

Present:-

*Mr. Justice Mahmudul Hoque*

**Civil Revision No. 1698 of 2021**

Md. Mostafizur Rahman and another  
..... Petitioners

-Versus-

Md. Bazlur Rashid and others  
..... Opposite-Parties

Mr. M. Sadekur Rahman, Advocate with  
Mr. Mahabul-Ule-Islam, Advocate  
... For the Petitioners

Mrs. Nusrat Jahan, Advocate  
... For the Opposite Party No. 1 & 2

**Judgment on 11.03.2025**

In this revision Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 24.03.2021 (decree signed on 31.03.2021) passed by the learned Joint District Judge, 1<sup>st</sup> Court, Rangpur in Other Class Appeal No. 37 of 2019 allowing the same in part by enhancing the share of the appellants and thus affirming the judgment and decree dated 27.01.2019 (decree signed on 03.02.2019) passed by the learned Senior Assistant Judge, Mithapukur, Rangpur in Other Class Suit No. 03 of 2003 decreeing the suit in part in preliminary form should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the opposite party Nos.1 and 2 and one Rokeya Begum as plaintiffs, filed the instant suit for partition of schedule 'Ka' to 'Uma' land claiming 4.475 acres of land as their share, stating that land of the schedule 'Ka' originally belonged to Suttur Mahmud Mollah who died before C.S. operation leaving behind his two sons Shahabuddin and Sayeruddin and one daughter Tamizonnessa. C.S. khatian rightly prepared in their names. The land of the schedule 'Kha' to the plaint originally belonged to Shahabuddin Mollah and duly recorded in C.S. Khatian. Land of schedule 'Ga' to the plaint originally belonged to Shahabuddin Mollah and Sayeruddin Mollah. Their names were duly recoded in C .S. khatian. Land measuring 2.36 acres in schedule 'Gha' to the plaint originally belonged to Shahabuddin Mollah and land measuring .52 acres originally belonged to Amir Uddin. Their names were duly recorded in C.S. Khatian No. 115 and S.A. Khatian No. 161. Land of the schedule 'Uma' originally belonged to Shahabuddin Mollah and his son Nehal Uddin and their names duly recorded in C.S. Khatian No. 390 and S.A. Khatian No. 430. Being co-owner of schedule 'Ka' and 'Ga' land Soyeruddin died leaving

behind his wife Jobeda Khatun, three daughters namely, Ahela, Ayesha and Nurjahan, only brother Shahabuddin and sister Tamizannessa.

Thereafter, Shahabuddin Mollah died leaving behind his widow Jannatunnessa, five sons namely, Mokbul, Momdel, Nehal, Shamsuddin and Patu and four daughters Rokeya, Shamsun Nahar, Fatema and Rahima. Jannatunnessa died leaving behind her three sons Mokbul, Momdel, Patu and three daughters Rokeya, Shamsunnahar and Fatema. Thereafter, Patu died unmarried leaving behind his aforesaid two brothers and three sisters. Thereafter, Shamsuddin died leaving behind wife Fatema Khatun, one Son Mostafizur Rahman and one daughter Marium Khatun. Ayesha Khatun died leaving behind her only son Atiar Rahman who died leaving behind only son Shahab Ali. Nurjahan died leaving behind her husband Ayub Ali and only son Nuruzzaman. Tamizunnessa died leaving behind her two daughters Pagli Mai and Shaheronnessa and three nephews, Mokbul, Momdel and Nehal. Jabeda died leaving behind her daughter Ohila and grandson of her late daughter Nuruzzaman. Fatema Khatun died leaving behind his son Babul and five daughters. Rubi, Rehana, Monowara, Morsheda and Lovely. Mokbul died leaving behind his wife, five sons Haider, Bazlur Rashid, Kamrul, Khorshedul and

Roman and seven daughters, Ferdousi, Ranju, Bina, Memo, Piyari, Dulali and Rupali, Nehal died leaving behind his wife, one son Nurul Islam and two daughters Nurunnahar and Laily and his grandsons and granddaughters through his late son Kibria Robbani, namely Mustafa, Rina, Ria and Shima. Fatema died leaving behind her one son Islam and two daughters Laily and Nurunnahar. Momdel died leaving behind his wife Mamda Khatun, two sons Milon and Mithu and four daughters Selina Sultana, Razia, Monowara and Sultana Yeasmin.

Husband of Nurjahan namely Ayub Ali died leaving behind his four sons Khairuzzaman, Nuruzzaman, Akhtaruzzaman and Bulu and one daughter Moksen Khatun. Rahima Khatun died leaving behind her one son Reza Sarker and three daughters Masu, Josna and Korimon. Nur Nahar died leaving behinds her four sons. Ronju, Khaja, Sonju and Sadhin and three daughters Rubi, Rekha and Reba. Sayeruddin's daughter Ahela died leaving behind her two sons Abdur Rahim and Saidul Islam and four daughters Amena, Momena, Momtaz and Tohura. Rahima Khatun's daughter, Kosirun Nessa died leaving behind her son Kamruzzaman and two daughters Rezina and Rasheda. Tamizonnessa's daughter Shaheron Nessa died leaving behind her two sons Shamsul Huda and Shahidul

Islam and three daughters Nargis, Monowara and Nurbanu. Rahima Khatun's son Reza Sheikh died leaving behind his two sons Alamgir and Roni and the aforesaid persons have got ownership of schedule 'Ka' and 'Uma' as heirs of C.S. recorded tenants.

While Amiruddin was owning and possessing 0.52 acres of land of the schedule 'Gha' he died leaving behind his four sons Mozaffar, Abu Sayed, Sirajul and Sohim. Thereafter, Sohim died leaving behind his two sons Taslim Uddin and Mobarak Ali. Land of the schedule 'Uma' originally belonged to Shahabuddin and his son Nehal and their names were recorded in C.S. Khatian No. 430 in equal share. Rahimuddin and Tamizuddin were tenants in respect of .14 acres of land of Lot-3 of schedule 'Uma' and their names were duly recorded in C.S. Khatian No. 390. The plaintiffs have no claim in respect of said .14 acres of land. Shahabuddin as co-sharer by inheritance got 41.4443 acres of land of schedule 'Ka'-'Uma' and got 2.9221 acres of schedule 'Ga' along with Tomizonnessa as co-sharers by way of inheritance. Shahabuddin's widow Jannatonnessa got 5.18 acres, each son got 5.18 acres and each daughter got 2.59 acres. After the death of Janantunnessa her each son got 1.15 and each daughter got 0.575 acre. After the death of Patu Sheikh his each

brother got 1.81 and each sister got 0.905 acre. After the death of Tamizonnessa her each daughter got 0.970 acre and each brother got 0.3246 acres. Mokbul got 5.18 acre from his late father Shahabuddin and 1.15 acres from his late mother Jannatunnessa and 1.81 acre from his brother Patu Sheikh and 0.3246 acre from his father's sister Tamizonnessa. He also purchased .50 acres of land from defendant No. 2 on 16.02.1983 and by this way he acquired 8.9646 acres of land in the suit khatians. Thereafter, he gifted 2.84 acres of land to his wife, 1.59 acres to his sons and also transferred some land to other persons. While he owned the rest .20 acres of land he died leaving behind wife, five sons and seven daughters, therefore, his widow got .025 acre each son got .02 acre and each daughter got .01 acre by way of inheritance. Shahabuddin's daughter Rokeya Khatun gifted 2.40 acres of land to plaintiff No. 2 vide gift deed No. 3624 dated 19.02.01 and 1.26 acres vide gift deed No. 5031 dated 27.04.2011. During pendency of the suit Rokeya Khatun died and her rest .41 acre of land got the plaintiff No. 2 as daughter.

Nehal, Momdel, Jobeda, Mokbul Hossain, defendant No. 2 Mostafizar Rahman, defendant No. 1 Fatema and Daoer Box and others gifted 1.86 acres of land to Latifpur Primary School vide deed No. 19325

dated 23.09.1953 but by this deed only 1.34 acres of land was transferred from the suit jote. Thereafter, Momdel and defendant No. 2 gifted 0.545 acres of land to Latifpur Junior High School vide registered deed No. 23613 dated 25.05.1968. Defendant No. 2 Mostafizur, Nehal, Ayub and Mahatab and Noor Box gifted .61 acres of land to Latifpur High School vide deed No. 5159 dated 12.03.1973 but by the said deed only .35 acre of land of the suit jote transferred to the school. Mokbul, Momdel, Nehal and defendant No. 2 gifted .07 acres of land of schedule 'Kha' to Latifpur Jame Mosque and Moktob vide deed No. 12015 dated 25.09.1986.

Defendant No. 2 Mostafizur Rahman transferred .39 acres of land of schedule 'Ka' to predecessor of the defendant No. 23 (Ka) to 23(Ga) Azizul Islam @ Haider Ali vide deed No. 7821 dated 13.07.1978, .50 acre of schedule "Kha' to the predecessor of the defendant Nos. 22-33, Mokbul Hossain vide deed No. 2974 dated 16.02.1983, .32 acres of land of schedule 'Kha' and another .20 acres of land to the predecessor of the defendant Nos. 80 and 81, Soms Uddin, .40 acre land of schedule 'Gha' to the predecessor of the defendant Nos. 127(Ka)-127(Gha), Abdus Samad vide deed No. 14866 dated 13.12.1986, 0.33 acres of land of schedule 'Gha' to defendant No. 126 vide deed No. 14817 dated 13.12.1986, .50

acre of land of schedule 'Kha' to defendant Nos. 104-106 vide deed No. 15326 dated 20.10.1994, .36 acre of land of schedule 'Kha' to defendant Nos. 104-106 vide deed No. 10171 dated 29.09.1995, .43 acre land of schedule 'Kha' to defendants 131(Ka)-131(Cha) vide deed No. 8045 dated 09.06.1998, .15 acres of schedule 'Ga' to one Amin vide deed No. 2755 dated 05.04.2006, .52 acres of schedule 'Kha' to Joydul and Shahanaz vide deed No. 12302 dated 05.11.2017. In this way defendant No. 2 transferred 4.9425 acres of land but defendant Nos. 2 and 130 by suppressing the aforesaid transfer claimed 15.6775 acres of land as their saham. Moreover, most of the purchased land of the defendant Nos. 2 and 130 are not the suit land but they claimed saham in the suit land.

Rashida Khatun wife of Mokbul Hossain transferred .20 acre of land vide deed No. 7969 dated 07.06.1992 to plaintiff No. 1 Bazlur Rashid Molla. Mokbul Hossain son of Sahabuddin Molla transferred 1.59 acres of land to the plaintiff No. 1, Bazlur Rashid, Kamrul Hasan, Khorshedul Alam and Roman Molla. Thereafter plaintiff No. 1 transferred 0.405 acre of land vide deed No. 5618 dated 09.04.2002 to his wife plaintiff No. 2. In this way plaintiff No. 2 is owning and possessing 4.4550 acres and plaintiff No. 1 also owning and possessing .02 acres of



land in total they owned 4.475 acres in the suit jote. The plaintiffs claimed partition of the suit property amicably on 01.11.2002, but the defendants refused to partition the suit property, hence the present suit.

On the other hand, defendant Nos. 1, 2 and 130 jointly filed a written statement, defendant Nos. 5-9 jointly filed a written statement, defendant Nos. 143-158 filed a joint written statement, defendant Nos. 43-48 filed a joint written statement and defendant Nos. 20-70, 110 and 141 filed separate written statement and lastly defendant Nos. 2 and 130, 159-166, prayed for their saham on payment of court fees.

Defendant Nos. 1, 2 and 130 in their written statement and saham petition stated that original owner of the schedule 'Ka' land was Sotur Mamud and before C.S. record he died leaving behind his two sons Sahabuddin and Soyer Uddin and one daughter Tamiznessa. Sayeruddin died leaving behind wife Jobeda Khatun, 3 daughters Ahela, Aysha and Noorjahan and one brother Sahabuddin and one sister Tamizunnessa. Sahabuddin Molla died leaving behind his wife Nesamai, 5 sons Mokbul, Momdel, Nehal, Shamsuddin and Patu and 4 daughters Rabeya, Shamsunnahar, Fatema and Rahima Khatun. Nesamai died leaving behind his two sons namely Nehal and Shamsuddin and one daughter Rahima.

Shamsuddin died leaving behind wife Fatema Khatun, son Mostafizur Rahman and daughter Moriam Khatun, Fatema Khatun died leaving behind his son Mostafizur Rahman. daughter Morium Khatun. Being owner of 8 annas share of schedule 'Ga' land sayerruddin died leaving behind his aforesaid heirs. Being owner of schedule 'Ka' to 'Uma' land Sahabuddin Molla died leaving behind his aforesaid heirs. In this way defendant No. 2 by way of inheritance got .9550 acres of land of schedule 'Ka', 5.3050 acres of land of schedule 'Kha', 42 acres of land of schedule 'Gha' and .750 acres of land by purchase, .35 acre land from Mokbul Hossain vide sale deed No. 16290 dated 09.04.70, .06 acre from Nehal vide Deed of exchange No. 5005 dated 17.05.78, 1.15 acres from Momdel vide sale Deed No. 2479 dated 07.02.80, .3550 acre from Momdel vide sale deed No. 10856 dated 15.11.86 and .78 acre of land by another deed, .1050 acre from Mokbul vide sale deed No. 12018 dated 25.02.86, 4.0350 acres from Fatema vide sale deed No. 12018 dated 25.09.86, .3750 acre from Mokbul vide sale deed No. 2931 dated 05.02.87, .3750 acre from Aziron and Saharon vide sale deed No. 4113 dated 17.02.90, .73 acre from Moriam vide sale deed No. 13694 dated 10.10.92. In this way defendant No. 2 got 8.2550 acres of land by purchase. Defendant No. 130

purchased .25 acre of land vide sale deed dated 27.02.94 and acquired 7.1725 acres by way of inheritance and 8.2550 acres by way of purchase and in total he got 15.4275 acres of land. Defendant No. 2 and 130 jointly owned 15.6775 acres of land in ejmali and possessing the same and they prayed for saham in respect of 15.6775 acres of land.

The Govt. represented by the Deputy Commissioner, Rangpur as defendant No. 70 filed a written statement admitting the statement made in para No. 9 of the plaint and prayed for saham in respect of 3.98 acres of land. Defendant Nos. 43-48 contested the suit by filing a joint written statement denying the material allegation of the plaint and prayed for dismissing of the suit, although they cross examined the P.Ws but did not depose in support of their written statement. The added defendant Nos. 159-166 prayed for saham stating inter alia that defendant Nos. 159.166 and predecessor in interest of the plaintiff No. 2 Rokeya Khatun got 4.0803 acres of land of schedule 'Ka'-'Uma' to the plaint and thereafter, they transferred 2.40 acres of land vide deed No. 3624 dated 19.02.2001 and 1.26 acre of land vide deed No. 5031 dated 27.04.2011. Rokeya Khatun gifted orally .01 acres of land for family graveyard. Thereafter, Rokeya Khatun died leaving behind .41 acres of land and two sons

defendant Nos. 159-166 and grandsons through her late son, defendant No. 161-164 and accordingly, defendant Nos. 159-166 prayed for saham in respect of .3645 acre of land.

The trial court framed 6 (six) issues. After conclusion of trial learned trial court decreed the suit in preliminary form against the defendant Nos. 2, 130, 23, 43-48, 70, 159-166 on contest and exparte against the rest and allotted saham in respect of 4.0201 acres of land to the plaintiffs, 1.6002 acres of land to defendant Nos. 2 and 130 and 0.4253 acre of land to defendant Nos. 159-166.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the defendant Nos. 2 and 130, as appellants, filed Other Class Appeal No. 37 of 2019 before the District Judge, Rangpur. Eventually, the appeal was transferred to the court of learned Joint District Judge, 1<sup>st</sup> Court, Rangpur who after hearing allowed the appeal in part and enhanced the appellants share from 1.6002 acres to 1.96 acres and allotted 4.2462 acres of land to respondent Nos. 35-37. At this juncture, the petitioners moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of status quo.

Mr. M. Sadekur Rahman, Advocate with Mr. Mahabul-Ule-Islam, learned Advocates appearing for the petitioner Nos. 1 and 2 (defendant Nos. 2 and 130 in suit) submit that the genealogy whatever given in the plaint are admitted by the parties to the proceeding, but the trial court as well as the appellate court while allotting saham to the plaintiffs and contesting defendants failed to find that Mokbul Hossain Mollah by way of inheritance and purchase acquired in total 8.6090 acres of land out of which he transferred 8.87 acres of land by 20 transfer deeds to different persons, as such, Mokbul Hossain had no title and interest in the excess suit property measuring 0.2610 acre of land to be inherited by the plaintiffs. The plaintiff No.1 and defendant Nos. 23-26 will not get any saham as heirs of Mokbul Hossain Mollah.

He further submits that the defendant No. 2, Mostafizur Rahman purchased 10.50 sataks of land from Mokbul Hossain Mollah by a deed No. 12015 dated 25.09.1986 (exhibit-Chha). The trial court as well as the appellate court did not consider the deed and allotted saham for the said quantum of land to the defendant No. 2. Both the courts below in allotting saham to the defendant Nos. 35-37 measuring 4.2262 acres wrongly deducted the quantum of land gifted to school by them, wherein, they are

not entitled to get saham for .0440 sataks. After deduction of said quantum of land, defendant Nos. 35-37 will get 4.2022 acres of land in their saham.

He submits that the plaintiffs, after thorough calculation came to an agreement that the plaintiff No. 1 will not get any property, plaintiff No. 2 will get 4.0074 acres in place of 4.0201 acres, defendant Nos. 22-26 will not get any property as their predecessor Mokbul Hossain Mollah transferred his entire interest in the property in excess to his entitlement.

Mrs. Nusrat Jahan, learned Advocate appearing for the opposite party Nos. 1 and 2 in agreeing with the submission of the learned Advocate for the petitioners, very candidly submits that with the modification of allotment of saham to the contesting parties the rule may be disposed of.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statements, evidences both oral and documentary available in lower court record and impugned judgment and decree of both the courts below.

Fact of the case need to be repeated again, the dispute between the parties lies within a very narrow compus. The trial court while decreeing the suit allotted saham to the plaintiff No. 1, measuring 1.27 sataks out of 4.0201 acres. After calculation as given by the parties it appears that predecessor of plaintiff No. 1, defendant Nos. 22-26, named Md. Mokbul Hossain Mollah actually owned and possessed total quantum of land 8.6090 acres out of which by way of sale, gift and other ways transferred 8.87 acres of land in excess to his entitlement. Consequently, he had no title and interest in the land measuring 0.2610 acre to be transferred to defendant No. 22 by deed of gift No. 1847 dated 08.02.1989, as such, by the said deed of gift defendant No. 22 will acquire 0.6090 acre of land by the said gift deed No. 1847. Plaintiff No. 1, defendant Nos. 23-26 acquired no property by way of inheritance from their predecessor Mokbul Hossain Mollah. Therefore, the plaintiff No. 2 only entitled to get saham for 4.0074 acres, defendant No. 2 inherited 3.0053 acres from his father Shamsuddin and by several deeds (exhibits-'Ga', 'Uma' 'Cha'- 'Nio', 'Fa', 'Bha' and 'Bha-1') he purchased 3.9673 acres totalling 6.9726 acres, out of which by series of transfer, he transferred 4.9907 acres leaving only 1.9819 acres in his saham from schedule-'Ka'-'Uma'.

After transfer of property he had in his saham 1.9819 acres and defendant No. 130 acquired .25 acre of land by exhibit-‘Ta’ totaling 2.2319 acres, but the appellate court allotted saham to defendant Nos. 2 and 130 for 1.96 acres. Defendant Nos. 35-37 prayed saham for 5.5535 acres, the court allotted them 4.2462 acres without considering the fact that they along with their predecessor gifted some property to the school and said quantum of land has not been properly accounted for. After proper accounting, it appears that a quantum of .04402 sataks will be deducted from their share allotted by the appellate court, consequently, defendant Nos. 35-37 are entitled to get saham for 4.2022 acres.

In view of the above, as agreed by both the contesting parties judgment and decree of the appellate court can be modified, modifying share of plaintiff No. 1 and defendant Nos. 2, 130, and 35-37 only and the rule may be disposed of with the following modifications.

Judgment and decree of the appellate court is hereby modified. The defendant Nos. 2, 130 will get saham for 2.2319 acres in place of 1.96 acres, defendant No. 22 will get 0.6090 acre of land in Gift Deed No. 1847 dated 08.02.1989n plaintiff No. 1 and defendant Nos. 23-26 will not get any saham as their predecessor Mokbul Hossain Mollah had no



interest in the property after transfer. Plaintiff No. 2 will get 4.0074 out of 4.0201 acres, defendant Nos. 35-37 will get saham for 4.2022 acres in place of 4.2462 acres and the saham of the rest opposite parties will remain as per judgment and decree passed by the courts below.

With the above modifications the rule is disposed of, however, without any costs.

The order of status quo granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.