

District: Khulna

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

Present:-

Mr. Justice Md. Zakir Hossain

Civil Revision No. 2381 of 2017

Dipak Sardar and others

..... Defendant Nos. 4 & 5-Appellant-Petitioners

-Versus-

Suvash Chandra Sarkar and others

.....Plaintiff-Respondent-Opposite Parties

Mr. Shardar Abul Hossain

..... For the petitioners

Mr. Md. Azim Uddin, Advocate

....For the opposite parties

Heard On: 09.03.2023 & 09.11.2023

Judgment On: 11.01.2024

Md. Zakir Hossain, J

At the instance of the petitioners, the Rule was issued by this Court with the following terms:

“The delay of 32 days in filing the revisional application is condoned.

Records be called for.

Let a Rule be issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 22.02.2017 passed by the learned Special District Judge and the judge of Jononirapatta Bignokari Aparadh Doman Tribunal, Khulna in allowing the Title Appeal No. 254 of 2014 with modification and thereby affirming the judgment and decree dated 20.07.2014 passed by the learned Senior Assistant Judge, Koyra, Khulna in decreeing the Title Suit

No. 12 of 2010 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.”

The fact of the case in short is that the suit land belonged to the defendant No. 1 Anumati Sarder and she gifted out the suit land to her grandson i.e the defendant No. 2 Bimal Chandra Sarder by way of registered deed of gift deed being No. 222 dated 09.02.1998. Thereafter, Bimal Chandra Sarder got his name mutated and transferred the suit land to the plaintiffs vide sale deeds dated 19.06.2006, 27.09.2009, 13.04.2009, 15.06.2009, 13.09.2009 and 15.06.2009 respectively. Subsequently, the plaintiffs came to know that the defendant Nos. 1 and 2 by practicing fraud instituted Title Suit No. 53 of 2009 and obtained a fraudulent compromise decree, therefore, the plaintiff was constrained to file the instant suit.

Having received the summons, the defendant No. 1 Anumati Sarder and the defendant No. 2 Bimal Chandra Sarder entered appearance in the suit and by filing a joint written statement denied the material averments made in the plaint contending inter alia that the deed of gift dated 09.02.1998 was not acted upon, therefore, they rightly filed a compromise petition and obtained a valid decree.

The defendant No. 6 by filing separate written statement claimed that he was a purchaser by way of a power of attorney dated 24.09.2009 followed by a deed of agreement for sale dated 15.09.2008 executed by the defendant No. 2. The defendant No. 6 also stated that the

compromise decree obtained by the parties was concocted and tainted by fraud.

The Trial Court framed the following issues in this regard.

1. *Whether the suit is maintainable in its present form?*
2. *Whether the suit is bad for defect of parties?*
3. *Whether the suit is barred by limitation?*
4. *Whether the plaintiffs are entitled to decree of declaration to the effect that the disputed judgment and decree of the Suit No. 53 of 2009 is unlawful and not binding upon them?*

After conclusion of the trial, the learned Senior Assistant Judge was pleased to decree the suit. Being aggrieved by and highly dissatisfied with the judgment and decree of the Trial Court, the defendant Nos. 4 & 5 preferred Title Appeal No. 254 of 2014 before the Court of the learned District Judge, Khulna. After admitting the appeal, the learned District Judge was pleased to transmit the record of the said appeal to the learned Special District Judge, Khulna for disposal. Upon hearing, the Appellate Court was pleased to allow the appeal with modification that the impugned judgment and decree dated 09.11.2009 is not lawful and not binding upon the plaintiffs. Impugning the judgment and decree of the Appellate Court, the petitioners moved this Court and obtained the aforesaid Rule and status quo therewith.

Mr. Sharder Abul Hossain, the learned Advocate for the petitioners submits that the Appellate Court committed an error of law in passing the decree and thereby contradicted with the findings embodied in the judgment resulting in an error in the decision occasioning failure

of justice. He further submits that the Appellate Court observed that the plaintiffs have purchased 1.1595 acres of land out of 2.60 acres of land and accordingly 1.45 acres of land remains unsold, therefore, it is not justified to declare the compromise decree null and void as a whole and Anumati Sarder and Bimal Sarder had a right to compromise in respect of the property which was admitted by other side. Nevertheless, the learned Judge of the Appellate Court modified the judgment but unfortunately in the operative portion of the judgment declared that the impugned judgment and decree dated 09.11.2009 (decree being drawn on 15.11.2009) in disputed Title Suit No. 53 of 2009 is not lawful and thereby committed an error of law resulting in decision occasioning failure of justice. Therefore, the operative portion of the judgment of the Appellate Court is required to be modified otherwise it will cause serious prejudice to the petitioners. He further submits that the Courts below committed an error of law in declaring the impugned judgment and decree dated 09.11.2009 passed in Title Suit No. 53 of 2009 instead of declaring the said decree is unlawful so far it relates to 'Ka' schedule of land as mentioned in the plaint and thereby committed a serious failure of justice.

On the other hand, Mr. Md. Azim Uddin, the learned Advocate for the opposite parties candidly conceded the submissions of the learned Advocate for the petitioners. He further submits that if the judgment and decree of the Appellate Court is modified as per the finding and observation of the body of the judgment and decree of the Appellate

Court, it will not cause prejudice to the opposite parties rather it will secure the ends of justice.

Heard the submissions advanced by the learned Advocates for the petitioners and the opposite parties at length and perused the materials on record with due care and attention and seriousness as they deserve and the convoluted question of law involved in this case has meticulously been waded through in order to reach a just decision.

The Appellate Court in its judgment held to the effect:

“That it has been submitted on behalf of appellant that plaintiffs have purchased 1.1595 acres out of 2.60 acres of land. Land to the extent of 1.45 acres remains unsold. So it is not justified to declare the compromise decree null and void as a whole. Anumati and Bimal Sarder had a right to come to a compromise in respect of the rest property. Other side also admits the same. Submission deserves merit. So it is decided to modify the judgment and decree for effectual adjudication to avoid future complicity.”

The findings and observations of the Appellate Court have not been reflected in the operative portion of the judgment; therefore, it will suffice if the operative portion of the judgment and decree of the Appellate Court is hereby modified. Accordingly, the compromise decree passed in Title Suit No.53 of 2009 so far it relates to 1.1595 acres of land is illegal and unfounded. The compromise decree so far it relates

to 1.45 acres of land as mentioned in the schedule to the plaint of the aforesaid suit shall remain valid and lawful.

With the above observation and modification of the judgment and decree of the Appellate Court, the Rule is disposed of. The order of status quo granted earlier by this Court thus stands recalled and vacated.

Let a copy of this judgment with LCRs be sent down to the Court below at once.

(Md. Zakir Hossain, J)

Naser.
P.O