

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 2525 of 2019

Masud Mia Molla

.....petitioner

-Versus-

Iman Hossain Mollah and others

.....opposite parties

Mr. Biplab Goswami with

Mr. Md. Zobaidur Rahman, Advocates

.....for the petitioner

Mr. Shamsul Haque, Senior Advocate with

Mr. Md. Khalilur Rahman, Advocate

.....for the opposite parties

**Heard on: 20.11.2025, 24.11.2025 and
30.11.2025**

Judgment on: 01.12.2025

In the instant revision Rule was issued on 29.08.2019 calling upon the opposite party 1 to show cause as to why the judgment and decree dated 10.06.2019 passed by the Additional District Judge, Shariatpur in Title Appeal No. 27 of 2016 reversing judgment and decree dated 29.04.2015 passed by the learned Assistant Judge, Vedorgonj, Shariatpur in Title Suit No. 28 of 2013 should not be set aside and/or such other

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

Petitioner as plaintiff filed Title Suit Number 28 of 2013 on 24.02.2013 in the Court of Assistant Judge, Bhederganj, Shariatpur for declaration of title and recovery of possession upon eviction of defendant from the suit land comprising an area of 20 decimals of land.

The case of the plaintiffs in short is that Hazrat Ali Mollah was owner in possession in 1.31 acres of land appertaining to S.A. plot 2266 of S.A. record 358. Hazrat Ali Mollah transferred 1.11 acres of land out of 1.31 acres of land to Badsha Mia Halder and Choto Mia Halder by registered kabala deed number 905 dated 13.05.1980. Choto Mia transferred his share of 56 decimals of land to Ansar Ali Mollah and Masud Mia Mollah by registered kabala deed

number 1172 dated 01.08.1985. Plaintiff Masud Mia Mollah obtained 28 decimals of land in which he established a graveyard on the far west of the said purchased land and on the adjoining 4 decimals of land lying to its east he excavated a well and in rest 20 decimals of land he planted trees. These 20 decimals of land is disputed in the instant case. Defendant Imon Ali Mollah along with local respectable persons came to the plaintiff and requesting him to grant temporary permissive possession on that 20 decimals of land for household purpose with a condition that defendant would vacate and surrender possession of the said land whenever he would be asked by the plaintiff. When plaintiff asked him to vacate and surrender possession of the same he did not pay any heed to it and on 31.12.2011 plaintiff along with local respectable persons went to defendant and asked him to vacate the suit land within 30

days but defendant denied to vacate the suit property and threatened the plaintiff and accordingly plaintiff filed the suit for declaration of title along with recovery of possession upon eviction of defendant who is a licensee.

Opposite party 1 as defendant 1 appeared and contested the suit by filing written statement denying all material statements made in the plaint contending inter alia that Hazrat Ali Mollah was the owner of 1.31 acres of land from which he transferred 1.11 acres of land to Badsha Mia Halder and Choto Mia Halder on 13.05.1980. Thus Badsha Mia acquired 56 decimals of land and he sold his share to Ahmed Mollah and Baschu Mia on 01.08.1985. Ahmed Mollah thus acquired 28 decimals of land from which he transferred 8 decimals of land in favour of defendant Imon Hossen Mollah by kabala number 198 dated 22.12.1990. Hazrat Ali died leaving behind seven

sons and six daughters who acquired the rest 20 decimals of land of S.A. plot no. 358. Ansar Ali Mollah who is one of the sons of Hazrat Ali executed a heba-bil-awaz deed in favour of defendant Imon Hossen Mollah in respect of 10 decimals of land on 03.04.2008. In the deed of Heba-bil-awaz 5 decimals of land was transferred to defendant Imon Hossen Mollah from the suit plot thus he acquired 13 decimals of land in the suit plot. It is the further case of the defendant that he got 10 decimals of land by way of inheritance and by amicable partition he also obtained 10 decimals of land situated in Char Mohishkhali Mouza recorded in S.A. khatian 618. Defendant made a proposal to the plaintiff to exchange the property of Char Mohishkhali Mouza with the suit land and the proposal was accepted by the plaintiff and accordingly plaintiff took possession of 20 decimals of land of S.A. plot 231

appertaining to S.A. khatian 618 and defendant got 20 decimals of land from the suit plot as mentioned in the schedule to the plaint. With these averments defendant prayed for dismissal of the suit.

The trial Court framed as many as five issues and during the course of trial plaintiff examined 4 witnesses and defendant examined 3 witnesses and both the parties adduced documentary evidence in order to prove their respective cases.

The trial Court decreed the suit by judgment and decree dated 29.04.2015 on the finding that plaintiff successfully proved that the defendant was the licensee under the plaintiff.

As against the same defendant preferred Title Appeal 27 of 2016 in the Court of District Judge, Shariatpur which was subsequently transferred to the Court of Additional District

Judge who was pleased to allow the appeal by judgment and decree dated 10.06.2019.

Being aggrieved by and dissatisfied with the judgment passed by the appellate Court plaintiff came before this Court with this revision and obtained the instant Rule on 29.08.2019.

Learned Advocate Mr. Biplab Goswami along with Mr. Md. Zobaidur Rahman appearing on behalf of the plaintiff-petitioner submits that the trial Court upon proper appreciation of evidence correctly found that defendant failed to prove the case of exchange by producing any convincing oral or documentary evidence and since S.A. khatian 618 was not filed in support of the case of exchange the appellate Court committed error of law resulting in an error in such decree occasioning failure of justice in dismissing the suit upon wrongful consideration. He further submits that the claimed

exchange of the defendant was not supported by any evidence and oral exchange is not permitted under Section 118 of the Transfer of Property Act and for such reason the finding of the appellate Court having been based on misreading and non-consideration of material evidence is liable to be struck down. Referring to the depositions led by defence witnesses he points out that mere claim of exchange by the defendant without any convincing evidence does not mean that the case of exchange is proved in evidence and the finding of the appellate Court that the exchange is proved by the admission of PW 1 is not sufficient to convince the ingredient of making exchange in accordance with law thus the appellate Court committed error of law resulting in an error in such decree occasioning failure of justice. He finally submits that the judgment passed by the appellate Court is not a proper judgment of reversal according

to the provisions laid down in Order 41 Rule 31 of the Code of Civil Procedure and since the impugned judgment is perverse and misconceived the same is liable to be set aside. He finally prays that the Rule may be made absolute.

On the other hand learned Senior Advocate Mr. Shamsul Haque along with Mr. Khalilur Rahman appearing on behalf of the opposite parties submits that the appellate Court on the basis of the evidence led by both the parties correctly found that plaintiff failed to prove their case on permissive possession and the impugned judgment was rightly passed in accordance with law which may not be interfered with by this Court. He points out that the suit could not proceed without any attorney on behalf of the plaintiff but the trial Court did not advert to this aspect of the case and wrongly decreed the suit violating the procedure laid down in order 3 Rule 2 of the

Code of Civil Procedure. He further contends that the firistry is no evidence and does not empower anybody to proceed with the suit who actually has no *locus standi* to file and depose in the suit in support of plaintiff having not been properly recognized by plaintiff in the instant suit. He finally submits that the documents of defendant relate to the suit plot and after introduction of such documents of the defendant in written statement plaintiff did not take any step by amending their plaint to challenge those registered documents which stand as a bar against plaintiff's title and as such the suit was not maintainable under Section 42 of the Specific Relief Act and the judgment passed by the appellate Court being passed upon proper appreciation of evidence may not be interfered with. He prays that the Rule may be discharged.

Heard the learned Advocates for both sides and gone through the judgment of the courts below and perused the materials on record as well as the revisional application with the documents appended thereto.

Plaintiff filed the suit for declaration of title and recovery of possession upon eviction of defendant from the suit land measuring 20 decimals of land. The claim of the plaintiff is that Hazrat Ali Mollah was the owner in possession in 1.31 acres of land of S.A. plot 2266 appertaining to S.A. khatian 358. He transferred 1.11 acres of land to Badsha Mia Halder and Choto Mia Halder by registered kabala deed 905 dated 13.05.1980 Exhibit-3. Choto Mia Halder transferred his share of 56 decimals of land to the plaintiff Masud Mia Mollah and Ansar Ali Mollah by registered kabala deed 1172 dated 01.08.1985 Exhibit-2. The plaintiff acquired 28

decimals of land from which at the far west end of the land he established a graveyard in 4 decimals of land and on the adjoining 4 decimals of land lying to its east he excavated a well and planted trees in the rest 20 decimals of land. Subsequently in the first part of December 2011 defendant who is the relative of plaintiff came along with other respectable persons to the plaintiff and wanted the suit land as licensee for temporary use for household purposes. Plaintiff considered the proposal and granted permissive possession to the defendant on the condition that the defendant would be bound to vacate and surrender possession without raising any objection whenever plaintiff asked the same. Later on when defendant was asked to surrender the possession to the plaintiff he did not pay any attention for which plaintiff along with the witnesses asked the defendant to vacate the suit land

within 30 days on 31.12.2012. From perusal of paragraph of 4 of the plaint it appears that plaintiff gave permission to defendant in the first part of December 2011 and finally on 31.12.2012 plaintiff called upon defendant to surrender vacant possession of suit land within 30 days that is to say on or before 30.01.2013 but defendant declined to comply with the said demand. It also appears that there is overwriting in the year of 2012 in two places but upon careful scrutiny it appears that the date written therein was 31.12.2011. In this respect on behalf of plaintiff his wife Maksuda Begum as PW 1 stated in her deposition that in December 2011 when defendant sought temporary permissive possession in the said 20 decimals of land plaintiff allowed him to enter into possession of the same on a conditional basis.

She further stated that on 31.12.2011 the plaintiff in presence of witnesses asked the defendant to vacate the land within 30 days but defendant did not surrender possession. Consequently the date of granting permissive possession and the date of asking the defendant to vacate as stated by PW 1 appear doubtful and questionable inasmuch as defendant was allegedly given possession in the early part of December 2011 and again was asked to vacate in the later part of the same month of 2011 which is abnormal and inconsistent. The case of the plaintiff that defendant took permissive possession was not at all satisfactorily proved in evidence by PWs 2, 3 and 4 and their deposition went beyond the pleading and the same has also been found by the Court of appeal below.

It is further case of plaintiff that plaintiff Masud established a graveyard in 4 decimals of land and dug a well in

the adjoining 4 decimals and in the rest 20 decimals he planted trees and has been maintaining possession accordingly. PW 1 explicitly admitted in her cross-examination that defendant has also got the land in the suit plot and she lives in another Mouja named Charmohiskhali. Defendant produced kabala deed 198 dated 22.12.1990 Exhibit-Ka and Heba-bil-Ewaz deed 1129 dated 03.04.2004 and those documents show that defendant is co-sharer in the holding by way of purchase and Heba-bil-Ewaz and those documents were not challenged by the plaintiff. Those documents are left outstanding which stand as a bar against the claim of the plaintiff and the suit filed in this manner is not maintainable. It also appears that the plaintiff acquired the suit land by kabala dated 13.05.1985 by Exhibit-2. Defendant claims that he got 20 decimals of land of plaintiff by way of exchange with the land of plot 618 of

Charmohiskhali Mouja belonging to the defendant. But defendant did not produce that S.A. record 618 to show that he has got any land in Charmohiskhali Mouja but PW 1 admitted in her cross-examination that she lives in Charmohiskhali. That statement implies that there might be an exchange. But it is the weakness of the defense that defendant could not make out any definite case on his claiming exchange at least by producing S.A. khatian 618 showing that he has land in Charmohiskhali Mouja.

The plaint shows that the suit was filed by Maksuda Begum on behalf of plaintiff Masud Miah. It is the definite claim of the plaintiff that suit land belongs to Masud Miah but Masud Miah did not execute any letter of authority or power of attorney in favour of his wife Maksuda to file and proceed with the suit. Since any power of attorney showing such

authority was filed and tendered in evidence it can be said that the filing of the suit has got no basis and the procedure as contained in Order 3 Rule 2 of the Code of Civil Procedure was not properly followed. A person who is not party to the suit nor a constituted attorney of the plaintiff having not been authorized is not a competent witness to depose on behalf of the plaintiff and as such the deposition of PW 1 does not bear importance in accordance with law. Plaintiff's further claim is that at the time of filing of the suit on 24.02.2013 the power of attorney was given in the "*firisty*" which was appended to the plaint but the "*firisty*" does not show any such document of power of attorney contained in the list. In the case of C Mondol and others Vs. Abdus Samad Talukder and others reported in 9 BLT(AD) 109 it was decided that a *firisty* is no evidence of the contents of the documents filed. In C. Mondal

case plaintiff filed suit for declaration of title and recovery of possession upon eviction of the defendant. Suit was decreed by the trial Court on the basis of a *firisty* which was marked in evidence as Exhibit-1. On appeal preferred by defendant the judgment passed by the trial Court was set aside and appeal was allowed on the finding that *firisty* is no evidence. In revision High Court Division affirmed the judgment of the trial Court and decreed the suit. Leave was granted on this point whether the High Court Division was wrong in relying upon the *firisty* Exhibit-1 in coming to its finding. Finally our Appellate Division found that High Court Division committed error of law in relying upon such *firisty* Exhibit-1 because a *firisty* is no evidence of the contents of the documents filed. In the instant case it appears that the power of attorney is not even in the *firisty* and it appears that it is an irregularity which

could be cured by plaintiff subsequently before passing of the judgment by the trial Court but however that was not done unfortunately.

The documents of defendants relating to the suit land since were introduced in the written statement plaintiff also could have amended their plaint and prayed for relief against those documents in accordance with law but plaintiff did not take such step. Those documents being left outstanding stand as a bar against the claim of the plaintiff that defendant is the licensee under plaintiff inasmuch as the documents of the defendant presuppose that he is a co-sharer in the holding. Plaintiff failed to make out any definite case showing time, place and manner of granting defendant permissive possession in the suit land and also the date as to when plaintiff asked defendant to vacate and surrender the possession of the suit

land in his favour. Since the fact that defendant is a co-sharer by purchase in the suit holding is not challenged the finding arrived at by the appellate Court that the proper relief between the parties lies in a suit for partition is reasonable and correct. In the instant case since plaintiff failed to prove their case to the satisfaction of the Court the suit cannot be decreed. However plaintiff may have his remedy in a properly constituted suit for partition amongst the co-sharers if so advised.

Accordingly I find no merit in this Rule. In the result the Rule is discharged. The judgment of the appellate Court is hereby affirmed and that of the trial Court is set aside.

The order of *status quo* 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