition above property in accordance with above share within 60 days from the date of receipt of this judgment in default the plaintiff shall get partition through the Court.

However, there will be no order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER