

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 120 OF 2020

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Shushil Chandra Sutradhar

--- Defendant-Appellant-Petitioner.

-Versus-

Sree Gouranga Chandra Sutradhar and others

---Plaintiff-Respondent-Opposite Parties.

Mr. Ali Ahsan Mullah, Advocate

--- For the Defendant-Appellant-Petitioner.

Mr. S. M. Rezaul Karim, Advocate

---For the Plaintiff-Res-Opposite Party No. 1.

**Heard on: 17.05.2023, 22.05.2023 and
24.05.2023.**

Judgment on: 24.05.2023.

At the instance of the present defendant-appellant-petitioner, Shushil Chandra Sutradhar, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1-7 to show cause as to why the judgment and decree dated 30.09.2019 passed by the learned Additional District Judge, Court No. 1, Kishoregonj in the Other Class Appeal No. 182 of 2017

dismissing the same and thereby affirming and upholding the judgment and decree dated 21.08.2017 passed by the learned Senior Assistant Judge, Bajitpur, Kishoregonj in the Partition Suit No. 13 of 1988 decreeing the suit in favour of the plaintiffs should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party Nos. 1-7 as the plaintiffs filed the Partition Suit No. 13 of 1988 in the court of the learned Senior Assistant Judge, Bajitpur, Kishoregonj for partition of the suit land and a preliminary decree was passed by directing to appoint a Survey Commissioner for demarcating saham (সাহাম) for the respective parties. After a long litigation between the parties, the partition suit was finally decreed, as such, the preliminary decree remained operative and valid which was passed by the learned trial court. After receiving the file again the learned trial court passed Order No. 90 dated 21.08.2017 appointing an Advocate Commissioner who after taking all necessary steps submitted a report by allocating saham (সাহাম) of the respective parties pursuant to the preliminary decree passed by the learned trial court which was accepted by the learned trial court.

However, the present defendant No. 7 as the petitioner raised an objection as to the report already submitted by the Advocate Commissioner pursuant to the preliminary decree.

Being aggrieved by the said report of Advocate Commissioner the present defendant No. 7 as the petitioner preferred the Other Class Appeal No. 182 of 2017 in the court of the learned District Judge, Kishoregonj which was heard by the learned Additional District Judge, Court No. 1, Kishoregonj who after hearing the parties dismissed the appeal by his judgment dated 30.09.2019.

This revisional application has been filed against the said impugned judgment passed by the learned appellate court below under section 115(1) of the Code of Civil Procedure and the Rule was issued thereupon.

Mr. Ali Ahsan Mullah, the learned Advocate, appearing for the defendant No. 7 as the petitioner submits that the learned courts below particularly the learned appellate court below committed an error of law by dismissing the appeal by affirming the judgment of the learned trial court, therefore, the Rule should be made absolute.

The learned Advocate also submits that the Advocate Commissioner without considering the appropriate measurement of saham (সাহাম) of the parties in the partition suit which is an unlawful and immoral practice by the Advocate Commissioner but none of the courts below could appreciate the said mistake, thus, came to a wrongful conclusion to dismiss the claim of the plaintiffs which is liable to be set aside and the Rule should be made absolute.

The Rule has been opposed by the present plaintiff-opposite party No. 1, namely, Sree Gouranga Chandra Sutradhar.

Mr. S. M. Rezaul Karim, the learned Advocate, appearing on behalf of the plaintiff-opposite party No. 1 submits that long lengthy legal proceeding taken by the parties in this partition suit in the trial court appointed an Advocate Commissioner in order to take an appropriate measurement of land to be declared by the learned trial court by passing preliminary decree dated 04.03.1997 and the Advocate Commissioner measured the land as per the said decree but reduced the measurement of land from $12\frac{3}{8}$ decimals to $11\frac{1}{4}$ decimals of land as he could not find the decretal measurement of land by the practical survey of the land which is permissible under the law and the opposite party did not

object thereof but the present petitioner filed this revisional application by raising objection thereabout which is undoubtable under the law, as such, the Rule is liable to be discharged.

The learned Advocate also submits that both the courts below concurrently found in favour of the present opposite parties but the present defendant No. 7 as the petitioner obtained the Rule with a malafide intention to delay the matter and obtained the present Rule by misleading the court, therefore, the Rule is liable to be discharged.

Considering the above submissions made by the learned Advocates appearing on behalf of the respective parties and also considering the revisional application filed by the present defendant No. 7 as the petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below dismissing the appeal and thereby affirming the judgment and decree of the learned trial court as well as perusing the essential documents available in the lower courts records, it appears to this court that the present opposite parties as the plaintiffs filed the partition suit and obtained the decree after adducing and producing documents in favour of the

respective parties. However, the present petitioner challenged the said preliminary decree and continued lengthy litigation between the parties in order to frustrate the result of the preliminary decree, therefore, unnecessarily the proceedings being in the court.

The said preliminary decree was held by all the courts passing the preliminary decree and took the matter to the final stage of the partition suit. The decree passing by the court within the proceeding appointed an Advocate Commissioner who allocated saham (সাহাম) to the respective parties including saham (সাহাম) of the plaintiff-opposite parties. The Advocate Commissioner submitted a report by lawful step to the decretal court which was objected by the present defendant on the ground that the Advocate Commissioner did not take proper and lawful decision to reduce the measurement of land which was decreed by the court in the preliminary decree. The learned Advocate for the present opposite party No. 1 submits that there is no illegality in reducing the measurement of land if the land is not available as per the decree. Accordingly, the vital question in this Rule is that whereas the Advocate Commissioner reduced the measurement of land which was the decretal land.

In view of the above question, I have carefully considered the submissions of the learned Advocates of the respective parties and the relevant law of the power of the Advocate Commissioner in a partition suit. I am of the opinion that the Advocate Commissioner has all authentic power to file a report after making out the case of claim and counterclaim as to the measurement of land in the partition suit. The Advocate Commissioner has authority over the parties despite the preliminary decree of a different measurement of land. The learned courts below lawfully came to a conclusion to pass the decree in favour of the opposite parties and this court consider that this is not a proper case for interference from this court.

In view of the above, I consider that this is not a proper case for interference upon the impugned judgment by this court.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The order of stay passed on 02.02.2021 and subsequently extended from time to time are hereby recalled and vacated.

The impugned judgment and decree dated 30.09.2019 passed by the learned Additional District Judge, Court No. 1, Kishoregonj in the Other Class Appeal No. 182 of 2017 by

affirming those dated 21.08.2017 passed by the learned Senior Assistant Judge, Bajitpur, Kishoregonj in the Partition Suit No. 13 of 1988 in favour of the plaintiffs is hereby upheld.

The concerned section of this court is hereby directed to receive the torn/distorted lower courts records and send down the same along with this judgment and order to the learned courts below immediately.