

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

CIVIL REVISION NO. 544 OF 2019

In the matter of:

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

AND

In the matter of:

Md. Ekhlash Uddin @ Ekhlash Uddin Ahmed

.... Petitioner

-Versus-

Md. Ikhtiar Uddin and others

....Opposite-parties

None represented

... For the petitioner

Mr. Md. Mesbahul Islam Asif, Advocate

...For the opposite party no. 1(a)-1(d)

Heard and Judgment on 25.04.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the defendant no. 1 in Title Suit No. 113 of 2012,
this rule was issued calling upon the opposite-party nos. 1-8 to show cause
as to why the judgment and order dated 16.10.2018 passed by the learned
Joint District Judge, 3rd court, Dhaka allowing the application of the
defendant nos. 4,5,6 and 8 praying for giving proportionate share of the suit

property should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, this court also stayed the further proceedings of the said suit initially for a period of 06(six) months which was lastly extended on 20.10.2019 till disposal of the rule.

The precise facts so have been figured in the revisional application are:

The predecessor of the present opposite party nos. 1(a)-1(d) namely Md. Ikhtair Uddin filed the aforesaid suit seeking following reliefs:

(ক) বাদী পক্ষ নিম্ন “ক” ও “খ” তফসিলী সম্পত্তিতে ১ যোল আদার ম-ধা ৪ আনায় মালিক স্বত্বাধিকারী থাকা ম-র্ম এবং বাদী পক্ষ নিম্ন “খ” তফসিলী ৫৩৬,৯০,০০০/- টাকার ম-ধ্য $\frac{১}{৪}$ অংশ হিসা-ব ১৩,৪৭,৫০০/- টাকার হকদার ও প্রাপ্য ম-র্ম বাদী প-ক্ষর অনুকু-ল ও বিবাদী পক্ষের বিরুদ্ধে বন্টনের নির্মিতে এক প্রিলিমিনারী রায় ও ডিক্রী প্রদান করিতে;

(খ) নালিশী “ক” ও “খ” তফসিলে বর্ণিত সম্পত্তি বাবদ বাদীর ৪(চার) আনা অংশ আ-পাষ সাহাম বা-টায়ারা করিয়া সাহাম প্রাপ্ত অংশ দখল বুঝাইয়া দিবার জন্য বিবাদী গণ-ক আদালত হই-ত একটি নির্দিষ্ট সময় করিয়া দি-ত;

(গ) আরজির “খ” তপসি-ল বর্ণিত একমাস ভাড়ার টাকার ম-ধ্য বাদীর অংশ $\frac{১}{৪}$ অংশ সাহম আদাল-তর নির্দিষ্ট সময় ম-ধ্য নগদ বা চে-কর মাধ্যমে না দিলে অত্র আদালত যোগে উহা বাদী-ক আদায় করিবার আ-দশ দি-ত;

(ঘ) আদালত কর্তৃক প্রদত্ত নির্দিষ্ট সময়ের মধ্যে বিবাদীগণ আপোষে বা-টায়ারা করত সুনির্দিষ্টভা-ব দখল না দি-ল প-র আদালত কর্তৃক একজন

সার্ভেজানা বিজ্ঞ এডভোকেট কমিশনারের মাধ্যমে প্রিলিমিনারী রায় ও ডিক্রী মোতাবেক সকল প্রকার বাধ্য বিপত্তি ও প্রতিবন্ধকতা অপসারণপূর্বক বাদীর দাবীকৃত ১ ষোল আনার ম-ধ্য ৪ আনা অংশ ছাহাম বাদীর বরাব-র বুঝাইয়া দি-ত;

(ঙ) মোকদ্দমার খরচাদি বাদী পক্ষের অনুকূলে ও বিবাদী পক্ষের প্রতিকূ-ল প্রদা-নর এক আ-দশ দি-ত;

(চ) বাদী পক্ষ আইন ও ইকুইটি অনুযায়ী আর যে যে প্রতিকার পাইতে হকদার তদমর্মে এক ডিক্রী দিতে হুজুরের মর্জি হয় ।

In order to contest the suit, the defendant no. 1- petitioner as well as other defendants that is, defendant nos. 2,3,4,5,6 and 8 entered appearance and filed separate sets of written statement denying all the material statement so made in the plaint and prayed for dismissal of the suit. During pendency of the said suit, the plaintiff on 27.05.2012 filed an application under Order 40 Rule 1 read with section 151 of the Code of Civil procedure for appointing a receiver for distributing the rents derived from the building located in the suit property claiming that the defendant no. 1 was not paying proportionate amount of rent that is, $\frac{1}{4}$ th share of the suit property to him. The application was taken up for hearing by the learned judge of the trial court and vide order dated 24.10.2013 the same was allowed appointing one Mr, Shirajul Islam, Advocate of the District bar Dhaka as the receiver. Challenging the said order, the defendant no. 1 filed an appeal being First Miscellaneous Appeal No. 126 of 2014 before this court and ultimately that very appeal was disposed of vide judgment and order dated 29.11.2014 setting aside the judgment and order dated

24.10.2013. When the defendant no. 1 was directed to give $\frac{1}{4}$ th of the amount collected as rent of the building situated on the scheduled property and directed the trial court to dispose of the suit within a period of 06(six) months. When the suit was being proceeded, the defendant nos. 4,5,6 and 8 filed another application for appointing a receiver since the defendant no. 1 had not been paying the proportionate amount of rent in their favour. The learned judge of the trial court then vide order dated 14.01.2016 allowed the said application giving the authority to the defendant no. 1 to collect rent from the tenants of the building and to distribute the rents proportionately among the plaintiff as well as the defendant nos. 2-8. However, since as per that order dated 14.01.2016, the defendant no. 1 again did not comply with the order, those defendant nos. 4,5,6, and 8 then on 16.10.2018 filed another application under section 151 of the Code of Civil Procedure praying for giving proportionate share of the land by giving direction to the plaintiff and the defendant nos. 1-3. That very application was taken up for hearing by the learned judge of the trial court and vide impugned order dated 16.10.2018 allowed the same by modifying the order dated 14.01.2016 appointing the "Officer in Charge" of Kotwali police station, DMP as a receiver authorizing him to collect the rent and to distribute the proportionate share to the plaintiff. It is at that stage, the defendant no. 1 as petitioner came before this court and obtained the instant rule and order of stay.

None appeared for the petitioner to press the rule though the matter has been appearing in the list at the top with the name of the learned counsel for the parties to the rule.

On the contrary, Md. Mesbahul Islam Asif, the learned counsel appearing for the heirs of plaintiff opposite parties nos. 1(a) to 1(d) upon taking us to the revisional application and all other document appended therewith at the very outset submits that, since this Hon'ble court has earlier rejected the application appointing receiver so there has been no scope for the trial court to modify the order dated 14.01.2016 to appoint any receiver for collecting and distributing rent to the share holders of the suit property.

The learned counsel further contends that, even if, there has been a clear direction by this Hon'ble court given in the First Miscellaneous Appeal to distribute rent to the extent of $\frac{1}{4}$ th share of the suit property to the plaintiff yet the defendant no. 1 did not comply with the said direction.

The learned counsel further contends that, though there has been clear direction upon the trial court to dispose of the suit within a period of 06 (six) months but in the meantime ten years have already elapsed but the suit has not yet been disposed of which amounts to clear violation of the order passed by this Hon'ble court.

The learned counsel lastly contends that, under no circumstances can the impugned order passed by the learned judge of the trial court be sustained though he appeared for the opposite parties and prayed for setting aside the order with a direction to be given upon the trial court to dispose of the suit within a shortest possible time. With such submission, the learned counsel finally prays for making the rule absolute by setting aside the impugned order.

We have considered the submission so advanced by the learned counsel for the plaintiffs opposite parties and gone through the revisional application and also examined the impugned judgment and order and the order supplied by the learned counsel for the opposite party dated 14.01.2016. There has been no gainsaying the facts that, in the suit the plaintiff as well as the defendant nos. 1-8 are all siblings and the suit was filed for partition and to distribute their respective saham as per the judgment to be pronounced but meantime since a deed has been executed behind the back of the knowledge of the plaintiff, he filed the suit for cancelling the said deed as well as for partition of the suit land but from the very beginning, the defendant no. 1 had been enjoying title and possession over the entire suit property by renting the same to different tenants and to collect the rent and he did not pay the rents proportionately to all the heirs of Alhaj Md. Shahab Uddin Ahmed, that compelled the plaintiff to file the application for appointing receiver and afterwards all other defendants in order to get their proportionate share of land as well as the rent collected from the building located on the suit properties, took the same stand. From the materials on records it exemplified that, it is the defendant no. 1 who is the instrumental in lingering the dispute and to deprive all his sibling that is, other defendant and the plaintiff by not giving their proportionate share of the rent collected from the suit property. Since the judgment passed by this court dated 19.11.2019 in First Miscellaneous Appeal No. 126 of 2014 has not been challenged through which the appointment of receiver was rejected so under no circumstances can the learned judge of the trial court pass any order giving appointment of any receiver. So on that score, we find that, the learned judge has shown an audacity to appoint a receiver.

Furthermore, vide earlier order dated 14.01.2016, the defendant no. 1 was given absolute authority to collect and distribute rent of the building located in the suit properties to the plaintiff as well as other defendants but from the subsequent application we find that, the defendant no. 1 kept on disobeying the order. However, from the rule issuing order we don't find that the operation of the impugned order has been stayed other than the further proceedings of the suit which construe that, that the Officer in Charge is still collecting the rent which appears to be illegal in view of the order passed by this court in First Miscellaneous Appeal No. 126 of 2014. In any view of the matter since the impugned order appointing receiver is totally contrary to the direction of the order of this court passed on 19.11.2014 in First Miscellaneous Appeal No. 126 of 2014 so under no circumstances can the impugned order appointing Officers in Charge as receiver be sustained. Accordingly, the impugned order stands set aside.

Accordingly, the rule is made absolute however without any order as to costs.

At the fag end of passing the judgment the learned counsel appearing for the opposite parties nos. 1(a)-1(d) apprised this court that, after passing the interim order by this court, while issuing rule staying the further proceedings of the suit, the Officer in Charge has not been collecting rents or distribute the same to the parties and no tenants has been paying their rent to the defendant no. 1 in view of the order dated 14.01.2016. In such a circumstances, the defendant no. 1 is hereby directed to collect all arrear rents from the tenants enjoying possession over the suit property as tenants and distribute the same proportionately to the plaintiff and the defendants.

At the same time, the trial court is hereby directed to dispose of the suit within a period of 03(three) months from the date of receipt of the copy of this order without giving any adjournment to any parties to the suit keeping in mind that, the said court had earlier directed to dispose of the suit within a period of 06(six) months.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this order be communicated to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.

Kawsar /A.B.O