

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 4907 of 2014

IN THE MATTER OF:

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

(Against Decree)

And

IN THE MATTER OF:

Md. Chan Miah died leaving behind his legal heirs as substituted being Nos. 1(A)-1(E) and another.

--- Plaintiff-Petitioners.

-versus-

Most. Jamala Khatun died leaving behind his legal heirs as substituted being Nos. 1(ঐ)-1(ঋ) and others

--- Opposite Parties.

Mr. M.M. Haq Siddique (Rana) with

Mr. Md. Nasir Uddin, Advocates

--- For the Plaintiff-Petitioners.

Mr. Md. Abdus Sabur Khan, Advocate

--- For the Opposite Parties.

**Heard on: 21.05.2023, 19.07.2023, 27.07.2023
& 02.08.2023.**

Date of Judgment: 02.08.2023.

At the instance of the present defendant-appellant-petitioners, Md. Chan Miah {now deceased and substituted by his legal heirs being Nos. 1(A)-1(E)} and another, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1 to show cause as to why the judgment and decree dated 09.09.2014 and

decree signed on 15.09.2014 passed by the learned Additional District Judge, Court No. 2, Tangail in the Title Appeal No. 139 of 2009 disallowing the appeal and affirming the judgment and decree dated 09.07.2009 and decree signed on 16.07.2009 passed by the learned Assistant Judge, Nagorpur, Tangail in the Title Suit No. 73 of 2002 decreeing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party No. 1 (now deceased and substituted by her legal heirs being as Nos. 1(ক)-1(ছ) as the plaintiff filed the Title Suit No. 73 of 02 in the court of the learned Assistant Judge, Nagarpur, Tangail praying for partition of the suit land measuring $18\frac{1}{2}$ decimals of land out of 46 decimals land situated at Mouza-Shakhipur, ডি. -স. -ম. খতিয়ান নং- ৯, এস. এ. খতিয়ান নং-৪, Police Station-Nagarpur, District-Tangail. The plaint contains that one Hazari Sheikh was the original owner of the total land but Samser Sheikh was in possession. He died leaving behind his heirs. The S. A. Record of Rights was prepared in the name of the plaintiff. The plaintiff got the land as an owner and possessor measuring $18\frac{1}{2}$ decimals. At the time of Diara Jorip (দিয়ারা জরিপ), the land was prepared in his name. The plaintiff approached to the concerned defendants for partition who refused.

The suit was contested by the defendant- opposite party Nos. 20 and 21 as the present petitioner Nos. 1 and 2 by filing a written statement contending, *inter alia*, that one Hazari Sheikh was the owner of the suit land but it was possessed by Samser Sheikh. Samser died leaving behind his 4 (four) sons. In the course of succession, defendant No. 20 purchased the land measuring 23 decimals by a sale deed dated 09.12.1986. He also purchased the other suit land, as such, he became the owner of 41 decimals but in the Survey Jorip, his name appeared for the land measuring 33 decimals. In the course of time the present opposite party Nos. 2-33 as the defendant Nos. 1-19 appeared in the suit by filing a written statement and claimed Saham (সাহাম) of $27\frac{1}{2}$ decimals of land and they produced sufficient documents in support of their title and possession.

After hearing the parties and considering the possession the learned trial court below passed the preliminary decree by allocating Saham (সাহাম) of land measuring $18\frac{1}{2}$ decimals in favour of the present opposite party No. 1, as the petitioner, Most. Jamala Khatun, accordingly, got $18\frac{1}{2}$ decimals of land and the other defendant- opposite party Nos. 1-19 got $27\frac{1}{2}$ decimals of land.

While the trial was continuing, the present petitioners filed an application to be added as the defendants and also claimed Saham (সাহাম) of land measuring 41 decimals out of 46 decimals. The learned trial court considered their application but because of their failure to produce sufficient documents for their ownership did not allocate any Saham (সাহাম) in their favour in the preliminary decree. Thereafter, they filed an application for adding themselves in the suit land as the defendants and they were made the parties as the proforma-defendant Nos. 20 and 21.

Being aggrieved the present petitioners as the defendant Nos. 20 and 21 preferred Partition Appeal No. 139 of 2009 in the court of the learned Additional District Judge, Court No. 2, Tangail who after hearing the parties disallowed the appeal and thereby affirmed the judgment and decree of the learned trial court.

Being aggrieved by the said impugned judgment and decree the said proforma-defendant-appellant Nos. 20 and 21 as the present petitioners filed this revisional application challenging the legality of the said preliminary decree passed by the learned trial court below and the present Rule was issued thereupon.

Mr. M. M. Haq Siddique (Rana), the learned Advocate, appearing along with the learned Advocate, Mr. Nasir Uddin, on behalf of the present petitioners, submitted and stated in the plaint that the sale deed was registered in Asham (আসাম) but she did not

prove the same as well as the title. The learned trial court rightly findings that- ‘যদিও আসা-ম জমি রেজিস্ট্রি হওয়ার বিষয়টি আদাল-তর নিকট আকাট্যভাবে গ্রহণযোগ্য নয় তথাপি ক্রেতা খরিদারদের নামে এস. এ. রেকর্ড হওয়ায় তারা সত্যিকা-র দখলকার প্রতীয়মান হয়।’ The plaintiff also did not produce her purchase deed before the court but the courts below without applying judicial mind erroneously findings that the plaintiff proved his right, title and possession which has occasioned failure of justice.

The Rule has been opposed by the present opposite parties.

Mr. Md. Abdus Sabur Khan, the learned Advocate, appearing for the opposite party No. 1, Most. Jamala Khatun {now deceased and substituted as being Nos. 1(ক)-1(ছ)}, submits that the present plaintiff No. 1 could produce sufficient evidence in support of her/their ownership and possession of the land measuring $18\frac{1}{2}$ decimals and the defendant Nos. 1-19 now opposite party Nos. 2-33 who proved their entitlement upon the land measuring $27\frac{1}{2}$ decimals, as such, the learned trial court passed the preliminary decree in favour of them but the present added proforma-defendant-petitioners could not prove their ownerships and possession as per their claim, as such, no Saham (সাহাম) was allocated in their favour, thus, the learned trial court allocated no Saham (সাহাম) on the basis of the evidence both documentary and depositions of the PWs, as

such, passed the said decree which was affirmed by the learned appellate court below but the present petitioners obtained the present Rule by misleading the court, thus, the Rule should be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed by the petitioners under section 115(1) of the Code of Civil Procedure along with the impugned judgment and preliminary decree therein and also perusing the essential documents adduced and produced before the learned courts below which are available in the lower courts records, it appears to me that the present opposite party No. 1, Most. Jamala Khatun, as the plaintiff filed a partition suit impleading all the relevant defendants. The plaintiff claimed Saham (সাহাম) of land measuring $18\frac{1}{2}$ decimals situated at Mouza-Shakhipur, ডি. -স. -ম. খতিয়ান নং- ৯, এস. এ. খতিয়ান নং-৪, Police Station-Nagarpur, District-Tangail. The plaintiff produced both the purchased deeds dated 27.11.1986 which were sold by Torab Ali and Toaj Ali land measuring $9\frac{1}{4} + 9\frac{1}{4}$ decimals each in total land measuring $18\frac{1}{2}$ decimals. The defendant Nos. 1-19 who are presently opposite party Nos. 2-33 claimed Saham (সাহাম) of the land measuring $27\frac{1}{2}$ decimals.

In support of their case adduced and produced the documents of their inheritance and record of rights. During the pendency of the said partition suit the present petitioners filed an application for adding themselves as the defendants. The learned trial court considered the application and added themselves as the proforma-defendant Nos. 20 and 21 but they could not produce sufficient documents for their claiming land and their title upon any land. On the basis of the above-submitting evidence adduced and produced by the parties, the learned trial court passed the preliminary decree by giving Saham (সাহাম) for the present opposite party No. 1 and also the opposite party Nos. 2-33 and without allocating any Saham (সাহাম) in favour of the proforma-defendant Nos. 20 and 21, because, they failed to prove their title and possession upon the suit land as per the claim.

I have carefully examined and considered the preliminary decree passed by the learned trial court as well as the impugned judgment affirming passed by the learned appellate court below. The learned trial court below came to a conclusion to pass the preliminary decree in favour of the original opposite parties but not in favour of the present petitioners as the proforma-defendant Nos. 20 and 21 on the basis of the following findings:

...“বিবাদীপক্ষ কোন ধর-নর দালিলিক বা মৌখিক সাক্ষ্য উপস্থাপন ক-রননি। যা-ত প্রমাণ হয় সম-সর সেকের ৪ পুত্র ছিল। যেহেতু বিবাদীপক্ষ আব্বাছ আলী নামে সমসের সেকের পুত্রের অস্তিত্ব প্রমাণ কর-ত পা-রননি

সে-হতু নি-জ-ক আব্বাছ আলীর পরবর্তী ওয়ারিশ দাবী করে বিবাদীর বক্তব্য গ্রহণ-যোগ্য নয়।”...

The learned appellate court below found that the present petitioners as the proforma defendants could not prove their case in the learned appellate court below on the basis of the following findings:

...“বাদী চাঁন মিয়া গং এর কোন স্বত্ব, স্বার্থ, দখল নেই। উক্ত রায় ও ডিক্রী প্রচারিত হওয়ার পর চাঁন মিয়া গং অ্যাপীল্যান্ট হয়ে টাংগাইলের বিজ্ঞ জেলা জজ আদাল-ত ১১৪/৯০ নং অন্য প্রকার আপীল মামলা দা-য়র কর-ল তা ৩০/০৫/০১ ইং তারি-খ অ্যাপীল্যা-ন্টর অনুপস্থিতির কার-ণ খারিজ হয় ম-র্ম প্রদর্শনী-৪(খ) এর আপীল মামলার আ-দ-শর সার্টিফাইড কপি দ্বারা প্রমাণ হয়। ফ-ল নালিশী ভূমি-ত বর্তমান মামলার ২০ নং মোকাবিলা বিবাদী চাঁন মিয়ার কোন স্বত্ব স্বার্থ দখল নেই ম-র্ম প্রদত্ত ৭৫/৮৮ নং অন্য প্রকার মামলার রায় অদ্য পর্যন্ত বহাল আ-ছ।”...

In view of the above discussions and the analysis of the partition suit, I find that the learned appellate court below did not commit any error of law and there was no non-consideration of evidence and law, as such, this is not a proper case for interference from this court.

Accordingly, I do not find any merit in this Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 09.09.2014 passed by the learned Additional District Judge, Court No. 2, Tangail in the Partition/Title Appeal No. 139 of 2009 disallowing the appeal and affirming the judgment and decree dated 09.07.2009 of the

learned Assistant Judge, Nagorpur, Tangail in the Title Suit No. 73 of 2002 is hereby *upheld*.

The pertinent department of this Court is hereby directed to send down the lower courts' records along with a copy of this judgment and order to the lower courts concerned as early as possible.