Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 2856 of 2023
Md. Emdadul Haque (Foring) and others
.....petitioners
-Versus-
Mst. Reful Bibi and others
.....opposite parties

Mr. ABM Makdum Hossain Dewan with
Mr. Md. Enamul Haq, Advocates
.....for the petitioners

Mr. Mr. Shah Newaz, Advocate
.....for the opposite parties

Heard on: 05.01.2026, 08.01.2026 and 21.01.2026

Judgment on: 22.01.2026

In the instant revision Rule was issued on 05.06.2023 calling upon the opposite parties to show cause as to why the judgment and decree dated 15.03.2023 passed by the Additional District Judge, Chapainawabgonj in Civil Appeal No. 123 of 2013 thereby reversing the judgment and decree dated 17.06.2013 passed by the learned Assistant Judge, Gomastapur Court, Chapainawabgonj in Other Class Suit No. 87 of 2005 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 opposite parties as plaintiff filed Other Class Suit No. 87 of 2005 in the Court of Assistant Judge, Gomastapur, Chapai Nawabgonj for declaration of title and partition and the suit was filed on 30.07.2005.

The case of the plaintiffs in short is that Moksed Mondal, Hasim Uddin, Johoruddin, Abdur Rahman were owners in possession of the Ka and Kha schedule land in equal share of 4 annas. While they were in possession and enjoyment of the land they transferred 0.34 acres of land of Kha schedule from plot number 78/344. At the time of possession and enjoying the land of Ga schedule Hasim Uddin left his paternal homestead and went to Babargaon Village and started to stay there and conferred the duty to record his name in S.A. record upon his brother Moksed Mondal with the firm belief that S.A. record would be prepared duly in his name. Thereafter Hasim Uddin died leaving behind his one wife named Kaju Bibi and one son named Joynal Abedin and two daughters named Rabeya Khatun and Hazera Khatun and these heirs and successors of Hasim Uddin became owners of the land left by Hasim Uddin and used to possess and enjoy the same jointly with other co sharers. C.S. recorded tenant Abdur Rahman transferred .32 acres of land from plot 126 to

one Rozza Khatun who was the wife of Johor Uddin. After death of Moksed Mondal his two sons Idris Ali and Solaiman and wife Joygunnesa became heirs and successors. Another C.S. recorded tenant Abdur Rahman died leaving behind two daughters named Ramiza and Monowara and wife Anowara and brother Johor Uddin who bacame heirs and successors and used to possess and enjoy the land in dispute jointly. The plaintiffs have conferred the duty upon Idris Mondol to record their names in R.S. record and they had firm belief that R.S. record would be recorded in their names properly. In the circumstance while maintaining joint possession they asked the defendants to make partition of the suit land but were refused on 01.04.2005 on the plea that they have no title over the suit land as the R.S. record has not been prepared and published in their names. On 30.05.2005 after obtaining the certified copies of R.S. and S.A. khatians they came to learn that R.S. record has not been duly recorded. The father of the plaintiffs never transferred his share of the land to Moksed Mondol or his heirs. Hence the suit.

The petitioners as defendants 1-3 and 8-19 contested the suit by filing a written statement denying the material averments made in the plaint contending *inter alia* that

Moksed Mondol, Hasimuddin, Johuruddin and Abdur Rahman were four brothers and recorded tenants as well in C.S. khatians 117 and 162 having equal shares of 4 (four) annas each as mentioned in schedules Ka and Kha to the plaints. The land described in schedule Ka is homestead land and the lands described in schedules Kha and Ga are agricultural land. Hasimuddin decided to leave his paternal homestead land and settled in a nearby Baburghon village and transferred his 4 (four) annas share of land to Moksed Mondol by registered deed number 3498 dated 07.09.1943 and thus Moksed Mondol while had been in possession and enjoyment in 8 annas share of Kha and Ga schedules land S.A. record 173 was recorded and published in his name and after few years when Hasimuddin proposed to transfer his share of land from Ka schedule Moksed Mondol got the land by registered deed. Both the deeds were in the custody of Johuruddin and after his death these two deeds came under the custody of his son named Abul Hossain who hid the deeds and gave the date of the deed in respect of Kha schedule land and the deed in respect of Ka schedule land remained hidden. However while had been in possession and enjoyment Moksed Mondol died leaving behind one wife Joigunnessa and two sons Iddris

Ahmed and Solaiman in whose names R.S. khatian 106 was recorded in respect of 8 annas share. Joigunnessa died leaving behind two sons named Iddris and Solaiman who became heirs and successors. Iddris transferred his share of land from Ka and Kha schedules to defendants 1-3 and 4-7 by wasiyatnama deed number 52 dated 23.06.1997. After death of Solaiman his wife defendant 19 and three sons and eight daughters who are defendants 8-10 and 11-18 became heirs and successors and they have been maintaining title and possession in 8 annas share of land. R.S. records 105 and 107 have been duly recorded in respect of Ga schedule land with regard to 8 annas share. Plaintiffs have got no title and possession in the suit land and the suit is liable to be dismissed.

Trial Court framed as many as five issues as to maintainability, defect of party, limitation, whether the plaintiff has title and possession in the suit land, whether the plaintiff is entitled to have the reliefs as prayed for. During the course of trial plaintiffs examined three witnesses and defendants examined four witness and both the parties adduced documentary evidence in order to prove their respective cases.

Upon perusal of the records and hearing the parties trial Court dismissed the suit by judgment and decree dated 17.06.2013 on the finding that the suit is barred by limitation and the plaintiffs failed prove their title and possession over the suit land.

As against the same plaintiffs preferred Title Appeal 123 of 2013 before the District Judge, Chapainawabgonj which on transfer was heard by the Additional District Judge, Chapainawabgonj who was pleased to allow the appeal by judgment and decree dated 15.03.2023 and granted saham of 12 decimals of land to the plaintiff.

Being aggrieved by and dissatisfied with the judgment passed by the appellate Court the defendants came before this Court with this revision and obtained Rule on 05.06.2023.

Learned Advocate Mr. ABM Makdum Hossain Dewan along with Mr. Md. Enamul Haq 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 in decreeing the suit upon misreading and non-consideration of material evidence and the impugned judgment is not a proper judgment of reversal in that the appellate Court failed to follow the provision laid down in

Order 41 Rule 31 of the Code of Civil Procedure and the impugned judgment being perverse and misconceived is liable to be set aside. He refers to section 9 of the Partition Act read with section 44 of the Transfer of Property Act and submits that the appellate Court went against the relevant law and wrongly passed the impugned judgment occasioning failure of justice. At one stage he contends that this is a fit case for remand to the appellate Court under Order 41 Rules 23 and 25 of the Code of Civil Procedure and also for giving opportunity to the petitioners for production of additional evidence in the appellate Court under Order 41 Rule 27 of the Code of Civil Procedure in the interest of justice in default whereof the cause of justice would stand frustrated. In support of his submission he refers to the case of Mohabbat Vs. Asadullah Khan and others reported in PLD 1989 SC 112.

Learned Advocate Mr. Shah Newaz appearing on behalf of the opposite parties submits that the trial Court committed error of law resulting in an error in such decree occasioning failure of justice in dismissing the suit upon fanciful consideration. He submits that the Senior Assistant Judge failed to consider that S.A. record has been prepared correctly in the name of the predecessor of the plaintiffs and the

defendants also failed to produce any deed showing execution by Hasimuddin in favour of Moksed Ali in respect of land of C.S. khatian 117 described in schedule Ka to the plaint and as such since there is no basis of R.S. khatian prepared in the name of the defendants in respect of the land of schedule Ka the appellate Court upon proper consideration of evidence correctly decreed the suit.

He also submits that the trial Court committed error of law occasioning failure of justice in holding that the suit is barred by limitation but failed to appreciate that against a wrong record of right the person whose interest is affected is required to file the suit seeking declaration of title within six years from the date the person in whose name record has been wrongly prepared and finally published raises claim on the basis of wrong record or in other words the cause of action arises from the date of denial and in support of his submission he referred to the case of Bangladesh Vs. A.K.M Abdul Hye, reported in 56 DLR(AD) 53. He prays that the rule be discharged.

Heard the learned Advocates of both sides and perused the materials on record.

Plaintiffs filed the suit for declaration of title and partition in respect of C.S. records 117 and 162 and claim 12 acres of land in 4 annas share from C.S. record 117 and $2.09\frac{1}{2}$ acres of land in 4 annas share from C.S. record 162 as mentioned in schedules Ka and Ga respectively. It is admitted that Moksed, Hasimuddin, Johuruddin and Rahman were four brothers and tenants as well in those records in 4 annas share each. Plaintiffs claim that the R.S. record 106 corresponding to C.S. record 117 is correctly prepared in the names of the plaintiffs but R.S. records 105, 201, 207 corresponding to C.S. record 162 are wrong being recorded in the names of the defendants.

Defendants claim that Hasimuddin transferred his entire share of C.S. records 117 and 162 to the predecessor of defendants. In its support defendants produced the xerox copy of the kabala number 3498 dated 07.09.1943 with a notorial certificate dated 12.07.2007 authenticated by P.K. Agarwala through registration number 45 of 1999 from Malda, West Bengal along with an envelop bearing seal of India Postage dated 29.07.2007 which is marked in evidence as Exhibit-D and D.W. 4 was examined in this respect and accordingly R.S.

records 105, 107 were prepared in the names of the defendants as apparent from Exhibit-C series. Plaintiffs claim that the said deed has no evidentiary value as it was not authenticated by the High Commission. However upon consideration of the facts and circumstances of the case and the entire evidence on record it clearly transpires that the predecessor of plaintiffs had executed such deed in favour of the predecessor of defendants. The trial Court and the appellate Court concurrently found as a fact that the said deed is genuine and plaintiffs failed to place before this Court any grievance showing convincing and reliable evidence to prove that transfer by Exhibit-D is not genuine. Therefore it appears that the said deed was duly executed and by virtue of and in consequence of exhibit-D the subsequent R.S. records Exhibit-C series were prepared in the names of the defendants whereby the title of the plaintiffs as recorded in C.S. khatian 162 stood extinguished. Since R.S. khatians Exhibit-3 series have their basis the said khatians carry a strong presumptive value under section 144A of the State Acquisition and Tenancy Act and such presumption shall prevail until it is proved otherwise.

Defendants have not filed the document showing their acquisition of title from Hasimuddin in favour of Moksed in respect of the land of C.S. khatian 117. The predecessor of plaintiffs named Hasimuddin had interest in 4 annas share equivalent to 0.12 acres of land out of 0.48 acres in C.S. khatian 117. Defendants claim that the said deed was in the custody of Johiruddin and upon his death it came into possession of his son Abul Hossain who concealed the said deed and as he did not disclose the date and number of the deed the defendants could not produce the same before the Court. Defendants failed to take any step to cause production of the said deed through the custodian thereof or otherwise and did not invoke the provision of law relating to summoning and production of documents under Order 11 Rule 14 or Order 16 Rule 6 of the Code of Civil Procedure nor took any other necessary legal measure for bringing the said deed before the Court. It appears that the S.A. khatian 122 Exhibit-2 was duly prepared and finally published in the names of the plaintiffs in accordance with their corresponding shares under C.S. khatian 117 but the R.S. khatian 106 Exhibit-3 corresponding to Exhibit-2 was wrongly prepared in the names of the defendants. So the claim of the defendants that Hasimuddin

sold the land of the said C.S. khatian to Moksed is not proved. Accordingly it appears that out of 0.48 acres of land under R.S. khatian 106 the plaintiffs have title to 0.12 acres being 4 annas share corresponding to C.S. khatian 117.

The submissions made by learned Advocate Mr. Dewan by invoking Section 9 of the Partition Act and Section 44 of the Transfer of Property Act are completely irrelevant to the fact and law involved in the present case. Moreover the prayer for remand sought for the purpose of substantiating the defendants' documents is untenable since the said documents could not be located as admitted by the defendants themselves. Hence the prayer for remand is entirely misconceived and it is the settled principle of law that remand cannot be granted as a matter of course at the instance of any party. In the absence of any legal foundation the submissions made by Mr. Dewan are hereby overridden and the *ratio* as given in the case referred to by him is not at all applicable in the present case.

In view of the observations made above the plaintiffs having title shall get separate allotment of 0.12 acres of land as claimed in schedule-Ka and the same shall be executed in terms of the ordering portion of the judgment passed by the appellate Court.

Since the judgment passed by the appellate Court is correct and lawful the same is hereby affirmed and accordingly this Rule having no merit is liable to be discharged. The judgment and decree passed by the trial Court is set aside.

Consequently the Rule is discharged.

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:

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