

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 3900 OF 2002

IN THE MATTER OF:

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

(Against Decree)

-And-

IN THE MATTER OF:

Khijim Uddin and others

--- Defendant-Appellant-Petitioners.

-Versus-

Mojnu Muhammed died leaving behind his
legal heirs and others

--- Plaintiff-Respondent-Opposite Parties.

No one appears

---For the defendant-Appellant-Petitioners.

Mr. Firoz Alam, Advocate

--- For the Plaintiff-Respondent- O. Ps.

Heard on: 07.12.2023, 02.01.2024,
03.01.2024 and 10.01.2024.

Judgment on: 16.01.2024.

At the instance of the present defendant-appellant-petitioners, Khijim Uddin 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 Nos. 1-6 to show cause as to why the judgment and decree dated 27.04.2002 passed by the learned Joint District Judge (Artha Rin), Dinajpur in the Other Class Appeal No. 89 of 2000 dismissing the appeal

thereby affirming the judgment and decree dated 20.07.2000 passed by the learned Senior Assistant Judge, Additional Court No. 1, Dinajpur in the Partition Suit No. 23 of 1990 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present predecessor of the plaintiff-opposite parties filed the Partition/Title Suit No. 272 of 1983 in the court of the learned First Munsiff, Dinajpur which was transferred for hearing to the learned Senior Assistant Judge, Additional Court No. 1, Dinajpur claiming that the suit property originally belonged to one Garibullah and after his death his wife Aziron Nessa who subsequently got married to Chini Muhammed. The said Aziron Nessa died leaving behind her husband Chini Muhammed and 4 sons, namely, Azim Uddin, Reaj Uddin, Sukur Muhammed and Keramuddin and a daughter Abiron Nessa. The said Azim Uddin died leaving behind a son Mojnu Muhammed as the plaintiff 2 wives, namely, Khujni Bibi and Dukhi Bibi and one daughter Kanduri Bibi. In the course of succession the plaintiff, Mojnu Muhammed, succeeded the suit property described in the plaint who was enjoying the possession in *ejmaly* (এজমালী) with the defendants and the said plaintiffs

approached the defendants for partition which was refused on 18.08.1998.

The suit was contested by the defendant Nos. 1, 2, 4, 6 and 9-14 by filing a written statement denying the claim of the plaintiffs and contending that the suit property originally belonged to one Azim Uddin whose name was recorded in the C. S. Khatian No. 3. One Goribullah as the former husband of the said Aziron Nessa and a son was born, namely, Azim Uddin. Aziron Nessa thereafter married Chini Muhammed and within their wedlock, 3 sons, namely, Reaj Uddin, Sukur Muhammed and Keram Uddin and a daughter Abiron Nessa Bibi were born. Azim Uddin died earlier than the said Aziron Nessa. The S. A. Record of Rights was published in the name of 3 children of Chini Muhammed but the S. A. Record was not published in the name of Azim Uddin. The said Azim Uddin died leaving behind his wife Dukhini Bibi who went to live in West Dinajpur, India and got married a second time and the plaintiff Majnu Muhammed also went to India with his mother in the year 1971 and Majnu Muhammed came back to Bangladesh in the year of 1974 and started living in the suit property by constructing a hut upon the land measuring 01 decimal after permission from the

defendants. During the pendency of the said suit, Majnu Muhammed died leaving behind the opposite party Nos. 1-6 who subsequently were substituted as plaintiffs.

Upon receipt of the said suit the learned Senior Assistant Judge, Additional Court No. 1, Dinajpur heard the parties and obtained oral and documentary evidence adduced and produced by the parties. The said court decreed the suit in favour of the plaintiffs. Being aggrieved the Partition/ Title Appeal No. 89 of 2000 was preferred by the defendants in the court of the learned District Judge, Dinajpur which was heard by the learned Joint District Judge (Artha Rin), Dinajpur who disallowed the appeal and thereby affirming the judgment of the learned trial court.

This matter has been appearing in the daily cause list for a long period of time and heard in length by this court but the present defendant-petitioners never appeared to support the Rule. However, the present petitioners have taken the ground that the learned courts below committed an error of law resulting in errors in their decisions occasioning failure of justice in not embarking upon an investigation of the title of the plaintiff Mojnu Muhammed to the suit property in existence of the entry of the defendants in the S. A. Khatian which did not lose its right

disentitling the plaintiff Mojnu Muhammed who had totally failed to prove his basis of claim to the suit property.

The Rule has been opposed by the present plaintiff-opposite party Nos. 1-6.

Mr. Firoz Alam, the learned Advocate, submits that a partition suit was filed by the plaintiffs in order to undertake partition as both the parties are possessing in respect of the land as described in the plaint. The learned trial court passed the preliminary decree after the conclusion of the hearing and the learned lower appellate court affirmed the judgment and decree passed by the learned trial court after finding a concurrent decision as to the sahams (সাহাম) of the plaintiffs but the present petitioners obtained the Rule by misleading this court, as such, the Rule is liable to be discharged.

The learned Advocate also submits that the plaintiffs could prove their case as to the sahams (সাহাম) entitled by them upon the land measuring $2\frac{1}{4}$ decimals which were obtained by way of inheritance from their predecessor, as such, the Rule obtained by the present petitioners are liable to be discharged.

Considering the above submissions of the learned Advocates appearing for the opposite parties and also

considering the revisional application filed under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and preliminary decree and also perusing the materials available in the lower court records, it appears to this court that the present plaintiff-opposite party Nos. 1-6 filed a partition suit for allocating sahams (সাহাম) upon the land measuring $2\frac{1}{4}$ decimals which claim to have from their predecessor. It further appears that the suit land has been possessed by the plaintiffs and defendants in ejmali (এজমালী), as such, a partition was required and both the parties succeeded in their portion of their land as the learned court below came to a lawful conclusion allocating sahams (সাহাম) to the plaintiff-opposite parties by passing the judgment and preliminary decree.

The learned appellate court below came to a conclusion that the plaintiffs filed the partition suit for allocating sahams (সাহাম) upon the suit land by affirming the judgment of the learned trial court, as such, there is no illegality committed by the learned courts below.

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

I have carefully examined the findings of the learned courts below.

The learned trial court came to a conclusion on the basis of the following findings:

...“এ ব্যাপারি উভয়পক্ষের মৌখিক সাক্ষ্যাদি প্রদান করা হয় মাত্র যা কোন পক্ষেরই দাবী সঠিকভাৱি প্রদান কৱি না। আর. এস. এ. খতিয়ান বাদীর নামি না হওয়ার কারণি বাদীর ওয়ারীশকি অস্বীকার করা যায় না। আর. এস. এ. খতিয়ান বাদীর নামি না হওয়ার কারণি বাদীর ওয়ারীশকি অস্বীকার করা যায় না কারণ নালিশী সম্পত্তিতে বাদী বাড়ী করে আছে মর্মে বিবাদীদির সাক্ষীগণ জবানবন্দী ও জেরাত্তি স্বীকার কৱিন। তৱি বিবাদীপক্ষ বলার চেষ্টা করা হয় যে, বাদী অনুমতি সূত্রে বাদী করে আছেন কিন্তু এর প্রমাণে যথিষ্ট ক্রান প্রমাণ আদালত্ৰ উপস্থাপিত হয় নাই। অতএব আজিরনের পুত্র আজিম উদ্দিন এবং আজিম উদ্দিনের পুত্র বাদী মর্মে বাদীর ওয়ারীশ প্রমাণিত হইতেছে। উক্ত মতে বাদী আজিম উদ্দিনের পুত্র হিসাবে ২.০৪ শতক এবং আজিমুদ্দিন এর ২ স্ত্রীর মধ্যে এক স্ত্রী দুখিনীর পুত্র হিসাবি ২১ শতক একুনি ২.২৫ শতক বা ২ ১/৪ শতক বাবদ ছাহাম পাইতি হকদার।”...

The learned appellate court below concurrently found by allocating saham (সাহাম) in favour of the plaintiffs on the basis of the following findings:

...“Admittedly the plaintiffs/respondents have been living in the suit property. There is no cogent evidence that the plaintiffs/respondents live here with the permission of the defendants and there

is also no evidence that the former plaintiffs ever lived in the hut erected on the Roads' land.”...

In view of the above concurrent finding of the learned courts below I consider that the learned appellate court below committed no error of law by disallowing the appeal and thereby affirming the judgment passed by the learned trial court. I am, therefore, not inclined to interfere upon the impugned judgment preliminary decree passed by the learned appellate court below.

According to the above discussions, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 27.04.2002 passed by the learned Joint District Judge (Artha Rin), Dinajpur in the Partition/Title Appeal No. 89 of 2000 dismissing the appeal and thereby affirming the judgment and decree dated 20.07.2000 passed by the learned Senior Assistant Judge, Additional Court No. 1, Dinajpur in the Partition/Title Suit No. 23 of 1990 is hereby upheld and confirmed.

The interim order passed by this court at the time of issuance of the Rule staying the operation of the judgment and decree dated 27.04.2002 passed by the learned Joint District

Judge (Artha Rin), Dinajpur in the Partition/Title Appeal No. 89 of 2000 is hereby recalled and vacated.

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