

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 1108 of 2018

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Asgar Ali

--- Plaintiff- Respondent- Petitioner.

-versus-

Mst. Ohijan Khatoon and others

--- Defendant- Opposite- Parties.

Mr. Md. Sajjad Ali Chowdhury with

Mr. Md. Fazla Rabby, Advocate

--- For the Plaintiff-Petitioner.

Mr. Md. Badsha Alamgir, Advocate

--- For the opposite parties.

Heard on: 03.04.2023, 04.04.2023, 30.04.2023,
09.05.2023 and 10.05.2023.

Date of Judgment: 11.05.2023 and 14.05.2023.

At the instance of the present plaintiff-appellant-petitioner, Md. Asgar Ali, this revisional application has been filed under section 115(1) of the Code of Civil Procedure and this Rule was issued calling upon the opposite party Nos. 1-5 to show cause as to why the judgment and decree dated 22.02.2018 (decree signed on 27.02.2018) passed by the learned Additional District Judge, Panchagarh in the Other Appeal No. 160 of 2011 reversing those of

the judgment and decree dated 02.11.2011 (decree signed on 13.11.2011) passed by the learned Senior Assistant Judge, Sadar, Panchagarh in the Other Suit No. 127 of 2010 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioner as the plaintiff filed a partition suit being Partition Suit No. 43 of 2010 before the court of the learned Senior Assistant Judge, Sadar, Panchagarh where the present opposite party Nos. 1-5 as the plaintiffs filed the suit against the present plaintiff-respondent-petitioner, Md. Asgar Ali and another described the property for partition in the schedule of the plaint. The said suit was originally filed on 17.02.2010 but on 24.02.2010 filed a joint application for compromising among the parties as to the measurement of land, as such, the learned trial court being the Senior Assistant Judge, Sadar, Panchagarh passed the said judgment and order of the said partition suit on compromising among the parties. Subsequently, the present petitioner alone filed the instant Other Class Suit No. 127 of 2010 in the same court claiming a declaration of title as described in the schedule of the plaint and also for declaration of title and also for a declaration that the compromise decree passed in the Partition Suit No. 43 of 2010 would not be binding upon him. The present opposite parties as the

defendants contested the suit by filing a written statement contending, *inter alia*, that the present suit is not maintainable and fraudulent. The written statement further contended that both the parties in the partition suit are sons and daughters of Abdul Gafur who became ill and after his death, the daughters filed the Partition Suit No. 43 of 10 and within a short period of time all the brothers and sisters as the parties in the suit filed a compromise deed which was decreed on compromise upon freewill and full consent which was read over to all the parties, as such, the present Rule is not tenable under the law.

Mr. Md. Sajjad Ali Chowdhury, the learned Advocate, appearing along with the learned Advocate Mr. Fazla Rabby for the petitioner submits that the learned court of appeal below being a final court of fact committed an error in law resulting in the decision occasioning failure of justice in coming to finding that no appeal and revision lies against any order or decree passed by the court in pursuance of settlement between the parties under the amended provision of the code of civil procedure, 2003, as such, arrived at a wrong decision misconceiving the provision of law.

The learned Advocate further submits that having regard to the fact that, Abdul Gafur, the father of the plaintiff-respondent-petitioner and plaintiff-respondent-opposite parties have given oral

Heba Deed in favour of the plaintiff respondent-petitioner and plaintiff-respondent-opposite parties and possession was also handed over to them and thereafter the Heba Deed was registered on 19.10.2008 being Deed No. 5017 (Ext-1) upon which they got their name in the mutation and obtained DCR (Ext-4) and then paid rent (Ext-5), thus, this being the fact that the learned court of appeal below committed an error of law resulting an error in the decision is not dismissing the appeal as the defendant-appellant-opposite parties by practising fraud upon the court managed to get Heba Deed land incorporated in the Solenama decree in the Partition Suit No. 43 of 2010 within 7 days of filing the partition suit.

The Rule has been opposed by the present opposite party Nos. 1-5.

Mr. Md. Badsha Alamgir, the learned Advocate, appearing for the defendant-opposite parties submits that the learned trial court decreed the suit within a very short period of time without considering the compromise agreement in the earlier Title Suit No. 43 of 2010 and thereby unlawfully decreed the suit. However, the learned appellate court below came to a lawful conclusion by setting aside the judgment and decree of the learned trial court, therefore, the Rule is liable to be *set aside* and therefore the Rule should be discharged.

The learned Advocate further submits that the instant suit is by and between brothers and sisters from the same parents who amicably settled the earlier partition suit upon signature of all the parties in the said suit exhibited as exhibit- 6(Kha) with free-will, as such, the learned trial court committed an error of law by decreeing the instant suit cancelling the compromise agreement but the learned appellate court perused the evidence adduced and produced by the parties and thereby came to a lawful conclusion to reverse the judgment and decree passed by the learned trial court and thereby committed no error of law, as such, the Rule is liable to 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 plaintiff-petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree as well as considering the essential materials available in the lower court records, it appears to me that both the parties are brothers and sisters from the same parents. The sisters as the plaintiffs filed a partition suit being Partition Suit No. 43 of 2010 which was decreed on a compromise by both the parties after executing a compromise Heba Deed exhibited as Exhibit- 6(Kha) within a very

short period of time. However, one of the parties of the said compromise deed was filed separately being Other Class Suit No. 127 of 2010 challenging the compromise deed in the earlier suit on the ground that there was a Heba Deed executed by the father of the respective parties in their favour exhibited as Exhibit- 1. In such a given situation the question is if there was a Heba Deed while that deed became part of the compromise deed by the same parties who is now the present petitioner.

The answer has been given by the learned Advocate for the petitioner is that he is an illiterate person. Under the provision of law a document signed by a person cannot be refused that he had to sign the compromise deed on an account of illiterate person. The learned trial court decreed the suit and thereby setting aside the compromise judgment and decree on the ground that the Heba-Bill Ewaj deed executed by the original owner could not be included in the compromise deed which is not natural and unusual. Moreover, he considered that the said suit was settled on the basis of out of court settlement among all the parties. In this regard, I consider that when the present petitioner signed the compromise deed he should have been more aware about the Heba Deed but because of his failure to include the Heba Deed the same was ignored by him as the property has been distributed by compromise decree in the Title

Suit No. 43 of 2010. Accordingly, the learned trial court committed an error of law by decreeing the instant suit and setting aside the compromise deed erroneously on the basis of the following findings:

“...হেবাবিল এওয়াজ দলিলের জমিত্ত বাদীপক্ষের একক স্বত্ব ও দখল থাকায় বাটোয়ারা ৪৩/১০ মামলায় উক্ত জমি বিবাদীদের সহিত বন্টন করা নেওয়া অস্বাভাবিক বলিয়া প্রতীয়মান হয়। তাছাড়া, উপরী আল্লাচনাকালি দেখা যায় যে, ৪৩/১০ মামলাটি অত্যন্ত দ্রুততার সহিত ধার্য তারিখের বহুপূর্বে নিষ্পত্তি হয়। বিলম্ব যেমন ন্যায় বিচারকে ব্যাহত করে তেমনি অত্যন্ত দ্রুততাও ন্যায় বিচারকে ব্যাহত করে। ধার্য তারিখের পূর্বে বিবাদী কর্তৃক জবাব দাখিল, একই দিনে সোলিনামা দাখিল ও সর্বোপরি একই দিনে মামলার চূড়ান্ত আদেশ প্রদানের ফলে সহজিই যোগসাজসী ও তথ্যকতা অনুমিত হয়। সার্বিক বিবেচনায় বলা যায় যে, বাটোয়ারা ৪৩/১০ মামলার গত ২৪/০২/২০১০ তারিখে সম্পাদিত সোলেনামার ভিত্তিতে প্রদত্ত আদেশ ও তদভিত্তিতে গত ০২/০৩/২০১০ তারিখের ডিক্রি যোগসাজসী, ষড়যন্ত্রমূলক, তথ্যকী, অবৈধ, প্রতারণামূলক ও ফলবলবিহীন হইত।...”

On the other hand, the learned appellate court considered the said compromise deed executed by all the (the brothers and sisters) sons and daughters of their father, Abdul Gafur, therefore, the Heba deed and therefore subject matter of the Heba Deed became part of the compromise deed, thus, the learned appellate court below passed the impugned judgment and decree reversing the judgment and decree of the learned trial court below on the basis of the following findings:

“... বিজ্ঞ নিম্ন আদালতে এই রেসপনডেন্ট পক্ষ বাদী হিসাবে মোকদ্দমা করেন এবং বাটোয়ারা ১২৭/২০১০ মোকদ্দমায় তারা সোলেনামা সম্পাদনকারী বিবাদীপক্ষ ছিলেন। সুতরাং উক্ত প্রকার সোলে ডিক্রী তাহাদের উপর বাধ্যকর নহি মর্মে প্রার্থনা করা আইনানুগ নহি। উহা রদ রহিত এর প্রার্থনা আনা বাঞ্ছনীয় ছিল। বিজ্ঞ নিম্ন আদালত বিষয়গুলি অনুধাবনে আইনানুগ পর্যালোচনায় সম্পূর্ণ ব্যর্থ হয়ে তর্কিত রায় ও ডিক্রী দিয়া ন্যায় বিচার পরিপন্থি কাজ করেছেন। উক্ত রায় ও ডিক্রী রক্ষণীয় নহে, উহা বাতিলযোগ্য। অত্র আপিলটি মঞ্জুরযোগ্য। বিজ্ঞ নিম্ন আদালতের মূল মোকদ্দমা অত্রাকারে ও প্রকারে অচল। যদি/রেসঃ পক্ষ উক্ত মোকদ্দমায় কোন প্রতিকার পাইতে হকদার নহেন। নিম্ন আদালতের তর্কিত রায় ও ডিক্রী রদরহিতক্রমে বাদী পক্ষের মোকদ্দমাটি খারিজিয়াগ্য।...”

In view of the above discussions and consideration of the evidence adduced and produced by the parties in the courts below, I find that the learned trial court committed an error of law by setting aside the compromise judgment and decree passed in another suit being Partition Suit No. 43 of 2010 on the basis of a quick disposal of the suit on compromise. However, the learned appellate court below carefully considered the evidence produced by the parties and came to a lawful conclusion to reverse the judgment of the learned trial court. In my opinion, the learned appellate court below committed no error of law by upholding the compromise decree which was passed on the basis of compromise deed {Exhibit-6(Kha)} containing the homestead and agricultural land which the parties have decided to distribute among themselves voluntarily executing a compromise deed.

In view of the above, I am not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below. In such a situation, this Rule does not any further consideration.

Accordingly, I do not find merit in this Rule.

In the result, the Rule is hereby discharged.

The judgment and decree dated 22.02.2018 (decree signed on 27.02.2018) passed by the learned Additional District Judge, Panchagarh in the Other Appeal No. 160 of 2011 reversing those of the judgment and decree dated 02.11.2011 (decree signed on 13.11.2011) passed by the learned Senior Assistant Judge, Sadar, Panchagrah in the Other Suit No. 127 of 2010 is hereby upheld.

The interim order of stay passed by this court at the time of issuance of the Rule and subsequently the same was extended from time to time are hereby recalled and vacated.

The pertinent department of this Court is thus instructed to transmit immediately the lower court records along with a copy of this judgment and order to the concerned lower court.