

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 3965 OF 2012

IN THE MATTER OF:

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

(Against Decree)

-And-

IN THE MATTER OF:

Halima Khatoon being dead her legal heirs
Md. Sohel Howlader and others

--- Petitioners.

-Versus-

Abdul Wahab Howlader being dead his legal
heirs: 1(a)-1(g) and others.

---Opposite Parties.

No one appears

--- Petitioners.

Mr. Uzzal Kumar Bhowmick with
Mr. Monoz Kumar Kirtania, Advocates

---For the Opposite Parties.

Heard on: 11.10.2023, 15.10.2023,
30.10.2023 and 08.11.2023.

Judgment on: 20.11.2023.

At the instance of the present plaintiff-petitioner, Halima Khatoon being dead her legal heirs: Md. Sohel Howlader and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1 to show cause as to why the impugned

judgment and decree dated 05.11.2007 passed by the learned Joint District Judge, Court No. 1, Barishal in the Title Appeal No. 79 of 1983 allowing the appeal and thereby reversing the judgment and decree those dated 20.01.1983 passed by the then learned Munsif, Court No. 2, Barishal in the Title Suit No. 592 of 1977 decreeing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the petitioner(s)' predecessor, Noor Mohammad as sole plaintiff filed the Title Suit No. 592 of 1977 praying for title and partition upon the suit land and claiming that he had purchased .48 acres of land from Arabjan Bibi and others by executing a registered sale deed dated 20.06.1939 in the Benami of defendant No. 34, Aditta Chandra Biswas. He also purchased .84 acres of land from Hatem Ali and others by 2 registered deeds dated 25.11.1967 and 04.12.1967 total land measuring 1.53 acres R. S. Khatian No. 331 corresponding to S. A. Khatian No. 854 land measuring .31 acres out of .48 acres was recorded in his name and $(.48-.31=.17)$.17 acres was wrongly recorded in the name of the said Noor Mohammad and he produced original deed in the court of his Benamder Aditta Chandra Biswas. The defendant Nos. 1-17 are the co-sharers in 'Ka' schedule land described in

the schedule of the plaint and defendant Nos. 18-33 are also co-sharers in 'Kha' schedule land.

Some of the defendants contested the suit by submitting 2 written statements contending, *inter-alia*, that the suit is not maintainable as there is no cause of action and also barred by limitation. The defendant-opposite party Nos. 5-7 contended that they are in possession of the land measuring .65 + .12 acres total land measuring .77 acres in 2 Khatians. The defendant contended that the relevant owners Keramat Ali and others sold .48 acres of land to Aditta Chandra Biswas on 21.06.1939 and he possessed the land. The plaintiff fraudulently and collusively made the wrong record in his name out of land measuring .48 acres during the Independence War of Bangladesh. The defendant No. 14 contended that Aditta Chandra Biswas himself purchased .48 acres of land for a consideration of Tk. 100/- (one hundred) by the registered deed dated 21.06.1939 and he was in possession of the said land. He therefore sold .48 acres to defendant No. 14, namely, Abdul Wahab on 10.01.1978 and he was in possession.

The then learned Munsif, Court No. 2, Barishal heard the title suit and concluded to decree the suit upon finding of the title

and partition regarding the scheduled 'Kha' land measuring .84 acres.

Being aggrieved the defendant No. 14, Abdul Wahab, preferred the Title Appeal No. 79 of 1983 which was heard by the learned Joint District Judge, Court No. 1, Barishal who allowed the appeal by dismissing the plaintiff's suit with observation and finding. Being aggrieved the present plaintiff-petitioner(s) filed this revisional application challenging the legality and propriety of the impugned judgment and decree filed under section 115(1) of the Code of Civil Procedure and this Rule was issued thereupon.

This matter has been appearing in the daily cause list for hearing for a long period of time but no one appears to support the Rule during the hearing of this Rule. However, in this Rule the plaintiff taken a ground in the revisional application that the learned appellate court below also found that there is no question of counterclaim against the plaintiff's 'Kha' schedule land of .84 acres out of ejmali land measuring 3.36 acres for partition but the learned appellate court did not allow the partition of .84 acres of plaintiff's claim as the part decree of the suit property and thereby committed an error of law resulting in an error in

allowing the appeal and dismissing the plaintiff's suit occasioning failure of justice.

The Rule has been opposed by the present defendant opposite party No. 1, Abdul Wahhab (now deceased).

Mr. Uzzal Kumar Bhowmick, the learned Advocate, appearing along with the learned Advocates, Mr. K. M. Reyad Salimullah and Mr. Monoz Kumar Kirtania on behalf of the opposite party No. 1, submits that the learned appellate court below passed the impugned judgment and decree on the basis of the documentary evidence adduced and produced by the parties and allowed the appeal preferred by the defendant No. 14 and the plaintiff-respondent-petitioners did not bring any amendment to the plaint seeking further consequential relief for declaring the said document void. Without consequential relief mere suit for partition is not maintainable if there is serious dispute on title. As a result, the original suit is seriously barred by the law of partition, hence, the instant civil revision is liable to be discharged.

The learned Advocate further submits that the suit filed by the plaintiff-petitioners on the basis of a Benami transaction by stating that the cardinal principles to substantiate Benami

transactions claimed that firstly, the motive for Benami transactions i.e. why the person concerned purchased the property in the name of a third party, secondly, the conduct of the parties both during and after the transaction, thirdly, the mode of payment, fourthly, the possession of the property, fifthly, who possess the original document.

The learned Advocate also submits that the plaintiff's case was considered by the learned appellate court below and came to a lawful conclusion as to the cause of action for filing the suit and the learned trial court by misreading came to a wrongful conclusion about the cause of action for filing the suit, whereas, the learned appellate court below came to a lawful conclusion to allow the appeal by reversing the judgment of the learned trial court as to the legal points as to the defect of parties as to the hotchpotch of the land in the plaint, period of limitation and also as to the cause of action, thus, the learned appellate court below reversed the judgment of the learned trial court below and thereby committed no error of law, as such, the Rule should be discharged.

Considering the above submissions made by the learned Advocates appearing on behalf of the opposite party No. 1 (now

deceased and substituted) and also considering the revisional application filed by the present plaintiff-petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below and also perusing the relevant documents available in the lower courts record, it appears to this court that the present plaintiff-petitioners filed a suit praying for title and partition of the suit land described in the plaint 'Ka' and 'Kha' schedules of land. It further appears that the suit was contested by the present defendant-opposite party contending that the plaintiff-petitioners failed to prove its own case by adducing and producing the documents in support of the case as to the title and partition of the suit land. It further appears that the learned trial court came to a conclusion to decree the suit on the basis of the purchase of land Benami on 21.06.1939 claiming that the land was purchased by way of Benami in the name of Aditta Chandra Biswas who transferred the land by executing a sale deed dated 10.01.1978 to the defendant No. 14 as present opposite party No. 1, Abdul Wahab Howlader and also handed over the possession thereof. Regarding the Benami transaction, the party who presented this Benami transaction

must prove certain elements regarding Benami transaction. The important element of a Benami transaction is that the reason for the Benami transaction and possession of the deed along with other relevant matter must be proved by the parties adducing and producing some documents. In the instant case, the plaintiff-petitioners could not prove its own case as to the Benami transaction. However, the learned trial court decreed the suit by non-considering the essential elements of such kind of a Benami transaction. However, the learned appellate court below came to a lawful conclusion as to the cause of action for filing the title and partition suit by the plaintiffs and also found that the plaintiffs could not prove the Benami transaction, as such, allowed the appeal and thereby reversing the judgment of the learned trial court.

In view of the above, the learned trial court failed to consider the merit of the case when and how the Benami transaction was executed by the plaintiffs before filing the suit. It was necessary to establish the fact that the purchaser executed the Benami transaction and it was also necessary to prove the fact of how the name was inserted in the purchased document as to the Benamdar. The plaintiff-petitioners did not adduce any

witness or evidence in support of the fact of the so-called Benami transaction. However, the learned trial court ignored the elements of a cause of action for filing the suit, therefore, the then learned Munsif came to a conclusion to decree the suit ignoring the defect of parties, cause of action and the Benami transaction, therefore, the learned trial court committed an error of law, whereas, the learned appellate court below came to a lawful conclusion in his observation regarding the cause of action.

Now, I am going to examine the findings of the learned courts below:

The then learned Munsif came to a wrongful conclusion on the basis of the following findings:

...“বাদী আরও দাবী করিয়া-ছ ‘খ’ তপসি-ল বর্ণিত ভূমি ম-ধ্য সে ২৮-৩২ নং বিবাদীর নিকট হই-ত ২৫/১১/৬৭ ইং তারি-খ ৩৯// শতাংশ এবং ৩৩ নং বিবাদীর নিকট হই-ত ইং ০৪/১২/৬৭ তারি-খ .১১ শতাংশ এবং বাদীর স্ত্রী আমিরননেছার অংশ বাদ ৩৩// শতাংশ জমির মালিক। বাদীর দাবির সমর্থ-ন দালিলিক সাক্ষ্য হিসা-ব কবলা দলিল এবং এস. এ. / আর. এস. রেকর্ড বা রি-পার্ট আমা-দর সম্মু-খ আসিয়া-ছ। বাদীর দাবী-ক অস্বীকার করার জন্য কোন অংশিদার বিবাদী বর্ণনা দেয় নাই। প্রদর্শনী-২ এবং ২(ক) কবলা দলিল থে-ক বাদীর দাবী প্রমাণিত হয় এবং প্রদর্শনী ৩(ক) থে-কও বাদীর দাবীর সমর্থন পাওয়া যায়। সুতরাং ‘খ’ তপসি-ল

.৮৪ শতাংশ-শর জন্য ভিন্ন ভাগ প্রাপ্তে বন্টনের ডিক্রী পাইতে পারে। এইভাবে দেখা যায় যে বাদীর মামলা প্রমাণিত হইয়া-ছা”...

On the other hand, the learned appellate court below came to a lawful conclusion to allow the appeal and thereby reversing the judgment of the learned trial court on the basis of the following findings:

...“-দং - ৫৯২/৭৭ নং মামলার বাদী ও বিবাদী পক্ষের প্রদত্ত মৌখিক সাক্ষ্য-সাবুদ ও দালিলিক কাগজাদি পর্যালোচনায় আ-রা দেখা গিয়া-ছ যে, বাদী নূর মোহাম্মদ কখ-না আরজীর ‘ক’ তপসিল বর্ণিত জমির এস. এ. রেকর্ড অশুদ্ধ হওয়ার বিষয়টি সম্পর্ক প্রথম অবগত হইয়া-ছ তাহা আরজী-ত উল্লখ ক-রন নাই। উল্লখ্য যে, আরজীর ‘ক’ তপসিল বর্ণিত ভূমি বাবদ স্বত্ব ঘোষণার ডিক্রীর প্রার্থনা করার কারণে এই মামলায় তামাদির বিষয়টি জড়িত। ফ-ল বাদী কর্তৃক ইহা উল্লখ করা সংগত ছিল -য, তিনি কখন আরজীর ‘ক’ তপসিল বর্ণিত ভূমির এস. এ. রেকর্ড ভ্রমাত্মক হওয়ার বিষয় সর্ব প্রথম জানি-ত পা-রন এবং কখন নালি-শর কারণ উদ্ভব হইয়া-ছ। উপ-রর আ-লাচনার প্রেক্ষি-ত আদালত বিশ্বাস ক-রন দেং - ৫৯২/৭৭ নং মোকদ্দমার তর্কিত রায় প্রদানকালে বিজ্ঞ বিচারক সামগ্রিক অবস্থা সতর্কতার সা-থ পর্যালোচনা না করায় ভ্রমাত্মক সিদ্ধান্ত গৃহিত হইয়া-ছ। উপ-রর আ-লাচনায় দেখা গিয়া-ছ দেওয়ানী ৫৯২/৭৭ নং মামলায় পক্ষাভাব দোষ ছিল এবং উহা-ত বিভাজ্য ভূমি ও হচপচ এ আনা হয় নাই। আরজীর ‘ক’ তপসিল বর্ণিত ভূমি-ত বাদী নূর মোহাম্মদ এর স্বত্ব থাকার বিষয়টিও বাদীপক্ষ কর্তৃক প্রমাণিত হয় নাই।”...

In view of the above findings, I consider that the then learned Munsif failed to consider the case by ignoring the

essential elements of the claim regarding defects of parties, the cause of action for filing the suit and the essential requirement of defect of parties. I therefore consider that the learned appellate court below considering the above requirements allowed the appeal by reversing the judgment of the learned trial court.

In view of the above, I am not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below, as such, this is not a proper case for interference by this court.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The interim direction passed by this court to maintain the *status quo* by the parties in respect of the suit land is hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower courts' records along with a copy of this judgment and order to the learned courts below immediately.