

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 1960 of 2020

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Shahjahan Mridha and another

--- Defendant-Appellant-Petitioners.

-versus-

Abdul Hakim Chokdar and others

---- Plaintiff- Opposite Parties.

Mr. Mohammad Humayun Kabir, Advocate

--- For the Defendant-Petitioners.

Mr. Humayun Kaibr Sikder, Advocate

--- For the Plaintiff- Opposite Party Nos. 1 and 2.

**Heard on: 06.03.2023, 07.03.2023, 12.03.2023,
28.03.2023 and 03.04.2023.**

Date of Judgment: 03.04.2023.

At the instance of the present defendant-appellant-petitioners, Md. Shahjahan Mridha and another, 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 and 2 to show cause as to why the impugned judgment and decree dated 06.09.2020 passed by the learned Joint District Judge, Court No. 2, Barishal in the Title Appeal No. 34 of 2014 disallowing the appeal in modifying the judgment and decree dated 29.01.2014 passed by

the learned Senior Assistant Judge, Ujirpur, Barishal in the Title Suit No. 88 of 2004 decreeing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party Nos. 1 and 2 as the plaintiffs filed the Title Suit No. 88 of 2004 in the court of the learned Senior Assistant Judge, Ujirpur, Barishal against the present petitioners as the defendants along with the other opposite parties for partition of the suit properties and declaration of title. The plaintiffs' case is that the suit property described in the plaint that the suit property originally belonged to one Jahenuddin Chokdar who died leaving behind his wife Sonavan and a son Mafizuddin. Sonavan died leaving behind his only son Mofizuddin. Mofizuddin married Muksa Bibi who had 2 sons as the respondent Nos. 1 and 2. Mofizuddin divorced Muksa Bibi and again she married Hujjat Ali and Mofizuddin died in the year of 1950. Mofizuddin sold 19 Chhatak land on 07.10.1949 to the predecessor Nos. 1-10 as the defendants, namely Taher Ali and Razi Ali Mridha but it was wrongly recorded in the S. A. and R. S. Khatian in their names. Plaintiff opposite party No. 2, namely, Abdur Rashid Chokdar sold 72.5 chhatak land on 13.11.1969 to the predecessors of the defendant-petitioner Nos. 1-4 on condition to return the land. Plaintiff- opposite party No. 2 filed a redemption case. The said

Muksa Bibi being a divorcee wife of Mofizuddin sold 17.75 decimals of land in favour of the defendant Nos. 1-10 but some of the land was wrongly recorded in B.S. Record in the name of the defendants. There were requests for partition but it was denied.

The present petitioners as the defendant Nos. 1 and 6 submitted a written statement contending that Jahenuddin was the original owner of the suit land. He had a wife, namely, Sonavan, a son, namely, Mofizuddin and a daughter, Lal Boru. Lal Boru died leaving behind her mother being Sonavan and 2 sons, namely, Abdul Ali Sikdar and Abdul Sattar Sikdar. Sonavan Bibi died leaving behind her only son Mofizuddin Chokdar. The land was correctly published in the R. S. Record of rights. In R. S. and S. A. the land was recorded in the names of Taher Ali and others. Eventually, the land was recorded in the names of the defendant-predecessors. Eventually, by several transfers, the defendant-petitioners possessed the land of $1.25\frac{1}{2}$ acres.

After hearing the parties the learned Senior Assistant Judge, Ujirpur, Barishal decreed the suit by his judgment and decree dated 29.01.2014. Being aggrieved the present petitioners as the appellants preferred the Title Appeal No. 34 of 2014 in the court of the learned Joint District Judge, Court No. 2, Barishal who passed

the impugned judgment and decree by disallowing the appeal but partly decreeing the appeal on 06.09.2020, thereby, affirming the judgment of the learned trial court.

This revisional application has been filed by the defendant-appellant-petitioners under section 115(1) of the Code of Civil Procedure challenging the legality of the said affirming impugned judgment and decree passed by the learned appellate court below and the Rule was issued thereupon.

Mr. Mohammad Humayun Kabir, the learned Advocate, appearing for the defendant-petitioner Nos. 1 and 6 submits that the learned courts below should consider the deposition of the plaintiffs where PW-1 clearly admitted that there was the homestead of the defendants and all the PWs and DWs have admitted about the possession of defendants but the courts below have misread and misconstrued the evidence of the parties dismissed the appeal which has occasionally failure of justice.

The Rule has been opposed by the present plaintiff-opposite party Nos. 1 and 2.

Mr. Humayun Kabir Sikder, the learned Advocate, appearing for the opposite party Nos. 1 and 2 submits that both the courts below concurrently found respective sahams (সাহাম) of the plaintiffs and the defendants as per the documents adduced and produced by

the parties but the present petitioners obtained this Rule by misleading this court, thus, the Rule is liable to be discharged.

He further submits that a divorcee from a husband can not hold rights to sell the husband's property, therefore, the land of a previous husband could not be sold by the divorcee wife of Mofizuddin, therefore, Taher Ali and other defendants could not prove the sale by Muksa Bibi as valid, thus, the Rule is liable to be discharged.

Considering the above submissions made by both the learned Advocates appearing for the respective parties and also considering the revisional application filed by the defendant-appellant-petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, especially, the impugned judgment and decree as well as necessary materials available in the lower courts records, it appears to me that the present opposite party Nos. 1 and 2 as the plaintiffs filed a title suit for partition and the title upon the suit land described in the schedule of the plaint land measuring 1.97 acres situated at Mouza- Kachua, C. S. Khatian No. 43, 45 and 47, JL No. 51, Police Station- Uzirpur, District- Barishal.

After hearing the parties the learned trial court passed a preliminary decree by allocating sahams (সাহাম) of land measuring

$93\frac{1}{2}$ decimals to the petitioners out of 1.97 acres and to the defendant Nos. 1 and 6 allocating saham (সাহাম) $1.03\frac{1}{2}$ decimals out of 1.97 acres. Being dissatisfied with the distribution of the saham (সাহাম) by the learned trial court the defendant Nos. 1 and 6 preferred an appeal which was heard by the learned appellate court below who after hearing the parties and examining the documents adduced and produced by the parties modified the measurement of the land but allocating saham (সাহাম) as per the documents both oral and by way of depositions as well as documentary evidence by allocating saham (সাহাম) measuring .65 decimals to the only plaintiff- opposite party No. 1. The learned appellate court below also allocated saham (সাহাম) to the petitioners measuring 24.71 decimals of land. The learned appellate court below also allocated saham measuring 2.07 decimals of land to the defendant No. 6 as the present petitioner No. 2, Md. Alal Ahmed.

I have carefully examined the revisional application and the concurrent findings of the learned courts below and I found that there are some admitted positions among the parties. Both parties made submissions that the suit originally belonged to some persons and it was subsequently succeeded and purchased by their respective portions of land. It is also admitted that the parties have

been enjoying their respective land as ejmaly (এজমালী) properties and there is a requirement of partition. Accordingly, the learned trial court and the learned appellate court below accepted that they are owners of the ejmaly (এজমালী) property but without formal partition, the dispute arose as the land described in the plaint when the divorcee wife (Muxsa Bibi) of Mofizuddin sold the land of Mofizuddin after his death which made the dispute among the parties. However, both the courts considered their documents and other evidence by the learned appellate court below and modified the sahams (সাহাম) of the parties on the basis of the lawful consideration of title and possession.

In view of the above, I have carefully considered that the learned appellate court below committed no error of law by allocating sahams (সাহাম) through the impugned judgment and preliminary decree which does not require any interference from this court.

Accordingly, I do not find merit in this Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 06.09.2020 passed by the learned Joint District Judge, Court No. 2, Barishal in the Title Appeal No. 34 of 2014 disallowing the appeal by modifying the judgment dated 29.01.2014 passed by the learned Senior

Assistant Judge, Ujirpur, Barishal in the Title Suit No. 88 of 2004 decreeing the suit is hereby upheld.

The interim order of direction passed by this court at the time of issuance of this Rule upon the parties to maintain the *status quo* in respect of the possession and position pending hearing of this Rule is hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower court records along with a copy of this judgment and order to the concerned court below at once.