

Present:***Mr. Justice Md. Kamrul Hossain Mollah*****Civil Revision No.3175 of 1999****IN THE MATTER OF:**

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

- AND -

IN THE MATTER OF:

Sreemati Brojobala Barmani

....Defendant-Petitioner

-Versus –

Sreemati Bulbuli Barmani and others

....Plaintiff-Opposite Parties

Mr. G.M. Nazrul Islam, Advocate

.... For the petitioner

No one appears

.....For the Opposite-Parties

**Heard on 08.10.2023 and
Judgment on 12.10.2023****Md. Kamrul Hossain Mollah, J:**

On an application by the petitioner, under section 115(1) of the Code of Civil Procedure, this Rule was issued in the following terms:

Let a Rule be issued calling upon the opposite party No.1 to show cause as to why the impugned Judgment and Decree dated 27.04.1998 passed by the learned Sub-ordinate Judge in Charge, 3rd Court, Rangpur in Other Appeal No.188 of 1990 allowing the Appeal and thereby reversing the Judgment and Decree dated 24.10.1990 passed by the learned Assistant

Judge, Kaunia in Other Suit No.34 of 1989 dismissing the suit should not be set-aside and or pass such other order or further order or orders as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short are that, the suit property was originally held by Tara Mohan Barman who died leaving three sons Jaduram Barman, Haren Chandra Barman and Lalit Chandra Barman. Jaduram died leaving son Changruram Barman, daughter Bulbuli Barmani and wife Patani Barmani. Thus, Chandgruram Barman inherited the share of his father Jaduram Barman. The last revisional khatian has been prepared in the names of Changruram Barman, Haren Chandra Barman and Lalit Chandra Barman. Changruram Barman died in 1364 B.S. leaving mother Patani Barmani and sister Bulbuli Barmani the plaintiff. Then Patani Barmani also died in the same year after the death of her son leaving only son bearing daughter Bulbuli Barmani who has been possessing the properties left by Changruram Barman.

Thereafter, Lalit Chandra Barman died leaving full brother Haren Chandra Barman and then Haren Chandra Barman had died leaving wife Brojabala Barmani the defendant No.1 and 4 daughter defendant No.2 to 6 and recently died son Ghora Charon. Late Haren Chandra during his life time sold some property from his share to the defendant Nos. 7 and 8. The defendants No.9-11 are the sons of the plaintiff having no title and interest in the suit property but as their name appears in the recent khatian they have been impleaded in this suit as defendant. There was no partition through Court and the plaintiff has been possessing her share with others co-sharer and the kabala purchasers and on 03.10.1990 she claimed

partition by metes and bound which was refused and hence the suit for partition in respect of half of the Ka schedule property.

The suit was contested by the defendant No.1 by filing written statements denying all the material allegations made in the plaint contending inter alia that the suit is not maintainable in its present form, the same is barred by the law of limitation, there is no cause of action as alleged, the plaintiff has no right, title, interest and possession over the suit property and that under the Dayabhaga School of Hindu Law she has not inherited anything and she is a non suited person and her suit is thus liable to be dismissed with cost. The positive case of the answering defendant is that she admitted the C.S. khatian and the ownership of Tara Mohan Barman and his three sons. She stated in her written statements that Jaduram died leaving wife Patani Barmani, son Changruram and 2 unmarried sister Bulbuli (Plaintiff) and Reshamoyee and thus Changruram inherited the Property left by Jaduram. Changuram had died on 21.05.1958 as unmarried leaving aforesaid two sister and mother and accordingly the mother Patani Barmani got life interest over the suit property. On the death of Lalit Chandra his wife took 2nd husband and thus she lost her right to inherit the property left by Lalit Chandra and thus Hren Chandra borhter of Lalit Chandra inherited the property. On the death of Patani Barmani, her interest over the property lies upon Haren Chandra Barman who was possessing the same and sold some land to defendant No.7 and 8. Thereafter, Haren Chandra Barman died leaving wife Brojobala Barmani, son Guru Charan and five daughters defendant No.2 to 6 and Guru Chandra had died unmarried leaving mother Brojobala and full sister Madhamala

Chunchuni Keronbala and Sukani Bala. Brojobala got the life interest over the property left by son Guru Charan. The plaintiff Bulbuli gave birth to a male child long after the death of Patani Barmani and thus the plaintiff is not entitled to get any property. Thus, the suit of the plaintiff is liable to be dismissed.

Upon such pleading of the parties the suit was taken up for trial by the learned Assistant Judge, Kaunia, Rangpur in which both the parties adduced evidences.

After hearing and upon considering all materials on record, the learned Assistant Judge, Kaunia, Rangpur passed the judgment and decree dated 24.10.1990 in Other Suit No.34 of 1989 dismissing the suit.

Being aggrieved by and dissatisfied with the judgment and decree dated 24.10.1990 passed by the learned Assistant Judge, Kaunia, Rangpur in Other Suit No.34 of 1989 dismissing the suit the plaintiff-opposite party filed Other Appeal No.188 of 1990 before the learned District Judge, Rangpur. Thereafter, it was transferred to the learned Sub-ordinate Judge, 3rd Court, Rangpur for disposal. Upon hearing the parties and considering the materials on record, the learned Sub-ordinate Judge, 3rd Court, Rangpur allowed the Other Appeal No.188 of 1990 and set-aside the judgment and decree dated 24.10.1990 passed by the learned Assistant Judge, Kaunia, Rangpur in Other Suit No.34 of 1989 dismissing the suit by his judgment and decree dated 27.04.1998.

Being aggrieved by and dissatisfied with the judgment and decree dated 27.04.1998 passed by the learned Sub-ordinate Judge, 3rd Court, Rangpur allowing the Other Appeal No.188 of 1990 and setting-aside the

judgment and decree dated 24.10.1990 passed by the learned Assistant Judge, Kaunia, Rangpur in Other Suit No.34 of 1989 dismissing the suit, the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. G.M. Nazrul Islam, the learned Advocate appearing for the petitioner submits that, the learned Sub-ordinate Judge acted illegally with materials illegality in decreeing the suit upon considering that the plaintiff Bulbuli Barmani is entitled to get the sharers of late Changaruram who died long ago and learned Court of Appeal erred in law in considering the law of inheritance in the light of the principle as enunciated under the Methakhara School of Hindu Law which is not applicable in Bangladesh.

The learned Advocate lastly submitted that the learned Sub-ordinate Judge acted illegally in giving much emphasis upon the possession of the plaintiff, but without ascertaining what type of possession since the plaintiff has not claimed any adverse possession and the learned Court of Appeal ought to have held that mere possession land without title cannot give rise to a lawful ownership and that according to the learned trial Court that may be a permissive possession or possession at will and that cannot be a factor for succession either by inheritance or by reversioner. The learned trial Court rightly passed the judgment and decree dated 24.10.1990 in Other Suit No.34 of 1989, which is maintainable in the eye of law. Accordingly, he prays for making the Rule absolute.

No one appears on behalf of the opposite parties to oppose the instant Rule, when the matter was taken up for hearing, although it appears in the daily cause list several times.

I have considered the submissions of the learned Advocate for the petitioner minutely, perused the revisional application, the impugned judgment and decree of the Courts' below, the papers and documents as available on the record.

It appears from the record that, the suit property was originally held by Tara Mohan Barman who died leaving 3 sons Jaduram Barman. Haren Chandra Barman and Lalit Chandra Barman. Jaduram died leaving son Changruram Barman, daughter Bulbuli Barmani and wife Patani Barmani. Thus, Chandgruram Barman inherited the share of his father Jaduram Barman. The last revisional khatian has been prepared in the names of Changruram Barman, Haren Chandra Barman and Lalit Chandra Barman. Changruram Barman died in 1364 B.S. leaving mother Patani Barmani and sister Bulbuli Barmani the plaintiff. Then Patani Barmani also died in the same year after the death of her son leaving only son bearing daughter Bulbuli Barmani who has been possessing the properties left by Changruram Barman. Thereafter, Lalit Chandra Barman died leaving full brother Haren Chandra Barman and then Haren Chandra Barman had died leaving wife Brojabala Barmani the defendant No.1 and 4 daughter defendant No.2 to 6 and recently died son Ghora Charon. Late Haren Chandra during his life time sold some property from his share to the defendant Nos. 7 and 8. The defendants No.9-11 are the sons of the plaintiff having no title and interest in the suit property but as their name appears in the recent khatian they have been impleaded in this suit as defendant. There was no partition through Court and the plaintiff has been possessing her share with others co-sharer and the kabala purchasers and

on 03.10.1990 she claimed partition by boundary which was refused and Thereafter, the plaintiff-opposite parties filed the Other Suit No.34 of 1989. The suit was contested by the defendant No.1 by filing written statements denying all the material allegations made in the plaint contending inter alia that the suit is not maintainable in its present form, the same is barred by the law of limitation, there is no cause of action as alleged, the plaintiff has no right, title, interest and possession over the suit property and that under the Dayabhaga School of Hindu Law she has not inherited anything and she is a non suited person and her suit is thus liable to be dismissed with cost. The positive case of the answering defendant is that she admitted the C.S. khatian and the ownership of Tara Mohan Barman and his three sons. She stated in her written statements that Jaduram died leaving wife Patani Barmani, son Changruram and 2 unmarried sister Bulbuli (Plaintiff) and Reshamoyee and thus Changruram inherited the Property left by Jaduram. Changuram had died on 21.05.1958as unmarried leaving aforesaid two sister and mother and accordingly the mother Patani Barmani got life interest over the suit property. On the death of Lalit Chandra his wife took 2nd husband and thus she lost her right to inherit the property left by Lalit Chandra and thus Hren Chandra borhter of Lalit Chandra inherited the property. On the death of Patani Barmani her interest over the property lies upon Haren Chandra Barman who was possessing the same and sold some land to defendant No.7 and 8. Thereafter, Haren Chandra Barman died leaving wife Brojobala Barmani, son Guru Charan and five daughters defendant No.2 to 6 and Guru Chandra had died unmarried leaving mother Brojobala and full sister Madhamala Chunchuni Keronbala and Sukani

Bala. Brojobala got the life interest over the property left by son Guru Charan. The plaintiff Bulbuli gave birth to a male child long after the death of Patani Barmani. After hearing and upon considering all materials on record, the learned Assistant Judge, Kaunia, Rangpur passed the judgment and decree dated 24.10.1990 in Other Suit No.34 of 1989 dismissing the suit. Being aggrieved by and dissatisfied with the judgment and decree dated 24.10.1990 passed by the learned Assistant Judge, Kaunia, Rangpur in Other Suit No.34 of 1989 dismissing the suit the plaintiff-opposite party filed Other Appeal No.188 of 1990 before the learned District Judge, Rangpur. Thereafter, it was transferred to the learned Sub-ordinate Judge, 3rd Court, Rangpur for disposal. Upon hearing the parties and considering the materials on record, the learned Sub-ordinate Judge, 3rd Court, Rangpur allowed the Other Appeal No.188 of 1990 and set-aside the judgment and decree dated 24.10.1990 passed by the learned Assistant Judge, Kaunia, Rangpur in Other Suit No.34 of 1989 dismissing the suit by his judgment and decree dated 27.04.1998.

Considering the above facts and discussion it is found that when Chengruram Burman died, his mother Patani Burman is the owner and occupier in his property for her life time, which is admitted. At present Patani Burman is dead. This is the main dispute in this case. According to the plaintiff, after the death of Patani Burman, the plaintiff is the owner and occupier of the said property of Chengruram Burman. On the other hand, the defendant contended that after the death of Patani Barmani, her property would go to Chengruram's father's brother Haren Chandra Barman. In this case, the provisions of the law can be reviewed. According

to the division of liability of the Hindu law, after the death of the holder of the life title, the title and interest goes to the heirs of the previous one. It is held that Patani Varmani had life time interest in the property of Chengruram, the deceased son. So after Patani Varmani's death, her property will go to Chengruram's other heirs. In the present case plaintiff Bulbuli claimed the property of the Chengruram as sister of Chengruram. Plaintiff Patani Barmani's daughter and Chengruram's son Chengruram had life right in the property and now Patani Barmani died. As per amendment of Hindu Law, 1929, the plaintiff Bulbuli is the heir of the property of the said Chengruram. In this case, the learned lower Court gave a wrong interpretation of the law that as per the claim of the plaintiff, the plaintiff cannot be the owner of the brother's property. Therefore, according to the amendment of the Hindu Law, 1929, the plaintiff is entitled to the suit property.

It is also found from the evidences of the witnesses that the plaintiff is in possession of the suit land.

So, considering above facts and materials on record, it appears that the plaintiff-opposite parties have right, title and possession in the suit land and they are entitle to get the preliminary decree for partition of land in the eye of law, but in connection the learned lower Court dismissed the Other Suit No.34 of 1989 by judgment and decree dated 24.10.1990 is gross illegal, which is liable to set-aside for ends of justice.

In view of the discussion made above, facts and circumstances, I think that the learned Sub-ordinate Judge, 3rd Court, Rangpur rightly

allowed the Other Appeal No.188 of 1990 and set-aside the judgment and decree dated 24.10.1990 passed by the learned Assistant Judge, Kaunia, Rangpur in Other Suit No.34 of 1989 dismissing the suit by his judgment and decree dated 27.04.1998 and as such, the Rule is liable to be discharged.

In the result, the Rule is discharged.

The judgment and decree dated 27.04.1998 passed by the learned Sub-ordinate Judge, 3rd Court, Rangpur in Other Appeal No.188 of 1990 allowing the Appeal and setting-aside the judgment and decree dated 24.10.1990 passed by the learned Assistant Judge, Kaunia, Rangpur in Other Suit No.34 of 1989 dismissing the suit is hereby upheld and confirmed.

Send down the L.C.R. along with a copy of this judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer