

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

Present:

**Mr. Justice Md. Moinul Islam Chowdhury**

**Civil Revision No. 2243 of 2009**

with

**Civil Revision No. 520 of 2011**

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Sree Govindo Prasad Ray and another

--- Plaintiff-Petitioners.

-versus-

Sree Anondo Mohon Ray died leaving behind his legal heirs substituted being Nos. 1(a)-1(g) and others

--- Defendant-Opposite Parties  
(In C. R. No. 2243 of 2009).

Sree Sadananda Ray

--- Defendant-Appellant-Petitioner.

-versus-

Anondo Mohon Ray died leaving behind his legal heirs substituted being Nos. 1(a)-1(g) and others

--- Opposite Parties  
(In C. R. No. 520 of 2011).

**Mr. Md. Abdullah-Al-Mahmud Chowdhury with  
Mr. Md. Rezaul Karim, Advocates**

--- For the petitioners  
(In both cases).

**Mr. Md. Badsh Alamgir, Advocate**

--- For the opposite parties  
(In both cases).

**Heard on: 11.02.2023, 19.02.2023, 22.02.2023,  
02.03.2023, 12.03.2023 & 26.07.2023.**

**Date of Judgment: 26.07.2023.**

These 2 Rules have been taken up together by passing a single common judgment as the facts and legal aspects of both cases are involved common and the parties are similar and also related to the similar law.

At the instance of the present plaintiff-petitioners, Sree Govindo Prasad Ray and another, this Rule was issued upon a revisional application being Civil Revision No. 2243 of 2009 filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1, Sree Anondo Mohon Ray, as the defendant to show cause as to why the impugned judgment and decree dated 16.02.2009 passed by the learned Additional District Judge, Court No. 3, Dinajpur in Other Class Appeal No. 95 of 1993 reversing the judgment and decree dated 27.05.1993 passed by the learned Assistant Judge, Bochagonj, Dinajpur in Partition Suit No. 05 of 1992 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter alia*, are that the present petitioners as the plaintiffs filed the Partition Suit No. 05 of 1992 in the court of the learned Assistant Judge, Bochagonj, Dinajpur against the present opposite parties praying for partition of the suit land as described in the schedule of the plaint. The plaint contains that one Ketu Ram, the father of the

plaintiffs and defendant No. 1 owned and possessed the suit land of 'Ka' schedule in the plaint and the 'Kha' schedule of the land was purchased from the income of 'Ka' schedule land. The said Ketu Ram died leaving behind the plaintiffs and defendant No. 1. The said Ketu Ram assigned defendant No. 1 as the eldest son to look after the property who purchased the 'Ka' schedule land. Both the parties had been using the 'Ka' and 'Kha' schedules of the land as their joint property but defendant No. 1 declared the 'Kha' schedule land as his own property and denied to partition the said land.

Defendant No. 1 and others contested the suit by filing a written statement contending, *inter alia*, that the eldest son has been a school teacher since 1967, as such, the land was purchased from the money obtained from his service and the 'Kha' schedule land was purchased by him and he transferred some land and he was in possession of the 'Kha' schedule land. He further contended that the plaintiffs did not include the land measuring 2.46 acres in the plaint. The other defendants also contested the suit by filing a separate written statement.

At the instance of the present defendant-appellant-petitioner, Sree Sadananda Ray, another Rule was issued upon a

revisional application being Civil Revision No. 520 of 2011 filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1, Sree Anondo Mohon Ray, as the plaintiff to show cause as to why the impugned judgment and decree dated 29.03.2010 (decree signed on 05.04.2010) passed by the learned Joint District Judge, Court No. 1, Dinajpur in Other Class Appeal No. 115 of 1992 dismissing the appeal by affirming those dated 30.09.1992 (decree signed on 07.10.1992) passed by the learned Assistant Judge, Bochagonj, Dinajpur in Other Class Suit No. 23 of 1991 decreeing the suit should not be *set aside*.

The present opposite party No. 1 as the plaintiff filed the Other Class Suit No. 23 of 1999 in the court of the learned Assistant Judge, Boachagonj, Dinajpur against the present petitioner and opposite party Nos. 2 and 3 praying for cancellation of the sale deed described in the 'Ka' schedule of the plaint in respect of the land described in the 'Kha' schedule of the plaint. The plaint contains that the above-mentioned Ketu Ram was the original owner of the suit land who died leaving behind his legal heirs wife and 3 sons. The plaintiff looked after his father in his old age including the costs of treatment. After

death of Ketu Ram the plaintiff sought partition keeping the 'Kha' schedule of the land out of partition as this land was purchased by the plaintiff-opposite party. The present opposite party No. 1 as the defendant No. 1, Sree Anondo Mohon Ray (died leaving behind his legal heirs and substituted) contested the suit by filing a separate written statement contending, *inter alia*, that the present plaintiff- opposite party No. 1 (now deceased) contending, *inter alia*, that their father, Ketu Ram, never entrusted upon the plaintiff who never looked after their father and the land of schedule 'Ka' was never purchased by the plaintiff from his own income. It was further contended that after death of the said Ketu Ram the plaintiff sought partition keeping the land out of partition because the said land was purchased from his own source of income but the defendant contended that the said sale deed was forged. The opposite party Nos. 2 and 3 as the defendants also contested the suit contending that Ketu Ram had been suffering from virus disease including TB. The plaintiff had expended no money for the treatment of their father.

On receiving the above 2 (two) complaints filed by the respective parties both the suits were heard by the same learned Assistant Judge, Bochagonj, Dinajpur separately and he decreed

both the suits separately. Being aggrieved with the judgment and decree of the learned trial court the defendant No. 1 as the appellant filed Other Class Appeal No. 95 of 1993 in the court of the learned District Judge, Dinajpur and the appeal was transferred the appeal to the learned Additional District Judge, Court No. 3, Dinajpur who after hearing allowed the appeal and thereby remanded the suit for retrial upon reversing those judgment and decree of the learned trial court as well as the defendants filed Other Class Appeal No. 115 of 1992 in the court of the learned District Judge, Dinajpur and the appeal was transferred to the learned Joint District Judge, Court No. 1, Dinajpur who after hearing dismissed the appeal thereby affirming those judgment and decree of the learned trial court.

These 2 (two) revisional applications have been filed by the different parties challenging the legality of the judgment and decree passed by the learned appellate courts below and these 2 (two) Rules were issued thereupon.

Mr. Md. Abdullah-Al-Mahmud Chowdhury, the learned Advocate, appearing along with the learned Advocate, Mr. Md. Rezaul Karim, for the plaintiff/Defendant- petitioners in both the Rules submits that the court of appeal below being the final court

of facts failed to take the pain of even reading the case of the respective parties and the evidence adduced and produced by the PWs, thus, committed an error of law resulting in an error in the impugned decision occasioning failure of justice.

He also submits that both the courts below failed to consider that the disputed Kabala deed has been executed and registered properly and the same has been proved by the DWs and admitted even by the plaintiff, thus, both the courts below committed an error of law resulting in an error in the impugned decision occasioning failure of justice.

Both the Rules have been opposed by the present opposite parties.

Mr. Md. Badsha Alamgir, the learned Advocate, appearing for the opposite parties in both the Rules submits that both the courts below considered the relevant documents adduced and produced by the parties in support of their respective cases, therefore, came to a concurrent finding in favour of the present opposite parties taking under scrutiny all the relevant evidence for the purpose of the cases, as such, no interference from this court is called for and the Rules are liable to be discharged.

The learned Advocate further submits that the suit land described in the 'Kha' schedule of the plaint and the sale deed in favour of the present plaintiff- opposite party No. 1 (in the C. R. No. 520 of 2011) which has been examined by both the courts below being Exhibit- 'Ka' which was transferred by Ketu Ram in favour of the defendant-petitioner, namely, Sree Sadananda Ray, for the land measuring 78 decimals, as such, there is no non-consideration and non-application of judicial mind, therefore, the Rule should be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering both the revisional applications filed by the petitioners under section 115(1) of the Code of Civil Procedure along with the annexures, therein, in particular, the impugned judgments and decrees and also perusing the essential documents available in lower court records, it appears to this court that originally these 2 (two) suits were filed by and between the sons of one Ketu Ram.

In the Civil Revision No. 2243 of 2009, the suit was for partitioning the land left behind by the father Ketu Ram in favour of the sons but the 2<sup>nd</sup> Rule being Civil Revision No. 520 of 2011

was issued at the instance of the younger son of Ketu Ram, namely, Sree Sadananda Ray against the present opposite party which was filed by the younger son of Ketu Ram, namely, Sree Sadananda Ray against the eldest brother of Sree Anondo Mohon ray for cancelling Kabala Deed being No. 1543 dated 18.03.1981 as Exhibit- 'Ka' in the Civil Revision No. 520 of 2011.

The settled principle of law is that in a partition suit all the relevant lands should be included in a partition suit and all the relevant parties must be impleaded in the present case. The partition suit was filed by impleading all the concerned parties and the learned trial court below passed the preliminary decree and the learned trial court also passed the suit for cancellation of the deed executed in favour of the elder son Sree Sadananda Ray. The learned trial court below and the learned appellate court below perused the deed and cancelled the deed as being forged and invalid.

In view of the above decisions by the learned courts below, I consider that there is no illegality or error committed by the learned Joint District Judge, Court No. 1, Dinajpur and also the learned Additional District Judge, Court No. 3, Dinajpur

committed no error of law by passing the concurrent impugned judgments and decrees., therefore, I am not inclined to interfere into the impugned Judgments and decrees passed by the learned appellate courts below.

Accordingly, I do not find merits in the Rules.

In the result, both the Rules issued in Civil Revision No. 2243 of 2009 and also in the Civil Revision No. 520 of 2011 are hereby discharged.

I have examined the impugned judgment and decree passed in the Civil Revision No. 2243 of 2009. The learned Joint District Judge, Court No. 1, Dinajpur decreed the suit and passed an order to send the matter on remand to be examined by the learned trial court as to the measurement of land described in the schedule of the plaint.

In this regard I am of the opinion that the learned appellate court below is correct to send the matter on remand in order to include the entire land of the said Ketu Ram in order to partition the total land as per the provision of land.

The learned Assistant Judge, Bochagonj, Dinajpur is hereby also directed to dispose of the partition suit by giving all facilities and opportunities to adduce and produce all the

respective documents as to the claim of Saham (সাহাম) of the suit land of the respective parties.

The interim orders of stay granted at the time of issuance of both the Rules and subsequently extended the same time to time are hereby recalled and vacated.

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 concerned courts below immediately for necessary actions.