

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1844 of 2015

IN THE MATTER OF :

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

-And-

In the Matter of:

Md. Abdur Rouf Bhuyan and others

..... Petitioners

Versus

Momena Begum and another

.....Opposite parties

None appears

Heard and Judgment on: 07.10.2020.

Md. Riaz Uddin Khan, J-

By this rule the opposite parties were asked to show cause as to why the impugned judgment and order dated 20.01.2015 passed by the learned Additional District Judge, Comilla in Family Appeal No. 25 of 2010 should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

At the time of issuance of the rule the prayer for stay was rejected and the opposite party no. 1 was directed not to transfer more than 23 decimals of minor's (Md. Joy Solaiman Bhuiyan) land. However, the opposite party No. 1 was at liberty to transfer 23

decimals of land as described in the application as per order of the trial court dated 04.07.2010.

No one appears to support or oppose the rule when it was taken up for hearing.

The facts for disposal of this rule are that the plaintiff- Opposite Party No.1 Momena Begum is the wife of late Md. Liakot Ali Bhuiyan @ Mokhles Mia and the minor (Md. Joy Solaiman Bhuiyan) is their son. After the death of Md. Liakot Ali Bhuiyan @ Mokhles Mia the plaintiff filed Family Suit No. 77 of 2010 before the Family Court and Senior Assistant Judge, Sadar, Comilla for appointing her as the guardian of her minor son and his property which was allowed by the Court by its judgment and order dated 06.06.2010. The plaintiff then filed Miscellaneous Permission Suit No. 51 of 2010 before the same Court for permission to sell 23 decimals of land which is the minor's property. The trial court after taking evidence on behalf of the plaintiff allowed that application vide its order dated 04.07.2010 and permitted the plaintiff Opposite party no. 1 to sell 23 decimals of minor's property and further directed to deposit the money from that sale to any of the schedule banks and also to submit the account of expenditure to the Court time to time. Against that order of permission the present

petitioners filed Family Appeal No. 25 of 2010. They have claimed before the Appellate Court that the Opposite party No. 1 as plaintiff filed the Suit without making the petitioners party to the suit who are the paternal uncles of the minor. They further claimed that the land permitted to sell was not the sole property of the minor rather it is ejmali (undivided) property of their family. The appellants further claimed that the plaintiff opposite party no. 1 and his minor son were living with them i.e the paternal uncles in the same mess. So, there is no question of maintenance of the minor since the maintenance and the expenditures are borne by the uncles, the present petitioners. After hearing the appeal the Lower Appellate Court by the impugned judgment and order dated 20.01.2015 dismissed the appeal and thereby affirmed the order of permission passed by the trial Court. The Appellate Court in its finding observed that the mother (the plaintiff opposite party no.1) is the closest relation of a child in the world and the trial court did not appoint anybody as a guardian other than the mother. Since the court below appointed the mother as a guardian of the minor and his property and permitted to transfer the property of the minor for his welfare and studies, the court below rightly passed the impugned order.

Being aggrieved by and dissatisfied with the said judgment and order the appellant petitioners filed the instant Revision and obtained this rule and the ad-interim order as stated at the very outset.

When this Rule was taken up for hearing, no one appears to support or oppose the Rule.

I have perused the application filed under section 115(1) of the Code of Civil Procedure along with two supplementary affidavits filed on 22.06.2015 and 23.06.2015. I have also perused both the judgments and orders passed by the trial Court as well as the lower appellate Court along with the papers annexed with the Revisional Application and supplementary affidavits.

The petitioners contended that both the courts below by misreading of the evidence on record committed error in law as well as in facts which resulted an error in decision occasioning failure of justice. The petitioners further stated that without complying the provisions laid down in section 15 of the Family Courts Ordinance, 1985 the impugned judgments and orders have been passed. They further stated that the Courts below without asserting the age of the minor passed the impugned order. Their further case is that since the Suit property is ejmali property, without filing a partition suit or

in absence of any bontonnama deed the case is not maintainable for which the judgments and orders passed by the courts below are liable to be set aside.

It appears from the order of the trial court that the plaintiff opposite party no. 1 filed the Miscellaneous Permission Case No. 51 of 2010 for permission to sell 23 decimals of land belongs to the minor and that application was allowed by the trial court and also in appeal the appellant was unsuccessful in reversing that order. It has already been noticed that during issuance of Rule this court also did not interfere with the order of the trial court or of the Appellate Court rather during issuance of this Rule this court passed order that the Opposite party No. 1 was at liberty to transfer 23 decimals of land as described in the application as per order of the trial court dated 04.07.2010.

It is admitted position that the opposite party No.1 Momena Begum is the mother of the minor who have been appointed as the guardian of the minor by the trial court. Then on an application for permission to sell only 23 decimals of land out of 53 decimals which the minor inherited from his late father Md. Liakot Ali Bhuiyan @ Mokhles Mia the trial court allowed the prayer. The appellant-petitioners did not deny that facts. Their contention is that they

were not made parties and the property in question is ejmali property. Since opposite party No.1 is the mother of the minor and the court of appeal below rightly found that mother is the best well wisher of her child in the world who is the closest relation. Moreover, it is mentionable that the trial court directed the mother to deposit the money after selling the minor's 23 decimals of land to a schedule Bank and also to submit report of expenditure for the welfare and studies of the minor time to time. So, no rights of the petitioners have been infringed by the order of the trial court for which the appellate court rightly dismissed the appeal.

In that view of the matter I do not find any error of law occasioning failure of justice which warrants interference by this Court. Moreover, this Rule was issued on 22.06.2015. Meanwhile, more than 5 years have been passed. The petitioners did not take any steps for hearing this Rule and by virtue of the ad-interim order of this court allowing the opposite party no.1 to sell the 23 decimals of land of the minor, whether in the main time, has already been sold out or not there is no information before this Court in that regard.

In the facts and circumstances there is no substance in this rule and I am not inclined to interfere with the judgments and orders passed by the courts below.

In the result the rule is discharged without any order as to cost.

Communicate the judgment and order at once.