

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3232 OF 2015

In the matter of:

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

And

Amena Begum and others

... Petitioners

-Versus-

Abdul Kader being dead his heirs: Fahima Begum and others

... Opposite parties

Mr. Md. Mostafa with

Ms. Sharmin Akter, Advocates

.... For the petitioners.

Mr. Md. Shahidul Islam with

Mr. Md. Shah Alam, Advocates

.... For the opposite parties.

Heard and Judgment on 04.09.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 15.02.2015 (decree signed on 22.02.2015) passed by the learned Joint District Judge, 2nd Court, Gazipur in Title Appeal No.328 of 2010 dismissing the same, affirming those dated 07.0.2010 (decree signed on 14.10.2010) passed by the learned Assistant Judge, 4th Court, Gazipur in Title Suit No.3874 of 2008 decreeing 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 in short are that the petitioners as plaintiffs instituted above suit for a decree of perpetual injunction for 1.12 acres land alleging that Yead Ali owned and possessed 9.02 acres land including above land and died leaving two sons namely Abdul Majid, predecessor of the plaintiffs and Abdul Hamid, predecessor of the defendants and one daughter Jahanara Begum. Thus Jahanara Begum acquired 1.8040 acres land by inheritance from her father and she was in peaceful possession in above land by amicable partition. Above Jahanara Begum transferred above land to Abdul Majid predecessor of the plaintiffs by a registered kabala deed on 19.02.1985. Abdul Majid mutated his name for above land and was in possession by constructing dwelling house and he died leaving the plaintiffs as his heirs who are in peaceful possession in the same. The defendants threatened the plaintiffs with forcible dispossession from above land.

Defendant Nos.1-6 contested the suit land by filing joint written statement alleging that Jahanara Begum transferred 1.20 decimals land to her daughter Rokeya Khatun by a registered deed of Heba-bil-awaz on 30.04.1984 and further transferred 8 decimals land to defendant No.1 by a registered kabala deed dated 27.09.1987 and again she transferred 2 decimals land to Afser Uddin by a registered kabala deed dated 27.04.1987 who in his turn transferred the same to defendant No.1 by a

registered kabala deed on 27.05.1984 and defendant No.1 is in possession in above land by mutating his name and paying rent to the Government.

At trial plaintiff examined 4 witnesses and documents produced and proved by the plaintiffs were marked as Exhibit Nos.1, 2 and 3. On the other hand defendants examined 3 witnesses and their documents were marked as Exhibit Nos.Ka - Kha.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge dismissed the suit.

Being aggrieved by the above judgment and decree of the trial Court plaintiffs preferred Title Appeal No.328 of 2010 to the District Judge, Gazipur which was heard by the learned Joint District Judge, 2nd Court, Gazipur who dismissed the appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by above judgment and decree of the Court of appeal below above appellants as petitioners moved to this Court and obtained this Rule.

Mr. Md. Mostafa, learned Advocate for the petitioners submits that the learned Judges of both the Courts below have erroneously dismissed the suit and the appeal respectively on mistaken perception that the disputed land was not properly specified but in fact suit land

was properly specified. The learned Advocate further submits that undisputedly Jahanara Begum owned and possessed 1.8040 acres land it has been claimed by the defendants that above Jahanara Begum transferred 1.02 acres land to her daughter Rokeya Khatun before the registered kabala deed of the plaintiffs predecessor Abdul Majid. If above claim is admitted even then Jahanara Begum had title and possession in remaining 78 decimal land which was purchased by the Abdul Majid. But the learned Judges of the Courts below have failed to appreciate above aspect of the materials on record and most illegally dismissed the suit and the appeal which is not tenable in law.

On the other hand Md. Shahidul Islam, learned Advocate for the opposite parties submits that Jahanara Begum had title and possession in 1.8040 acres land as the only female heir of Yead Ali. Above Jahanara Begum transferred 1.02 acres land to her daughter Rokeya Khatun and above land has been subsequently purchased by defendant No.1. Above Jahanra had title and possession in remaining 78 decimals land which can be claimed lawfully by the plaintiffs. But the plaintiffs have failed to prove their title and exclusive possession in 1.12 acres land by legal evidence and on correct appreciation of materials on record the learned Joint District Judge has rightly dismissed the appeal and

affirmed the judgment and decree of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that Jahanara Begum acquired 1.8040 acres land in the disputed khatians as the heir of Yead Ali.

Plaintiffs claim 1.12 acres land by purchase from above Jahanara Begum by registered kabala deed dated 19.02.1985. But the defendants claim that before above transfer above Jahanara Begum transferred 1.02 acres land to her daughter Rokeya Khatun by a registered deed of Heba-bil-awaz dated 30.04.1984 and above Rokeya Khatun transferred above land to Abdul Kadir and Afser by two registered kabala deeds and above Afser transferred his 22 decimals land to the defendant No.1 by two registered Kabala deeds.

Defendant No.1 have produced and proved all above registered deeds of transfer of 1.02 acres land of Jahanara Begum at trial. The registered deed of Heba-bil-awaz dated 30.04.1984 executed by Jahanara Begum in favour of his daughter Rokeya Khatun is earlier at point of time than the registered kabala deed dated 19.02.1985.

As such the learned Advocates for both sides have conceded that by above kabala deed Abdul Majid acquired title and possession in remaining 78 decimals land.

In this suit for permanent injunction there is no specification of above 78 decimals land. Moreover, so complicated questions of title are involved in this suit which cannot be determined in a suit for permanent injunction. Admittedly plaintiffs and defendants are co-sharer of the disputed joma as both of them are successive heirs of Yead Ali who was the original owner of the disputed jama. As such the plaintiffs will be at liberty to institute a properly framed suit for partition in order to settle the complicated questions of title and determine his share in above joma in presence of other co-sharers.

But as far as this suit for permanent injunction is concerned I hold that the learned Judges of the Courts below on consideration of evidence on record correctly held that the plaintiffs could not prove his prima facie title and exclusive possession in disputed 1.12 acres land and as mentioned above there is no specific specification for 78 decimals land which plaintiffs could lawfully claim after deduction of the land of Rokeya Khatun.

In above view of the materials on record I find no illegality or infirmity in the impugned judgment and decree of the learned Judge of

the Court of appeal below nor I find any substance in this revisional application under Section 115 of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there is no order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER