

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1902 OF 2019

In the matter of:

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

And

Respondent No.1 Abdul Sobhan being dead his heirs-
Moidharer Nessa @ Madhu Bibi and others

.... Petitioners

-Versus-

Appellant No.1 Mir Hossen being dead his heirs-
Hazera Begum and others

.... Opposite parties

Mr. Abdul Kuddus Miah with

Mr. Bazlur Rashid Dolon, Advocates

.... For the petitioners.

Mr. Mohammad Abdul Karim, Advocate

....For the opposite party Nos. 14-16,
24, 25 and 27-32.

Heard on 22.06.2025 and Judgment on 23.06.2025.

This Rule was issued calling upon the opposite party Nos.7-10, 13-16, 19-21, 23-25 and 27-32 to show cause as to why the impugned judgment and decree dated 12.02.2019 passed by the Additional District Judge, 1st Court, Cumilla in Title Appeal No.182 of 2011 allowing the said appeal and modifying the judgment and decree dated 15.02.2011 passed by the learned Senior Assistant Judge, Chandina, Cumilla in Title Suit No.255 of 2007 decreeing the suit in part in preliminary form should not be set aside and/or 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 partition of 52 decimal land appertaining to C. S. Khatian Nos.40 and 21 seeking a separate saham for 55 decimal land alleging that Torab Ali owned held and possessed 1.07 acres land including above 55 decimal who died leaving two brothers Yousuf and Arab Ali and wife Gulbahar. Above Gulbahar inherited $66\frac{17}{24}$ decimal land from her husband and died leaving father Kamaruddin and two brothers Azizmuddin and Habibullah predecessor of the defendants. Above Komruddin died leaving second wife Zinnatunnessa and two sons plaintiff No.1 & 2 and 1 daughter Khairuner Nessa, predecessor of plaintiff Nos.3-6 from his second wife and two sons namely Azizullah and Habibullah from his first wife. Plaintiffs are sons and daughter of above Komruddin. Plaintiffs claim separate sahum for 55 decimal land.

Above suit was contested by defendant Nos.9, 11 and 18-32 by filling a joint written statement alleging that Gulbahar while owning and possessing above property as heir of her husband Torab Ali died leaving two brothers namely Azizullah and Habibullah who inherited total property of Gulbahar. The father of Gulbahar namely Komoruddin having died during the life time of Gulbahar he did not inherited property of above Gulbahar nor plaintiffs inherited any property of Gulbahar.

At trial plaintiffs examined 3 witnesses and documents of the plaintiffs were marked as Exhibit Nos.1 series - 3 and the defendants Nos.9-11 and 18-27 examined 1 witness and their documents were marked as Exhibit Nos.Ka1 - Ga1 and defendants Nos.45-48 examined 1 witness and their documents were marked as Exhibit Nos.Ka4, Kha4 and Ga4 and defendant No.49 examined 1 witness and their documents were marked as Exhibit Nos.Ka7 and defendant No.50 examined 1 witness and their documents were marked as Exhibit No.Ka2 - Kha2 and defendant 52 examined 1 witness and their documents were marked as Exhibit Nos.Ka3, Kha3 and Ga3, defendant Nos.66-67 examined 1 witness and their documents were marked as Exhibit No.Ka8 - Ja8. Defendant No.24 examined 1 witness and their documents were marked as Exhibit No.Ka5 and defendants Nos.84-84 examined 1 witness and his documents were marked as Exhibit Nos.Ka6, Kha6 and Ga6.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed above suit in part and plaintiff Nos.7-19 was allocated saham for 76.37 acres decimal land. Defendant 09-11 and 18-27 were allotted saham for 270.16 decimal land, defendant No.45-48 was given saham for 42.86 decimal land, defendant No.49 was given separate saham for 18 decimal land, defendant No.50 were given saham for 12 decimal

land, defendant No.52 were given saham for 18 decimal land, defendant No.66-67 was given saham for 31.50 decimal land and defendant No.82-84 were given separate saham for 15 decimal land.

Being aggrieved by above judgment and decree of the trial Court plaintiffs Nos.1-6 as appellants preferred Title Appeal Nos.182 of 2011 to the District Judge, Cumilla and appellant Nos.45-48 preferred a cross objection and both above appeal and cross examination were heard analogously by learned Additional District Judge, 1st court who allowed above Civil Appeal and dismissed the cross objection and modified the impugned judgment and decree passed by the trial Court. The saham of plaintiff Nos.7-19 for 76.37 decimal land was upheld. Defendant Nos.45-48 were given separate sahum for 51 decimal land, defendant No.49 was given 18 decimal land, defendant No.50 was given 20 decimal land, defendant No.52 was given 18 decimal land, defendant No.82-84 were given 15 decimal land, defendant Nos.9-11 and 18-27 were allotted 262.20 decimal land and defendant Nos.66-67 were allotted 31.50 decimal land.

Being aggrieved by above judgment and decree of the Court of appeal below above appellants as petitioners moved to this Court with this revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Abdul Kuddus Miah, learned Advocate for the petitioners submits that admittedly Gulbahar inherited $66\frac{17}{24}$ decimal land as heir of her husband Torab Ali. Gulbahar died leaving father Kamaruddin and two brothers Habibullah and Azizullah as heirs. Above Kamaruddin died leaving second wife Zinnatunnessa and two sons and 1 daughter from above second wife who are plaintiff Nos.1-6 and two sons by first wife Habibullah and Azizullah predecessor of the plaintiffs. Plaintiffs Nos.1-6 inherited 55 decimal land of Gulbahar from her father Kamaruddin and sought separate saham for the same. PW1 and PW2 gave consistence evidence stating that Gulbahar died leaving father Komrauddin and two brother Azizullah and Habibullah and Kamaruddin inherited the property of her daughter Gulbahar. Above witnesses were subjected to cross examination but their above evidence remained unshaken, consistent and credence inspire. On the other hand the defendants could not adduce any evidence oral or documentary in support of their claim that Komoruddin died during lifetime of his daughter Gulbahar and he did not inherit the property of Gulbahar. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of both the Courts below have utterly failed to appreciate above materials on record and most illegally held that

Kamaruddin died during the lifetime of Gulbahar and he did not inherit any property of Gulbahar which is not tenable in law.

On the other hand Mr. Mohammad Abdul Karim, learned Advocate for the opposite party Nos.14-16, 24, 25 and 27-32 submits that admittedly Torab Ali was the owner and processor of 1.7 decimal land and he died leaving wife Gulbahar and two brothers Yousuf and Arob Ali and above Gulbahar acquired $66\frac{17}{24}$ decimal land by inheritance from her husband Torab Ali. It is admitted that Gulbahar had two brothers Azizullah and Habibullah predecessors of the plaintiffs. It has been alleged by the plaintiffs that father of Gulbahar survived his daughter Gulbahar and inherited her property as father which has been denied by the defendants. As such the plaintiffs were required to prove that Komoruddin died after demise of his daughter Gulbahar. The plaintiffs could not produce any documentary evidence in support of above claim. PW1 Mohammad Ullah a person of 50 years of age has admitted in cross examination that he did not see Kamoruddin. PW2 Muslemur Rahman has admitted in cross examination that Gulbahar died after the demise of her father. Above evidence of the plaintiff clearly show that Kamaruddin did not inherit any property of Gulbahar nor plaintiff Nos.1-6 inherited any property of Gulbahar from their father. On consideration of above materials on record the learned Judges of both

the Courts below rightly and concurrently held that plaintiffs did not inherit any property of Gulbahar through their father Kamroddin which being based on evidence on record this court cannot in its revisional jurisdiction interfere with above concurrent findings of fact.

I have considered the submissions of the learned advocates for the respective parties and carefully examined all materials on record.

It is admitted that Torab Ali owned held and possessed 1.07 acres land of C. S. Khatian Nos.40 and 21 and he died leaving wife Gulbahar and two brothers Yousuf Ali and Arab Ali and above Gulbahar inherited $66\frac{17}{24}$ decimal land as heir of her husband Torab Ali. It is also admitted that Kamaruddin predecessor of the plaintiffs died leaving two sons Azizullah and Habibullah by his first wife who were the full brothers of Gulbahar and second wife Khairunnesa and two sons plaintiff Nos.1 and 2 and 1 daughter Zinnatunnesa predecessor of defendant Nos.3-6 by his second wife as heirs. Plaintiffs claim that Gulbahar owner of 55 decimal land died during the lifetime of his father Kamruddin and two brothers Azizullah and Habibullah and Kamaruddin inherited property of Gulbahar as a heir which upon his demise devolved upon the plaintiffs Nos.1-6 and his second wife Zinnatunnesa and his two sons Azizullah and Habibullah from his 1st wife. In this regard the defendants claimed that

Kamaruddin died during the lifetime of Gulbahar and he did not inherit any property of Gulbahar.

The plaintiffs could not produce any documentary evidence in support of their claim that Gulbahar died during the lifetime of her father Kamaruddin and Kamaruddin inherited of her property. At trial plaintiff examined 3 witness PW1 Mohammad Ullah and PW2 Muslimur Rahman have given evidence as to the demise of Kamaruddin. The age of PW1 Moulana Mohammad Ullah was 50 years on 11.07.2010 when he gave evidence in Court. In cross examination he stated that he did not see Kamaruddin. At the time of death of Gulbahar her two brothers Azizullah and Habibullah were alive. Above witness did not mention that at the time of death of Gulbahar her father Kamaruddin was alive. PW2 Muslimur Rahman is plaintiff No.1 and grandson of Kamruddin who stated that Gulbahar died before the death of her father Kamruddin. But in cross examination he stated that Kamaruddin died in 1937 and after his demise his two sons Azizullah and Habibullah were separated. Gulbahar used to visit the house of above two brothers and they used to treat her well. Above evidence of PW2 proves that Kamaruddin died before the death of his daughter Gulbahar.

On consideration of above facts and circumstance of the case and evidence on record I am unable to find any illegality or

irregularity in the concurrent findings of facts arrived at by the learned Judges of both the Courts below that the plaintiffs have failed to prove that Gulbahar died during the lifetime of her father Kamaruddin and Kamaruddin inherited the property of Gulbahar. As mentioned above plaintiff Nos.1-6 are heirs of Kamaruddin from his second wife Zinnatunnesa and they have filed this case claiming the property of Gulbahar alleging that she died leaving her father Kamaruddin as a heir and plaintiffs inherited above land from Kamaruddin. The claim of title and possession of plaintiffs Nos.7-19 are quite different. It is not understandable as to how in the absence of unity of interest plaintiffs. Plaintiff Nos.7-19 could be added as plaintiffs in above suit.

Plaintiffs has filed this suit solely on the basis of two C. S. Khatian being No.40 and 21 without incorporating the corresponding R. S. or S. A. Khaitan which are the latest survey Khatians. The source of title of the plaintiff may come out of the C. S. Khatian but since above suit was filed on 29.07.2007 the plaintiffs should have incorporated above corresponding Khatians in the plaint for proper location and identification of the disputed property. In the absence of incorporation of latest survey Khatians it will be very difficult to implement a decree of a suit for partition and no Court should pass a decree which is incapable of implementation.

As mentioned above plaintiffs have brought into hotchpotch 520 decimal land of C. S. Khatian Nos.40 and 21 and sought saham for 55 decimal land but both the Courts below have allocated separate saham for plaintiff Nos.7-19 for 76.37 decimal land. It is not understandable as to how the learned Judges of both the Courts below granted separate saham for plaintiff Nos.7-19 for 76.37 decimal land when plaintiffs Nos.1-19 jointly sought separate saham for 55 decimal land.

In above view of the facts and circumstances of the case and evidence on record I hold that the ends of justice will be met if the impugned judgment and decree passed by the learned Additional District Judge is set aside and above suit is remanded for retrial to the trial court giving both parties an opportunities to amend their respective pleadings and adduce further evidence.

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 made absolute. The impugned judgment and decree dated 12.02.2019 passed by the learned Additional District Judge, 1st Court, Cumilla in Title Appeal No.182 of 2011 allowing the said appeal and modifying the judgment and decree dated 15.02.2011 passed by the learned Senior Assistant

Judge, Chandina, Cumilla in Title Suit No.255 of 2007 decreeing the suit in part is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduced further evidence.

However, there will be no order as to costs.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER.