

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3936 of 2016.

In the matter of:

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

And

Bimol Chandra Karmoker

...Petitioner

-Versus-

Dilip Kumar Karmoker being dead
his heirs:

1(a) Palash Kumar Karmaker and
others

...opposite parties

No one appears

...For the petitioner

Mr. Mohammad Eunus, Advocate

**...For the opposite party
No.1 (a) -1 (b) .**

Heard on:28.11.2024

Judgment on: 03.12.2024.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and decree dated 15.06.2016 passed by the learned Joint District Judge, 1st Court, Patuakhali in Title Appeal No.172 of 2014 rejecting the appeal and thereby affirming the judgment and decree dated 25.09.2024 passed by the learned Assistant Judge, Golacipa, Patuakhali in Title Suit No.27 of 2008 rejecting 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 petitioner as plaintiff instituted above suit for declaration that the judgment and preliminary decree of partition suit No.110 of 2004 and the order passed in decree execution case by the learned Assistant Judge, Golacipa is illegal collusive and not binding upon the plaintiff. It was alleged that the plaintiff was defendant No.5 in above suit but no notice of above suit was served upon him nor he was aware about decree execution Case No.04 of 2007. Defendant No.2 of above suit Sk. Ranjan died during pendency of above suit but his heirs were not substituted and defendant No.10 Shovon Kormoker was a minor but no court guardian was appointed to defend him in above suit. Jitendranath had 75 sahosrangso land in the disputed khatian who transferred the same to the plaintiff by registered deed of gift dated 16.06.1986 and he is in possession from eastern side of the above plot by mutating his name and paying rent to the government.

Defendant No.1 contested the suit by filing written statement alleging that Jitendranath and Nogendranath were owners and possessors in equal

shares of 1.5 sahosrangso land appertaining to plot No.234 of S. A. khatian No.385 and Nogendranath died leaving four sons namely Sukumar Kormoker, Sunil Kormoker, Shdhir Chandra Kormoder and Satta Ranjan Kormoker who transferred their 75 sahosrangso land to the defendant by registered kobla deed dated 05.08.1997 and he is possessing in above land from the western part of above plot. The defendant as plaintiff instituted Title Suit No.110 of 2004 for partition of above land and summon of above suit was properly served upon the plaintiff and his father and uncle who were defendant Nos.1 and 3 respectively of above suit and they entered appearance and obtained six adjournments but did not contest the suit.. The plaintiff has not been affected in any way by above judgment and decree of the Title Suit No.110 of 2004.

At trial plaintiff and defendant examined three witnesses each. Documents of the plaintiff were marked as Exhibit No.1-3 series and those of the defendant were marked as Exhibit No.Ka-Ga series.

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

Being aggrieved by above judgment and decree of the learned Assistant Judge above plaintiff preferred Title Appeal No.172 of 2014 to the District Judge, Patuakhali which was heard by the learned Joint District Judge, 1st Court who dismissed above 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 appellant as petitioner moved to this court and obtained this rule.

No one appears on behalf of the petitioner at the time of hearing of this revision although the matter appeared in the list for hearing on several dates.

Mr. Mohammad Eunos learned Advocate for the opposite parties submits that the summon of the plaintiff of Title Suit No.110 of 2004 was received by his father by putting his signature and his father and brother jointly entered appearance in above suit and obtained six adjournments for filing written statement but they ultimately abandoned the same the suit which

was rightly decreed ex-parte. Admittedly disputed khatian comprises 150 sahosrangso land which was owned and held by the Jitendranath and Nogendranth in equal shares and plaintiff acquired 75 sahosrangso land of Jitendranath by gift and defendant acquired 75 of of Nogendranth from his four sons by registered kobla deed. It is also admitted that plaintiff possessed from eastern side of the disputed plot and defendant possesses from the western side of the disputed plot. As such the learned Judges of both the courts below rightly held that the plaintiff has not been affected in any way by the impugned judgment and decree and summon of above Title Suit No.110 of 2004 was properly served upon the plaintiff which calls for no interference.

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

It is admitted that 150 sahosrangso land appertaining to plot Nos.234 of S.A. khatian No.385 belonged to Jitendranath and Nogendranath in equal shares and Jitendranath transferred his 75 sahosrangso land to the plaintiff by registered deed of gift dated 16.06.1986 and Nogendranath died leaving four sons namely

Sukumar Kormoker, Sunil Kormoker, Shdhir Chandra Kormoder and Satta Ranjan Kormoker who transferred their 75 sahosrangso land to defendant No.1 by registered kobla deed dated 05.08.1997.

It is also admitted that the Jitendranath and subsequently plaintiff possessed above 75 sahosrangso land from the eastern side of plot No.234 and Nogendranath and his sons and thereafter defendant No.1 possesses his 75 sahosrangso land from the western side of above plot.

While giving evidence as P.W.1 plaintiff admitted that defendant No.1 acquired disputed land from the heirs of Nogendranath and the Advocate Commissioner has given saham to above defendant from western side of the disputed plot and he does not have any claim over above land of Nogendranath. From above admission the plaintiff has clearly admitted that he has no lawful claim over 75 sahosrangso land of defendant No.1 which he has purchased from the heirs of Nogendranath and he is in possession from the western side of the disputed plot.

As far as service of summons of Title Suit No.110 of 2004 is concerned P.W.1 stated that he

gave signature in the vokalatnama of Title Suit No.110 of 2004 on 09.03.2006. He further admitted that other two signatures in above vokalatnama belongs to his father and his uncle. It turns out from the service return of the summon of defendant No.5 of Title Suit No.110 of 2004 that the summon of above defendant was received by his father who was defendant No.1 in above suit. As mentioned above defendant Nos.1 and 3 entered appearance in above suit and obtained six adjournments for filing of written statement but they ultimately abandoned above suit.

It has been alleged that Shovon Kormoker was defendant No.10 of above suit and he was minor but no court guardian was appointed to the presence interest in above suit. As mention above defendant No.1 purchased total 75 sahosrangso land of Nogendranath from his four sons namely namely Sukumar Kormoker, Sunil Kormoker, Shdhir Chandra Kormoder and Satta Ranjan Kormoker. As such Shovon Kormoker had no subsisting interest in the above joma nor there is anything on record to show that the interest of above minor has been affected by the impugned judgment and decree.

In above view of the materials on record I hold that the concurrent findings of the learned

Judges of the courts below that the summon of Title Suit No.110 of 2004 was properly served upon the plaintiff who was defendant No.5 in above suit and the plaintiff has not been affected in any way by the impugned judgment and final decree and order of execution case arising out of Title Suit No.110 of 2004 are based on evidence on record and in the absence of any allegation of non consideration or misreading of any evidence this court cannot in its revisional jurisdiction interfere with above concurrent findings of fact.

I am unable to find any infirmity and illegality in the impugned judgment and decree of the learned Joint District Judge nor I find any substance in this revision under section 115(1) of the Code of Civil procedure and the rule issued in this connection is liable to be discharged.

In the result, the rule is discharged.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.