

District- Cumilla

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

Present:

Mr Justice Md Atoar Rahman

**Civil Revision No 452 of 2018**

Md Nurul Islam being dead his heirs  
(a) Koteza Begum and another

...plaintiff appellant-petitioner

- versus-

Babul Miah and others

...defendant respondent-opposite parties

No one appears

....for the plaintiff appellant-petitioner

Ms Syeda Nasrin, advocate with

Mr Razu Hawlader Polash

Mr A B M Imdadul Haque Khan

Mr AHM Rehanul Kabir

Mr Bibek Chandra

... for the defendant respondent-opposite party No 1

**Heard on: 12.03.2024 and 18.03.2024**

**Judgment on: 09.05.2024**

This Rule was issued upon an application under section 115(1) of the Code of Civil Procedure, 1908 calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 25.05.2017, passed by the learned Additional District Judge,

Fourth Court, Cumilla, in Title Appeal No 58 of 2015 disallowing the appeal and thereby affirming those dated 08.09.2013, passed by the Senior Assistant Judge, Debidwar, Cumilla, in Title Suit No 27 of 2004, should not be set aside and/or passed such other or further order or orders as to this court may seem fit and proper.

The facts for the purpose of disposal of the Rule are that the predecessor of the substituted petitioners Md Nurul Islam as plaintiff instituted a suit being Title Suit No 27 of 2004 in the Court of Senior Assistant Judge, Debidwar, Cumilla for partition of land stating *inter alia* that the suit land measuring an area of 03.84 acres, described in the schedule to the plaint, originally belonged to three sisters namely Shukur Jan Bibi, Aysha Bibi and Johoren Nesa in equal shares and accordingly CS Khatian No 349 was published. The defendants No 1-9 are the successors in interest of Shukurjan Bibi. The defendants No 10-18 are the successors in interest of Jahoren Nessa. Aysha Bibi alias Esha Bibi being owner of 01.28 acres of land, including the plots No 377 and 378, sold 2 kanis and 7 gondas of land to Nosor Uddin vide a registered deed of sale dated 03.01.1918. Thereafter Nosor Uddin died leaving behind three sons namely Abdul Aziz, Abdul Gafur and Abdul Barik and three daughters Aytan Begum, Ayfal Begum and Jayfal Bibi. Abdul Aziz and Abdul Gafur got entire

lands of plots No 377 and 378 by amicable partition. Thereafter Abdul Aziz being owner and possessor of 00.36 acres of land in the plots No 377 and 378 died leaving behind his three sons, defendants No 24/25 and the plaintiff and by amicable partition the plaintiff got such 00.36 acres of land. Out of such land 00.04 acres was included in the road and the plaintiff has been possessing and enjoying remaining 00.32 acres of land in the suit plots No 378 and 377. But dispute has been prevailing regarding possession of the suit land between the parties and as such, the suit for partition seeking saham in respect of 00.32 acres of land in plots No 378 and 377 was instituted.

The defendants No 1 -7 contested the suit by filing a joint written statement denying all the material assertions made in the plaint. The defendant No 28 also filed a written statement denying all the material assertions seeking dismissal of the suit with a prayer for saham in respect of 00.3650 acres of land in the plots No 378 and 377, if the suit is decreed in any manner. But during trial he did not contest and the suit was decreed in part in preliminary form and allotted 00.04 acres of land to the plaintiff by the judgment and decree dated 18.03.2007. The plaintiff being aggrieved by the said judgment and decree preferred an appeal being Title Appeal No 211

of 2007 in the Court of District Judge, Cumilla. On transfer the appeal was heard by the learned Joint District Judge, First Court who dismissed the same by the judgment and decree dated 16.11.2009.

Thereafter on 22.02.2011 the defendant No 28 filed an application seeking saham in respect of 00.3650 acres of land in the plots No 377 and 378 which had been prayed by filing earlier written statement. The learned trial judge having heard allowed the prayer and allotted saham as prayed for to the defendant No 28 by the judgment and decree dated 08.09.2013 against which the plaintiff preferred an appeal being Title Appeal No 58 of 2015 in the Court of District Judge, Cumilla. On transfer the appeal was heard by the learned Additional District Judge, Fourth Court, Comilla who by the impugned judgment and decree dated 25.05.2017 was pleased to dismiss the appeal and affirm the judgment and decree dated 08.09.2013 passed by the learned Assistant Judge.

Being aggrieved by and dissatisfied with the above judgment and decree passed by the appellate court the plaintiff-appellant moved to this court with an application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of maintaining status quo in respect of possession and position of the suit land.

None appears to press the Rule.

Ms Syeda Nasrin, the learned advocate, appearing on behalf of the opposite party No 01 (defendant No 28) submits that the plaintiff-appellant-petitioner instituted the Title Suit No 27 of 2004 seeking saham in respect of 00.32 acres of land in the plots No 378 and 377. The learned trial judge considering the evidence on the record found that the plaintiff has no right, title and possession in these two plots and he has right, title and possession in only 00.04 acres of land in the plot No 352 under CS khatian No 349 and accordingly preliminary decree was passed which was affirmed by the appellate court in the Title Appeal No 211 of 2007. But the plaintiff-appellant-petitioner against such judgment and decree did not prefer any civil revision and as such, said judgment and decree became final. Ms Nasrin further submits that after filing of the written statement seeking saham of 00.3650 acres of land in the plots No 377 and 378 the defendant No 28 could not contest the suit since during trial he was abroad as wage earner. Thereafter having returned in the country before passing of final decree on the basis of the above preliminary decree on 22.02.2011 the defendant No 28 filed an application seeking saham in respect of 00.3650 acres of land which had been prayed by earlier filed written statement. Learned advocate further

states that the learned trial judge considering the evidence on record rightly allowed the prayer and allotted saham as prayed for to the defendant No 28 by the judgment and decree dated 08.09.2013 and the learned judge of the appellate court rightly and perfectly dismissed the appeal and, as such, the Rule is liable to be discharged.

I have heard the submissions made by the learned advocates for the opposite party No 1 and perused the revisional application along with the impugned judgment and order and other connected papers on record.

It appears that the predecessor of the present petitioners instituted the Title Suit No 27 of 2004 seeking saham in respect of 00.32 acres of land in the plots No 378 and 377. The learned trial judge found that the plaintiff had no right, title and possession in the plots No 378 and 377 and he had right and title only 00.04 acres of land in the plot No 352 under CS khatian No 349. Accordingly learned trial judge having allotted 00.04 acres of land in the plot No 352 in favour of the plaintiff decreed the suit in part in preliminary form. Against such preliminary decree the decree holder preferred an appeal being Title Appeal No 211 of 2007 in the Court of District Judge, Cumilla. The title appeal was heard by the learned Joint District Judge, First Court, who by the judgment and decree dated

16.11.2009 dismissed the same and affirmed the judgment and decree passed by the trial court in the Title Suit No 27 of 2004. It also appears that the plaintiff-appellant-petitioner ie the predecessor of the substituted petitioner against such judgment and decree passed by the appellate court did not prefer any civil revision, nor challenged in any manner in any forum. Therefore, the concurrent decisions of the trial court and the appellate court passed in the preliminary form became final.

It transpires that before passing of final decree on the basis of the above preliminary decree, upon an application filed on 22.02.2011 by the defendant No 28 the learned Assistant Judge, Debidwar by the judgment and decree dated 08.09.2013 allotted saham in his favour in respect of 00.3650 acres of land in the plots No 377 and 378 which does not conflict with the allotted share in the plot No 352 in favour of the plaintiff-appellant-petitioner ie predecessor of the substituted petitioners. Thus, learned additional district judge rightly and perfectly found that the allotted share to the plaintiff-appellant-petitioner and to the opposite party No 1 (defendant No 28) are different and accordingly, she dismissed the Title Appeal No 58 of 2015 by the impugned judgment and decree

and in dismissing the same she did not commit any error of law resulting in an error in such decision occasioning failure justice.

In view of the foregoing discussions, I do not find any substance in the Rule and, as such, the same is liable to be discharged.

Resultantly, the Rule is discharged without any order as to cost. The impugned judgment and decree is affirmed and the order of status quo granted at the time of issuance of the Rule is hereby vacated.

Let the lower courts' records along with a copy of this judgment be transmitted at once.