

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Appeal No. 69 of 2021

In the matter of:

Mst. Sahara Begum

... Defendant-Appellant.

-Versus-

Md. Abdul Mannan and others

...Plaintiffs-Respondents.

Mr. Mohammad Abdul Haque, Advocate

...For the Appellant.

Mr. S.M. Obaidul Haque, Advocate

... For the respondent Nos. 1-7, 9-13 and 16-29.

Heard on 23. 04.2025 and 24.04.2025

Judgment on 27.04.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

At the instance of the defendant in Title Suit No. 229 of 2020, this appeal is directed against the judgment and decree dated 15.11.2020 passed by the learned Joint District Judge, First Court, Narayanganj decreeing the suit in terms of compromise.

The precise facts leading to preferring this appeal are:

The present respondents as plaintiffs filed the aforesaid suit praying for a decree declaring right, title and interest of the plaintiff over the suit land described in the schedule to the plaint. The case of the Plaintiffs, in short, is that the suit land belonged to one, Amir Uddin and the C.S. record

was prepared in his name. He died leaving behind only one son namely, Enu Mia. Thereafter, Enu Mia died leaving behind four sons namely, Ali Hossain, Alim Mia, Amir Ali and Forhad Ali and three daughters namely Shuktara, Fulbanu and Zayeda. S.A. record was prepared in their names. The plaintiff nos. 1 to 16 executed a deed of amicable partition being no. 2694 on 21.06.1987 and the plaintiffs started enjoying title and possession of the suit land since then. On 22.10.2020, the defendant expressed that she is the owner's heir whose name was recorded in the C.S. record and claimed title in the suit land although she has no right, title or possession in the suit land. Her claim clouded the right and title of the plaintiffs in the suit land. Hence, the plaintiffs were constrained to institute the suit.

The defendant entered appearance in the suit on 12.11.2020 by filing a written statement and disowned her claim stating that she has no right, title or possession in the suit land. On the same day, the plaintiffs and defendant jointly filed a *ৰফানামা* (compromise petition) under section 89A of the Code of Civil Procedure before the trial Court. The plaintiffs examined 01(one) witness and produced *ৰফানামা* (compromise petition) under section 89A of the Code of Civil Procedure which was marked as Exhibit-1. The defendant herself examined as DW-1 and proved her signature put in the compromise petition which was marked as Exhibit-1/1.

Upon hearing the parties and on perusal of the pleadings, evidence and compromise petition, the learned Joint District Judge, First Court, Narayangonj decreed the suit on compromise on 15.11.2020 making the compromise as part of the decree.

Being aggrieved by and dissatisfied with the judgment and decree dated 15.11.2020 passed by the learned Joint District Judge, First Court, Narayanganj, the defendant as appellant then preferred this appeal before this Court.

Mr. Mohammad Abdul Haque, the learned Advocate appearing for the appellant upon taking us through the impugned judgment and decree as well as the documents as given in the paper book at the very outset submits that, the learned Joint District Judge, First Court, Narayanganj violated the provision of law by not making reference under section 89A of the Code of Civil Procedure and whimsically delivered the impugned judgment and decree on 15.11.2020 without following the due process of law and as such the impugned judgment and decree dated 15.11.2020 is liable to be set aside for ends of justice.

He next submits that, the appellant did not understand the consequence of the decree and moreover the written statement and compromise petition were submitted on the same day and the plaintiffs concluded the entire process with undue haste within one month by practising fraud with the help of staffs of the Court.

He further contends that, no date was fixed for mediation and in the mediation no provision is there to take evidence yet the trial court without assigning any reason passed the erroneous judgment and decree which is not tenable in the eye of law and as such the impugned judgment and decree is liable to be set aside.

Finally, he submits that the impugned judgment and decree is bad in law and thus liable to be set aside and the appeal be allowed.

Per contra, Mr. S.M. Obaidul Haque, the learned Advocate appearing for respondent nos. 1-7, 9-13 and 16-29 very vehemently opposes the contention so taken by the learned Advocate for the appellant and submits that section 89A(12) of the Code of Civil Procedure provides that no appeal or revision shall lie against any order or decree passed by the Court in pursuance of settlement between the parties.

He further contends that section 96(3) of the Code of Civil Procedure provides that no appeal shall lie from a decree passed by the Court with the consent of parties.

With those submissions, the learned counsel finally prays for dismissing the appeal by affirming the judgment and decree passed by the trial Court.

We have heard the learned counsels for both the parties, perused the impugned judgment and decree, memorandum of appeal as well as other materials on record.

On going through the written statement we find that the defendant clearly expressed that she has no right, title or possession in the suit land. She stated in paragraph no. 1 of written statement, “অত্র মোকদ্দমার বাদী পক্ষের আরজির তফসিল বর্ণিত সকল বক্তব্য অত্র বিবাদী কর্তৃক স্বীকৃত হয় বটে।” She further stated in paragraph no. 2 of the written statement, “নালিশী বর্ণিত সম্পত্তিতে বিবাদী পক্ষের কোন স্বত্ত্ব, স্বার্থ ও দখল বিদ্যমান নাই।” It appears from the record that, the joint compromise petition was signed by the plaintiffs and the defendant including their Advocates on 12.11.2020. In the joint compromise petition (রফানামা) it was stipulated that the compromise petition would be part of the decree. It was clearly stated in the compromise petition that the decree

would be declared in favour of the plaintiffs where there is no right, title and possession of the defendant in the suit land. In pursuance of the compromise, the plaintiff as PW-1 and the defendant as DW-1 deposed on the same day on 12.11.2020 and they in a same voice admitted that the suit would be disposed of on mediation in accordance with the compromise petition. Thereafter, the trial Court decreed the suit on 15.11.2020 finding the compromise is correct and legal and the decree was signed on 22.11.2020.

The defendant did not raise any objection to any authority that the written statement or the compromise petition was taken under any coercion, pressure or fraud. Since the compromise petition was submitted with the consent of the defendant and the decree was passed by consent so, there is no scope to file an appeal at this stage against the impugned judgment and decree.

In this regard, reliance may be placed upon the decision passed in the case of *Deity Shanimahatma Swamy Vs. Sri C Gangaiah*, reported in AIR 1994 Kant 303 wherein it was held:

“where a compromise petition is filed by the plaintiff and some of the defendants, it is not open to the left out defendants to challenge the compromise, if they acquiesced in the joint application by their conduct.”

Further, sub-section 3 of section 96 of the Code of Civil Procedure mandates that “no appeal shall lie from a decree passed by the Court with the consent of parties.” Sub-section is based on the principle of estoppel. When the decree has been obtained by the parties being otherwise based on

the understanding and consent of the parties, they are not permitted on principle and authority to take any appeal from such consent decree. The compromise decree is not appealable even if the compromise is disputed. We get support of such view from the case of *Parveen Banu @ Purnima Vs. Bangladesh House Building Finance Corporation* reported in 42 DLR(AD)234; *Sabitri Vs. Savi*, reported in ILR 12 Pat 359.

The instant appeal preferred against the judgment and decree dated 15.11.2020 is not maintainable and appears to be barred under sub-section 12 of section 89A of the Code of Civil Procedure because no appeal or revision shall lie even against any order or decree passed by the Court in pursuance of settlement between the parties under that section.

The legislature inserted section 89A in the Civil Procedure Code in 2003 with the object of reducing backlogs and congestion of suits in courts and encouraging the litigants to go for settlement of the disputes out of the Court through Mediation. Sub-section 12 of section 89A of the Code also has been enacted with the similar object to bar the parties from preferring any appeal or revision against any decree or order who were the parties to the settlement. The parties, who entered into the settlement in pursuance of the order passed through mediation of the Court cannot file any appeal or revision before any higher forum against such decree or order passed by any Court.

Given the above facts, circumstances of the case and discussion and observation made hereinabove, we are of the view that the learned Judge of the trial Court has rightly and legally decreed the suit upon compromise.

Overall, we find no ground to interfere with the impugned judgment and decree.

Resultantly, the appeal is dismissed, however without any order as to costs.

The judgment and decree dated 15.11.2020 passed by the learned Joint District Judge, First Court, Narayanganj in Title Suit No. 229 of 2020 is hereby affirmed and upheld.

Let a copy of this judgment along with the lower Court records be transmitted to the court concerned forthwith.

Md. Mozibur Rahman Miah, J.

I agree.