

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3572 OF 2018

In the matter of:

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

And

Md. Babul Hossain and others

.... Petitioners

-Versus-

Md. Salim Uddin and others

.... Opposite parties

Mr. Md. Sumon Ali, Advocate

.... For the petitioner.

None appears

.... For the opposite party

Nos.1-12.

Heard on 05.03.2025 and Judgment on 09.03.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 27.06.2018 passed by the learned Joint District Judge, 1st Court, Kurigram in Other Class Appeal No.57 of 2011 allowing the appeal and thereby sending back the suit on remand to the trial Court setting aside the judgment and decree dated 28.04.2011 passed by the learned Senior Assistant Judge, Kurigram Sadar, Kirugram in Other Class Suit No.74 of 2009 decreeing the suit should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted above suit for declaration of title and recovery of possession of 13 decimal land appertaining to S. A. Khatian No.617 corresponding to R. S. Khatian No.946. It was alleged that 59 decimal land was owned and held by Tumiz Uddin Mamud and Nader Hossain in equal shares and C. S. Khatian No.551 was rightly prepared. Above Nader Hossain gave settlement of 29.50 decimal land to the plaintiff and Johur Uddin by registered deed of patta dated 09.07.1949 and delivered possession. At above time plaintiff and Johur Uddin were minors and for their benefit and on their behalf their father Jasim Uddin obtained above settlement for plaintiff and Johur Uddin. By amicable partition plaintiff was in possession in 13 decimal land by constructing dwelling huts and S. A. Khatian No.617 and R. S. Khatian No.946 were rightly prepared in the names of plaintiff and Johur Uddin. Defendants as plaintiffs filed Title Suit No.20 of 1984 claiming that above property in fact belonged to Jasim Uddin father of the plaintiffs and defendants and he obtained above settlement in the benami of plaintiff and Johur Uddin and above suit was dismissed on contest. Challenging the legality and propriety of above judgment and decree above plaintiffs preferred Title Appeal No.49 of 2002 to the District Judge which also dismissed on contest. Defendant Nos.1-7 forcibly dispossessed the plaintiffs from above land on 27.11.2006.

Above suit was contested by defendant Nos.1-7 alleging that Jasim Uddin predecessor of the plaintiffs and defendants obtained settlement of 29.50 decimal land from Nader Hossain by a registered deed of patta dated 09.07.1949 in the benami of his two minor sons plaintiff and Johur Uddin. After demise of above Jasim Uddin plaintiffs and defendants inherited above land and defendants are in possession in above land by constructing their dwelling huts.

At trial plaintiffs examined three witnesses and defendants examined five. Documents of the plaintiffs were marked as Exhibit Nos.1-3 series and those of the defendants were marked as Exhibit No."Ka" series.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree of the trial Court above defendants as appellants preferred Other Class Appeal No.57 of 2011 to the District Judge, Kurigram which was heard by the learned Joint District Judge who allowed the appeal, set aside the judgment and decree of the trial Court and remanded the suit for retrial holding that the plaintiffs and defendants are co-sharers and plaintiffs should convert above suit to a suit for partition by amendment of the plaint.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondents as petitioners moved to this Court with this petition under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Md. Sumon Ali, learned Advocate for the petitioners submits that in the impugned judgment and decree the learned Judge of the Court of Appeal below erroneously and repeatedly held that plaintiffs and defendants were co-sharers although plaintiffs do not admit the defendants as co-sharers. The plaintiffs and Johur Uddin acquired 29 decimal land from Nader Hossain by registered deed of patta dated 09.07.1949 and above settlement was not obtained by the father of the plaintiff namely Jasim Uddin. The claim of the defendants that plaintiffs were their co-sharers and above property belonged to their father Jasim Uddin has been disproved by the judgment and decree of Title Suit No.20 of 1984 and Title appeal No.49 of 2002. The learned Judge of the Court of Appeal below erroneously held that the plaintiffs and defendants are co-sharer and on above erroneous perception allowed the appeal, set aside the lawful judgment and decree of the trial Court and remanded the suit for retrial after converting above suit into a suit for partition which is not tenable in law.

No one appears on behalf of the opposite parties at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

I have considered the submissions of the learned Advocate for the petitioners and carefully examined all materials on record including the pleadings, judgments of the Court below and evidence.

It is admitted that 22.50 decimal land belonged to the Nader Hossain and C. S. Khatian No.551 was accordingly prepared and above

land has been recorded in the name of plaintiff and Johur Uddin in S. A. Khatian No.617 and R. S. Khatian No.946. Plaintiffs claim to have acquired above land jointly with his brother Johur Uddin by settlement vide registered deed of patta dated 09.07.1949.

On the contrary the defendants claim that above settlement of disputed land by registered deed of patta dated 09.07.1949 was obtained by Jasim Uddin in the benami of his two minor sons plaintiffs and Jahur Uddin. On above claim defendants as plaintiffs filed Title Suit No.20 of 1984 which was dismissed on contest and Title Appeal No.49 of 2002 preferred by the above plaintiffs against above judgment and decree was also dismissed. The plaintiffs do not admit defendants as co-sharers for above property. Plaintiffs and defendants are co-sharers and disputed land belonged to their father is the case of the defendants and if the plaintiffs admit the defendants as co-sharers then his suit must fail. The learned Judge of the Court of Appeal failed to appreciate above aspect of the case and most illegally held that the plaintiffs and defendants are co-sharers and on above erroneous perception allowed the appeal and remanded the suit for retrial which is not tenable in law.

On consideration of above facts and circumstances of the case and evidence on record I hold that the ends of Justice will be met if the erroneous judgment and decree of the Court of Appeal below is set aside and the appeal is remanded back to the Court of Appeal below for rehearing and disposal in accordance with law.

In above view of the materials on record I find substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute. The impugned judgment and decree dated 27.06.2018 passed by the learned Joint District Judge, 1st Court, Kurigram in Other Class Appeal No.57 of 2011 is set aside and above appeal is remanded back to above Court of Appeal below for rehearing and disposal in accordance with law within 6(six) months from the date of receipt of this order.

However, there is no order as to cost.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER