

Present:-

Mr. Justice Mahmudul Hoque

**Civil Revision No. 2217 of 2002**

Md. Rahat Ali being dead his legal heirs:  
1(Ka) Karamat Ali and others

..... Petitioners

-Versus-

Md. Vadu Pramanik being dead his legal heirs:  
1(Ka) Abu Musa and others

..... Opposite-Parties

Mr. Md. Nurul Amin, Senior Advocate with  
Mr. Mohammad Mozibur Rahman, Advocate  
Mr. Tanveer Awal, Advocate and  
Mr. Liton Ranjan Das, Advocate

... For the Petitioners

Mr. Mansur Habib, Advocate with  
Mr. M. Bulbul Abu Saiyad, Advocate

**Judgment on 30.04.2025**

In this revision Rule was issued calling upon the opposite party Nos. 1(Ka)-1(Cha), 2-22 to show cause as to why the impugned judgment and decree dated 18.02.2002 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Kushtia in Title Appeal No. 161 of 1991 dismissing the appeal and affirming the judgment and decree dated 08.05.1991 passed by the learned Senior Assistant Judge, Bheramara, Kushtia in Title Suit No. 79 of 1988 dismissing the suit 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 petitioners, as plaintiffs, filed Title Suit No. 79 of 1988 in the Court of Assistant Judge, Bheramara, Kushtia against the opposite parties, as defendants, for declaration of title in the suit land and further declaration that the ex parte decree passed in Title Suit No. 380 of 1985 passed by Assistant Judge, Bheramara is illegal, collusive, fraudulent and not binding upon the plaintiffs, stating that the land in C.S. Khatian No. 3150 belonged to Nasiruddin Pramanik and Gopal Pramanik in equal share. Gopal Pramanik transferred his 8 annas share to Nasiruddin by registered sale deed dated 10.06.1919 and in such way Nasiruddin got 16 annas share and possessed the same. After the death of Nasiruddin his heirs transferred the suit land to the plaintiff by in registered sale deeds. Since purchase the plaintiffs have been possessing the land by planting various trees and cultivating the rest land. The defendant No. 1 Bhadu Pramanik as plaintiff filed Title Suit No. 380 of 1984 in the Court of the then Munsif, 2<sup>nd</sup> court, Kushtia against the heirs of Nasiruddin and the plaintiff of that suit by practicing fraud got the ex parte decree. Bhadu Pramanik knew that the plaintiff is the actual owner of the suit land, they possessed the same but willfully without making party, as defendant in the suit got

ex parte decree on 17.07.88. Bhadu Pramanik had no interest in the suit land or he never possessed the suit land. The plaintiffs have right, title and possession in the suit land and plaintiff have been possessing the suit land peacefully, continuously within the knowledge of the defendants and others and also acquired title in the suit land by way of the adverse possession. On 10.08.88 the defendant No. 1 disclosed about the ex parte decree and after searching, on 12.08.88, the plaintiffs came to know about the ex parte decree and hence, the plaintiffs filed the present suit for declaration.

The defendant Nos. 1, 2, 4-7, 9-13 appeared and contested the suit by filing written statement contending inter alia, that the suit is not maintainable; the suit is barred by limitation and the suit is bad for defect of parties.

Case of the defendants are in short is that the suit land originally belonged to Gopal Pramanik and Nasiruddin. Gopal Pramanik died leaving two sons Sipat Pramink and Abbas Pramanik. Sipat died leaving 2 sons defendants No. 1 and 2 daughters, defendant No. 3 Momejan Nessa and Moziran. Abbas died leaving one son defendant Nos. 4, 3 daughters, defendant Nos. 5-7, Abizan, Parijan and Siaman. Rajab Ali was entrusted

to prepare S.A. record, but he prepared S.A. record leaving the name of the defendants and their sisters. Thereafter, these defendants and their sisters Moziran, Momejan, Abizan and Nekzan as plaintiffs filed Title Suit No. 517 of 1974 in the Court of the then Munsif, 2<sup>nd</sup> Court, Kushtia and subsequently, transferred and renumbered as Title Suit No. 380 of 1984. In that suit the predecessor of the present plaintiffs were defendants and filed written statement. The plaintiffs were not the necessary parties of that suit. The ex parte decree was correctly passed. Rajab Ali filed Miscellaneous Case being No. 80 of 1985 against the ex parte decree and that was dismissed on 09.04.87. The plaintiffs filed false case against the defendants and hence, the suit is liable to be dismissed with costs.

The trial court framed 6 issues on the basis of the pleadings.

The plaintiffs examined 5 witnesses and the defence examined two witnesses in support of their respective cases.

The trial court after hearing dismissed the suit by its judgment and decree dated 08.05.1991 holding that the plaintiffs filed the deed dated 10.06.1919 containing only two pages, other pages are missing and also found that the deed has not been executed by Gopal Pramanik. So, the

plaintiffs failed to prove the deed dated 08.05.1919 and also found that the suit is not maintainable without partition.

Against the judgment and decree of the trial court, the plaintiffs preferred Title Appeal No. 161 of 1991 in the Court of learned District Judge, Kushtia. On transfer the appeal was heard by the learned Joint District Judge, 1<sup>st</sup> Court, Kushtia who after hearing dismissed the appeal by his judgment and decree dated 18.02.2002. 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.

The matter was heard by another Bench of this Division and after hearing by judgment and decree dated 04.06.2014 made the rule absolute and sent the suit back to the trial court on remand for fresh trial by setting aside the judgment and decree of both the courts below. Against the judgment and decree of this Court, the defendant, opposite party moved before the Appellate Division by filing C.P.L.A. No. 282 of 2016, wherein, by judgment dated 09.04.2017, judgment of this Court was set-aside and sent back the matter again to this Court for hearing a fresh and

disposed of the Rule on merit in accordance with law on the evidences available on record.

Mr. Md. Nurul Amin, learned senior Advocate with Mr. Mohammad Mozibur Rahman, appearing for the petitioner submit that the petitioner filed application before the appellate court praying for sending the suit on remand to the trial court for fresh trial after amending the plaint suitably, the same was rejected. In this Court also filed an application praying for remand of the suit to the trial court by application dated 27.05.2014. After exhaustive hearing this Court made the rule absolute and sent the suit on remand to the trial court for fresh trial, however, the Appellate Division directed this Court to hear the matter on merit on the evidences available on record.

He submits that admittedly the plaintiff could not prove sale deed dated 10.06.1919 by filing the deed in full and giving any supporting evidence to establish that Gopal Pramanik sold his eight annas share to his full brother Nasiruddin Pramanik. It is admitted that the suit property belonged to two brothers Nasiruddin Pramanik and Gopal Promanik in equal share. The suit property is measuring 9.03 acres, Gopal Pramanik got  $4.51\frac{1}{2}$  acres covering 11 plots and Nasiruddin Pramanik got  $4.51\frac{1}{2}$

acres. Nasiruddin Promanik died leaving three sons Naimuddin, Rahat and Gafur, Naimuddin died leaving Rajob Ali, Rahat died leaving three sons Elahi, Peyar Ali and Haran Ali, Gafur died leaving one son Abdul Goni. S.A. khatian stand recorded in their names for entire property covered by 11 plots. The plaintiff purchased 1.54 acres land from Plot Nos. 728, 729,  $\frac{951}{6035}$  and 941 by sale deed No. 4176 dated 27.08.1963, deed No. 1955 dated 26.02.1970, deed No. 4920 dated 19.05.1969, deed No. 1956 dated 26.02.1970, deed No. 3215 dated 31.03.1970, deed No. 6309 dated 26.12.1963, from Abdul Goni Pramanik son of Abdul Gafur, Haran Ali, Peyar Ali and Elahi Pramanik all sons of Rahat Ali Pramanik. Heirs of Gopal Pramanik filed Title Suit No. 380 of 1984 for declaration of title in the suit property left by Gopal Pramanik, wherein, heirs of Rajob, Rahat and Abdul Gafur were made party as defendants who appeared in suit, filed written statement, but ultimately did not contest, consequently, the suit was decreed. Present plaintiff in suit were not made party in the earlier Title Suit No. 380 of 1984, as such, it was not in the know of them. Consequently, the defendant claimed the property. The plaintiff filed this instant suit for declaration of title and further

declaration that the ex parte decree passed in Title Suit No. 380 of 1980 is collusive, ineffective and not binding upon the plaintiff.

He submits that the trial court as well as the appellate court dismissed the suit. On appeal the court held that the suit is barred by defect of parties, claimed schedule property is not specified, genealogy of the owner has not been disclosed in the plaint as well as written statement and found that the suit has no cause of action.

Mr. Amin candidly submits that the plaint in suit has not been properly framed however, he stands on his argument that both the parties admitted that the suit property under disputed khatian covered by 11 plots measuring 9.03 acres belonged to Nasiruddin Pramanik and Gopal Pramanik in equal share. Though the plaintiff could not prove the deed dated 10.06.1919, but fact remain Nasiruddin Pramanik was owner of  $4.51\frac{1}{2}$  acres land in the khatian. The plaintiff purchased from heirs of Nasiruddin Pramanik only 1.54 acres land by six registered deeds. Therefore, the plaintiffs have title in the purchased property along with other co-shares in ejmali. Both the courts below while dismissing the suit and appeal failed to find that for want of specification of the property and absence of genealogy in the plaint, title of the plaintiff has not been



affected in anyway. If the decree passed in Title Suit No. 380 of 1984 is considered to be proper and legal in that case the title of the plaintiff has not been affected anyway as they are claiming title in the property through Nasiruddin Pramanik.

He also submits that this suit as framed has been suffering from various defect, but from evidences and the document, the title of the plaintiff has been established. The plaintiffs were required to file a properly constituted partition suit for the claimed property, but they filed this suit for simple declaration of title, for not filing partition suit, a suit for simple declaration of title is not liable to be dismissed as a declaration of title can be given to the plaintiff in ejmali along with other co-sharers.

Mr. Mansur Habib with Mr. M. Bulbul Abu Saiyad, learned Advocate appearing for the opposite party submits that the plaint itself though discloses a cause of action but on evidence the plaintiff could not prove that the defendant at any point of time claimed the property belonged to Nasiruddin Pramanik or demanded any land from the plaintiff or threatened the plaintiffs with dispossession.

He submits that the trial court as well as the appellate court rightly held that when a person or group of person claim some property in part

out of several plots of land owning in ejmali they are to file a suit for partition bringing all the suit land into hotchpot making all the co-sharer as parties to the suit, but in the instant case only a declaration of title has been prayed for without partition and specification of the property.

He submits that the decree passed in Title Suit No. 380 of 1984 has not affected any right of the plaintiffs, the suit was filed against the heirs of Nasiruddin Pramanik in whose name wrongly S.A. khatian stood recorded. Those heirs of Nasiruddin Pramanik, though appeared in suit, filed written statement, but did not disclose that they transferred a portion of land to the present plaintiffs, therefore, present plaintiffs were not necessary parties to that suit. Moreover, the decree was passed not against the present plaintiffs but against the heirs of Nasiruddin Pramanik who never claimed the property belonged to defendants predecessor Gopal Pramanik.

He finally argued that the plaintiffs utterly failed to prove that Nasiruddin Pramanik purchased any land from Gopal Pramanik by any means. The deed alleged to have been executed by Gopal Pramanik is false having no date, signature or thumb impression of Gopal Pramanik and by the said deed it cannot be ascertained which property and whether

any property was at all transferred by Gopal Pramanik who is full brother of Nasiruddin Pramanik, as such, both the courts below rightly found that the plaintiffs could not prove the deed dated 10.06.1919.

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 statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree of both the courts below.

Both the parties admitted that the suit property under C.S. Khatian No. 3150 comprising 11 plots measuring 9.03 acres belonged to Nasiruddin Pramanik and Gopal Pramanik, two brothers, in equal share, measuring  $4.51\frac{1}{2}$  acres each. The plaintiffs claim that Gopal Pramanik sold his eight annas share to his full brother Nasiruddin Pramanik by a registered deed dated 10.06.1919, consequently, Nasiruddin Pramanik became owner of the entire khatian. They claimed that Nasiruddin Pramanik died leaving three sons and the plaintiffs purchased the suit property by six sale deeds, from Abdul Goni son of Abdul Gafur Pramanik who is son of Nasiruddin Pramanik and from Peyer Ali, Haran Ali and Elahi Promanik son of Rahat Ali. S.A. Khatian recorded in the

name of heirs of Nasiruddin Pramanik, therefore, by purchase the plaintiffs acquired title in 1.54 acres land covered by part of Plot Nos. 728, 729,  $\frac{951}{6035}$  and 941.

On the other hand, the defendants claimed that their predecessor Gopal Pramanik did not transfer his share to his brother Nasiruddin Pramanik by any sale deed. The deed dated 10.01.1919 alleged to have been executed by Gopal Pramanik in favour of Nasiruddin Pramanik is forged and fabricated one and submitted two pages of deed having no signature and thumb impression of Gopal Pramanik as executant and as well as there is no schedule mentioning plot number and khatian number. Moreover, a major portion of pages has not been filed. By the alleged deed the plaintiffs utterly failed to prove that Gopal Pramanik sold his share to the Nasiruddin Pramanik. Moreover, heirs of Nasiruddin Pramanik in their written statement filed in Title Suit No. 380 of 1984 has not utter a single word that Gopal Pramanik transferred his property to Nasiruddin Pramanik, rather, it is unusual that an original deed having only two pages was given to the plaintiffs by the heirs of Nasiruddin Pramanik, where they transferred a portion of land leaving major portion of land of Nasiruddin Pramanik. They also claimed that the property is

ejmali property of the heirs of Nasiruddin Pramanik and Gopal Pramanik.

Without specification and identification of the property claimed by the plaintiff the suit as framed is not at all maintainable. Moreover, the decree passed in Title Suit No. 380 of 1984 has not affected the right of the present plaintiff. If the plaintiff at all entitled to get the property they are required to file a properly constituted suit for partition.

To appreciate submissions of the learned Advocates for the parties, I have gone through both the judgment and decree passed by the trial court as well by the appellate court. The trial court while dismissing the suit rightly found that the suit is barred by defect of parties and hotchpot. It is also correctly observed that there is no specification giving boundary of the property. Appellate court also concurred the findings and observation of the trial court holding that the suit as framed lacking proper description of acquiring title, defect of party, non-specification of the property, but from the documents available in file in particular (exhibit-2 series) which are original sale deed of more than 30 years old, I find that Nasiruddin Pramanik owner of  $4.51\frac{1}{2}$  acres of land in the suit khatian and it is not denied that heirs of Nasiruddin Pramanik, son of Abdul Gafur named Abdul Goni and son of Rahat Ali named Peyar Ali, Haran Ali and

Elahi Pramanik did not transfer the property to the plaintiffs. Though the plaintiff failed to prove that Gopal Pramanik transferred his share in favour of Nasiruddin Pramanik by a sale deed dated 10.06.1919, but admittedly Nasiruddin Pramanik was owner of eight annas land measuring  $4.51\frac{1}{2}$  acres, out of which the plaintiffs claimed 1.54 acres by purchase from the aforesaid heirs of Nasiruddin Pramanik. In the absence of any denial or challenge on the part of the defendants that heirs of Nasiruddin Pramanik transferred no property to the plaintiffs by six deeds it can be easily said that the plaintiffs acquired title in 1.54 acres land by purchase from the share of Nasiruddin Pramanik not from the share of Gopal Pramanik.

The learned Advocate for the plaintiffs while framing plaint in suit ought to have given a clear genealogy of acquiring title by the plaintiff and making all the co-sharers defendants in suit and specifying the land claimed by the plaintiff, but the plaint has not been properly drafted and framed. However, it can be construed that the plaintiffs though failed to prove their case, exhibit-2 series, six sale deeds show that the plaintiffs have title in 1.54 acres land in four suit plots in ejmali with the defendants and their vendor along with other heirs of Gopal Pramanik and Nasiruddin

Pramanik. Therefore, it was incumbent upon the plaintiff to file a partition suit praying saham. Present suit filed in this form is not at all maintainable for simple declaration of title without partition.

In this situation, the plaintiff may be advised to seek proper relief by filing a partition suit if so desired as this Court finds title of the plaintiffs in ejmali with other co-sharers.

In view of the above, I find that both the courts below committed no illegality and error in the decision in dismissing the suit as well as the appeal. However, the plaintiffs shall be entitled to seek saham of their share in the property purchased by six sale deeds (exhibit-2 series) by filing a properly constituted partition suit or if they are not disturbed by the plaintiff in their peaceful possession in their purchased property though the suit is dismissed for defect of party, want of cause of action and defect of hotchpot their title will not be affected in anyway unless it is established that heirs of Nasiruddin Pramanik before the transfer in question alienated the property otherwise.

Taking into consideration of the above, I find no merit in the Rule as well as in the submissions of the learned Advocate for the petitioners calling for interference by this Court.

In the result, the Rule is discharged with above observations finding title of the plaintiffs in the suit property.

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.

Md. Akteruzzaman Khan (B.O)