

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

Civil Revision No. 4347 of 2016

IN THE MATTER OF

Md. Abdur Razzaq Shah and another

.....Plaintiffs-Respondents-Petitioners

-Versus-

Md. Golam Sarwar and others

..... Defendants-Appellants-Opposite parties

Ms. Purabi Saha, Advocate

.....For the petitioners

Mr. Khan Mohammad Moinul Hasan, Advocate

.....For the opposite parties

Heard on 03.05.23, 13.06.23, 30.10.23, 01.11.23
and judgment passed on 09.11.2023

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, on an application under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following term-

“Let the records be called for and a Rule be issued calling upon opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and decree dated 18.09.2016 passed by the learned Additional District Judge, 2nd Court, Bogura in Title Appeal No. 268 of 2007 should not be set

aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The present petitioners as the plaintiffs filed the instant Title Suit No. 06 of 1996 for partition, and after hearing the same the learned Joint District Judge, 2nd Court, Bogura decreed the suit ex-parte in part in preliminary form on 15.08.2006 which was made final on 18.04.2007. Against which the present opposite party Nos. 1 and 2 as a 3rd party preferred an appeal before the learned District Judge, Bogura, and the same was numbered as Title Appeal No.268 of 2007. After hearing the appeal the learned Additional District Judge, 2nd Court, Bogura by judgment and decree dated 18.09.2016 allowed the appeal on contest by setting aside the preliminary decree dated 22.08.2006 and final decree dated 18.04.2007 of the Trial Court. Against which the plaintiffs as the petitioners had preferred the instant civil revision.

Anyway, Ms. Purabi Saha, the learned Advocate appearing for the plaintiffs-petitioners by filing an application for remand submits that although some of the defendants filed separate written statements in the suit ultimately they did not contest the suit, and

the issue of defect of the party and territorial jurisdiction of the Trial Court did not arise as a result the suit was decreed ex-parte, which was made final on 18.04.2007, and the petitioners entered into possession of the decreed land in connection with Decree Execution case No. 1 of 2007.

She again submits that on appeal the learned Judge of the Appellate Court below allowed the appeal and set aside the judgment and final decree of the Trial Court holding that “-----অত্র আপীল আদালতে আপীলকারীপৰ কিছু রেজিস্ট্রাৰ্ড দলিল দাখিল কৰিয়াছে। যাহা পৰ্যালোচনায় দেখা যায় বাদীৰ মৌরশ কৰ্তৃক উক্ত দলিল সম্পাদন ও রেজিস্ট্রি কৰা। তাহা ছাড়া, কলিমুদ্দিনের কন্যা খইমন বা তাহার ওয়ারিশগন অত্র মামলায় পৰ নাই। তাহাদের স্বত্ব কি হইয়াছে তাহা আরজীতে উলেখ নাই। বাদীৰ আরজী পৰ্যালোচনায় দেখা যায় তাহারা সাকুল্য তপশীল বৰ্ণিত সম্পত্তির ওয়ারিশ সূত্রে শরীক মৰ্মে দাবী করেন। তাহা হইলে কাহার সহিত বন্টন কৰিবে, তাহা বোধগম্য নয়। বন্টন ৬/৯৬ নং মামলার বিবাদীগন কাহারা, তাহারা কিভাবে তপশীল বৰ্ণিত সম্পত্তির সহিত সংশ্লিষ্ট এবং তাহাদের সহিত কেন বন্টন কৰিয়া চাহিতেছেন, বাদীপৰ তাহা আরজীতে উলেখ কৰে নাই। সার্বিক বিচার বিশ্লেষণে অত্রাদালত মনে কৰে যে, অত্র মামলাটি এলাকা ভিত্তিক এখতিয়ার বৰ্হিভূত ২য় যুগ্ন জেলা জজ আদালতে দাখিল কৰা হইয়াছিল। যেহেতু একতরফা রায় আদেশটি স্বত্ব দখল সম্পর্কে কোন পৰ্যালোচনা হয় নাই। যেহেতু এই আপীলকারীপক্ষ বাদীৰ মৌরশ কৰ্তৃক সম্পাদিত ও রেজিঃকৃত কিছু দলিল দাখিল কৰিয়াছে। যেহেতু

আপীলকারীগণকে মূল মামলায় পক্ষভুক্ত করা হয় নাই। যেহেতু মূল মামলায় বিবাদীগণকে কেন পক্ষ করা হইয়াছে, তাহা উল্লেখ করে নাই। সেহেতু অত্রাদালত মনে করে যে, অত্র ৬/৯৬ বন্টন মামলার প্রাথমিক রায় ডিক্রী ও চূড়ান্ত ডিক্রী বহাল থাকিলে ভবিষৎ নানা জটিলতা সৃষ্টি হইবে এবং অন্যান্য পক্ষগণ ক্ষতিগ্রস্ত হইবে। আপীল শুনানীকালে ১-৫ নং রেসপনডেন্টপক্ষের বিজ্ঞ কৌশলী উল্লেখ করেন যে, নালিশী তপশীল সম্পত্তি লইয়া আরো ২টি মামলা বিচারাধীন আছে। অত্র মামলার রেসপনডেন্ট বাদীগণ উক্ত মামলায় পর হইয়া তাহাদের দাবী প্রমাণ করিতে পারিলে ছাহাম পাইতে কোন অসুবিধা হইবে না।.....”

She further submits that the present opposite party Nos. 1 and 2 earlier filed Partition Suit No. 68 of 2007 renumbered as 243 of 2016 against the present plaintiffs-petitioners and others which was dismissed for non-prosecution, and defendant No. 24 filed another partition suit being No. 57 of 2007 renumbered as 171 of 2016 against the present plaintiffs-petitioners and others about the self-same property and same parties which was also withdrawn, and thereafter on 26.09.2017 present defendants-opposite parties filed another partition suit being No. 142 of 2017 against the present plaintiffs-petitioners and others including the present opposite party Nos. 1 and 2 which is pending for hearing.

She lastly submits that in the circumstances, the petitioners have no other alternative but to pray for sending back the case on remand to the Trial Court for fresh trial analogously with Title Suit No. 142 of 2017 upon setting aside the judgment and decree of the Court of Appeal below; otherwise, the petitioners will be prejudiced and will suffer irreparable loss and injury.

Conversely, Mr. Khan Mohammad Moinul Hasan, the learned Advocate appearing for defendant-opposite party Nos. 6-8, 16, 20-22, and 29 to 32 find it difficult to oppose the prayer of the learned Advocate for the petitioners.

Given the above, I find substance in the submissions made by the learned Advocate for the plaintiffs-petitioners. In the premises, it appears that justice will better be served if the case is sent on remand as prayed for because of the aforementioned submissions. Accordingly, I am inclined to send the case on remand to the Court of learned Senior Assistant Judge, Sherpur, Bogura to try the same afresh analogously with Title Suit No. 142 of 2017 pending before it on the self-same property.

As a result, the application for remand is allowed, and thus the Rule is disposed of.

The order of stay and that of the temporary injunction are hereby vacated.

The impugned judgment and decree dated 18.09.2016 passed by the learned Additional District Judge, 2nd Court, Bogura in Title Appeal No. 268 of 2007 allowing the appeal, and the ex-parte judgment dated 15.08.2006 and the final decree dated 18.04.2007 of the Trial Court are hereby set-aside.

The case is sent on remand to the Court of learned Senior Assistant Judge, Sherpur, Bogura to try the same afresh analogously with Title Suit No. 142 of 2017 pending before it on the self-same property by giving the parties equal opportunities.

Send a copy of this judgment along with the lower Court records to the Court below at once.