Present:

Mr. Justice Sheikh Abdul Awal

Civil Revision No. 43 of 2020

Md. Esmail Gazi and others.

..... Defendant-petitioners.

Versus

Md. Moslem Pyada and others.

.....Plaintiff-Opposite Parties.

Mr. Md. Hamidur Rahman, Advocate.

....For the Defendant-petitioners.

Mr. A.K. Rashedul Huq, Advocate.

.....For the Plaintiff-opposite-parties.

Heard on 25.08.2024 and 27.08.2024

Judgment on 27.08.2024

This Rule was issued calling upon the opposite party Nos. 1-25 to show cause as to why the impugned judgment and decree dated 20.02.2019 (decree signed on 03.03.20219) passed by the learned District Judge, Patuakhali in Title Appeal No. 62 of 2018 dismissing the appeal and affirming the judgment and decree dated 16.11.2017 (decree signed on 23.11.2017) passed by the learned Assistant Judge, Dashmina, Patuakhali in Title Suit No. 105 of 2008 decreeing the suit should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The relevant facts briefly are that the opposite party Nos. 1-25 as plaintiffs filed Title Suit No. 105 of 2008 in the Court of the

learned Assistant Judge, Dashmina, Patuakhali for partition of the suit land as described in the schedule of the plaint.

Defendant Nos. 1-7, 14-6, 18-28, 30 and 39-42 entered appearance in the suit and filed written statement denying all the material averments made in the plaint contending, inter-alia, that in the facts and circumstance the partition suit without any prayer for declaration of title is not maintainable at all, the same is liable to be dismissed.

The learned Assistant Judge on the pleadings of the parties framed the following issues for determination:

i. Whether the suit is maintainable in its present form and manner?

ii. Whether the suit is bad for defect of parties?

iii. Whether the suit is bad for misjoinder and non-joinder of the parties?

iv. Whether the plaintiffs have right, title and possession in the suit land?

v. Whether plaintiffs are entitled to get the reliefs, as prayed for?

At the trial the plaintiff-opposite parties examined 4 witnesses and the defendant side examined 2 witnesses and both the parties produced some documents to prove their respective cases.

The trial Court after hearing the parties and on considering the materials on record by its judgment and decree dated 16.11.2017 decreed the suit in favour of the plaintiffs.

Against which the defendants preferred Title Appeal No. 62 of 2018 before the learned District Judge, Patuakhali, who by the impugned judgment and decree dated 20.02.2019 dismissed the appeal and affirmed the judgment of the trial Court below.

Aggrieved defendant-petitioners then preferred this revision application and obtained the present rule.

Mr. A.K. Rashedul Huq, the learned Advocate appearing for the plaintiff-opposite parties at the very outset upon placing an application for discharging the Rule dated 28.04.2024 submits that in this case preliminary decree dated 23.11.2017 has become final on 29.08.2019 and it is apparent from the record that the instant Civil Revision is directed against the judgment and decree dated 16.11.2019 and the proposition of law is by now well settled that no revision lies against final decree. The learned Advocate to fortify his sole arguments has relied on the decision reported in 11 BLT 508. Finally, the learned Advocate submits that the defendants by suppressing the facts and circumstances of the case and law bearing on the subject deliberately obtained the present Rule after passing the final decree, which is liable to be knocked down.

Mr. Md. Hamidur Rahman, the learned Advocate appearing for the defendant-petitioners on going through the application for discharging the Rule together with the decision reported in 11 BLT 508 having failed to refute the sole contention raised by Mr. Huq, the learned Advocate for the plaintiff-opposite parties. However, he concedes the sole contention of Mr. Huq although he submits that judgment may kindly be passed in this case.

Having heard the learned Advocates for both the parties, perused and having gone through the application for discharging the Rule dated 28.04.2024 together with the revision application.

In deciding the Rule, I feel it necessary to quote hereunder the order of final decree dated 29.08.2019 as evidenced by "Annexure-3" series to the supplementary affidavit dated 28.04.2024, which reads as follows:

> "অদ্য এ/সি আর বিরুদ্ধে আপত্তি দাখিল (যদি থাকে) এর জন্য ধার্য আছে। বাদীপক্ষ হাজিরা দেন। কোন পক্ষ কোন প্রকার আপত্তি দাখিল করেন নাই।
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> বাদীপক্ষের দাখিলী দরখাস্ত, আরজী ও বিজ্ঞ এডভোকেট কমিশনারের প্রতিবেদন পর্যালোচনা করিলাম এবং কমিশনার ন্যায়ত ও আইন সংগত ভাবে প্রতিবেদন দাখিল করিয়াছে। প্রতিবেদন গৃহীত হইল। অতএব, আদেশ হইল যে,
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> অত্র মোকদ্দমার বিগত ইং ১৬/১১/১৭ তারিখের প্রচারিত রায় ও ইং ২৩/১১/১৭ তারিখের স্বাক্ষরিত প্রাথমিক ডিক্রী এবং তম্মূলে অত্র মোকদ্দমা হইতে উদ্ভূত দেঃ আঃ ৬২/১৮ এর রায়ের আলোকে প্রাথমিক ডিক্রীকে চুড়ান্ত ডিক্রীতে পরিণত করা হইল। বিজ্ঞ কমিশনারের প্রতিবেদন, ফিল্ডবুক, স্কেচ ম্যাপ, চিটা প্লট ইত্যাদি চূড়ান্ত ডিক্রীর একাংশ হিসাবে গণ্য করা হইল।"

From the certified copy of the order of final decree dated 29.08.2019, it appears that in this case the trial Court after accepting the Commissioner's report passed the final decree before filing this Revision application.

In the case of Abu Baar Siddique Vs. Md. Khorshed Alam and others reported in 11 BLT 508, it has been held that:

> "From the impugned order it appears that the learned Assistant Judge after accepting the commissioners report also passed final decree as per preliminary decree passed on 25.08.1991 and thereby nothing remained

to be followed or passed to make the preliminary decree final as per provision of order XX Rule 6(1) and 7 order XXVI, Rule 14(3) of the Code. The direction to submit stamp and the drawing and the signing of the final decree are the mere clerical job to be performed by the court staff and that cannot have any bearing to make the decree final. The submissions of the learned Advocates appearing for the petitioner and the opposite party nos. 2(a) and 2(b) that after acceptance of the commissioner's report sometime should have been given to the parties to challenge the order before court has got no substance in that the law namely the relevant provisions of the Code as have discussed and quoted herein above do not provide so. The provision of sub- rule (3) of Rule 14 of order XXVI of the Code has made it obligatory upon the Court to pass a final decree when the court confirms or varies the report. Here in this case the learned Assistant Judge after accepting the commissioner's report having passed the final decree there is no scope to challenge the same by filing revisional application and the only remedy left to the petitioner was/is to file appeal to the appellate court as per provision of section 96 of the Code and in the appeal the petitioner will have all the scope to raise the objections taken in the written objection filed against the commissioner's report as well as the points taken before this Court. Furthermore, as because of the order of stay passed by this

> Court, decree could not be drawn and singed, the petitioner will have no problem about limitation in filing the appeal, In view of the discussions made above, I find substance in the submissions of Mr. Mahmudul Islam I hold that the trial Court after accepting the commissioner's report having passed the final decree as per provision of sub-rule (3) of Rule 14 of order XXVI of the Code of Civil procedure there was/is no scope to file revisional application before this Court challenging the said order and as such this rule cannot be maintained."

From a close study of the above mentioned decision, I find a clear view of law as it stands today that if the trial Court after accepting the Commissioner's report passed the final decree as per provision of sub-role (3) of Rule 14 of Order XXVI of the Code of Civil Procedure there was/is no scope to file revisional application.

In the given facts and circumstances of the case and the decision of the highest Court as cited above, I have no hesitation to hold that the instant Civil Revision is incompetent, misconceived one and not tenable in law.

In the result, the Rule is discharged without any order as to costs.

Let a copy of this judgment along with lower Courts' record be sent down at once.