

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

Present

Madam Justice Kashefa Hussain

Civil Revision No. 1918 of 2020

Md. Sumon and others

.....petitioners

-Versus-

Mosammat Rekha Begum and another

----- Opposite parties

Mr. S.M. Obaidul Haque, Advocate

----- For the petitioners

Mrs. Olia Ferdous, Advocate

----- For the Opposite Parties

Heard on: 04.12.2023 and

Judgment on 05.12.2023

Rule was issued calling upon the opposite party to show cause as to why the impugned Judgment and decree dated 12.02.2020 (decree signed on 23.02.2023) passed by the learned Joint District Judge, Additional Court, Narayanganj in Family Appeal No. 12 of 2016 disallowing/dismissing the appeal by affirming the judgment and order dated 25.04.2016, passed by the learned Senior Assistant Judge, Aryhajar, Narayanganj in Family Suit No. 05 of 2015, appointed the plaintiff petitioner as the guardian of her minor daughter (Ela) and her property decreed the suit in part should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The instant opposite parties Nos. 1 and 2 as plaintiff filed Family Suit No. 138 of 2012 which was subsequently renumbered as Family Suit No. 5 of 2015 in the court of Assistant Judge, Aryhajar, Narayangonj praying for guardianship of her minor daughter the plaintiff No. 2 impleading the instant petitioners as defendants in the suit. The trial court upon hearing the parties allowed the suit by its judgment and decree dated 25.04.2016. The defendants in the suit being aggrieved by the judgment and decree of the trial court filed Family Appeal No. 12 of 2016 which was heard by the court of Joint District Judge, Additional Court, Narayangonj. The Appellate court upon hearing the parties dismissed the appeal by its judgment and decree dated 12.02.2020 and thereby affirmed the judgment of the trial court passed earlier. Being aggrieved by the judgment and decree of the courts below the defendants in the suit being appellants in the appeal as petitioner filed a civil revisional application which is instantly before this bench for disposal.

The plaintiff's case inter alia in short is that one Md. Elisur Rahman Prodhan was the owner of enlistment of the land, described in the 'Ka' schedule, measuring of an area 61.75 decials of land under Mouza Jalkuri and another measuring of an area of 15 decimals of land under Mouza Shiyachar which were purchased vide registered Deed No. 2000 dated 25.03.2009, the said Eliasur Rahman Prodhan married the petitioner (plaintiff on

28.01.1994 as per Muslim Shariat Law and thereafter the said marriage was dissolved on 18.10.1998 giving talak by the said Eliasur Rahman Prodhan through Notary Public, Narayangonj and at that time, the plaintiff petitioner was pregnant and the age of Feotus was at about 6(six) months and the said talak was effected. Subsequently the minor Ela was born o 03.03.1999 and the plaintiff-petitioner sent a legal notice to her ex-husband Md.Eliasur Rahman Prodhan claiming the maintenance and share of her minor daughter and which was refused by the aforesaid man and also demanded that the said minor Ela was not his daughter. The ex-husband of the plaintiff died on 29.09.2010 leaving behind one Momtaz Begum as his 1st wife, one son namely Ifran and 2(two) daughters Israt and Eja and the plaintiffs as his 2nd wife and minor daughter Ela as his heirs. And as such the minor Ela will get the share of 13.43 decimals of land from his late father's property and in that circumstance the plaintiff petitioner has filed this suit for appointing her the guardian of minor daughter Ela and her property. Hence the plaintiff's Suit.

That the defendant No. 1 Jahanara Begum the grandmother of the minor Ela contested the suit by filing written statements denying the material averments of the plaint of the plaintiff-petitioner and the positive case of the defendant is that a marriage was held on 28.01.1998 between Md. Eliasur Rahman Prodhan with the plaintiff-petitioner. Thereafter the said

marriage was dissolved on 18.10.1998 between the parties through talak-e-etaifuz that is consented talak by the parties in presence of the witnesses and at that time the plaintiff-petitioner also admitted that she was not pregnant and the aforesaid matter was intimated through the legal notice on 14.12.2009. The plaintiff- petitioner has filed this false case by false pleas and now the plaintiff got married with another person and is living with him by gave birth 2(two) children. The plaintiff has no cause to file the instant suit and hence the false suit filed by the plaintiff will be dismissed on contest. Hence the defendant's case.

Learned Advocate Mr. S.M. Obaidul Haque appeared for the petitioner while learned Advocate Mrs. Olia Ferdous represented the opposite party.

Learned advocate for the petitioner submits that both courts below upon misapplication of mind came into wrong findings on guardianship and also share holding and therefore the judgment of the courts below are not sustainable and ought to be set aside. He elaborates his submissions upon asserting that the courts below even divided the respective shares of the parties but did not give any share to the mother of the deceased father of the plaintiff No. 2 although she was alive at the time of her son's death. He submits that according to the Muslim Inheritance Law if a son/daughter dies during a parent's life time the parent is

entitled to his/her respective share. He submits that the trial court however totally ignored this essential factor and committed grave error of law in its findings. Upon a query from this bench he however concedes that although the trial court did not give any share to the defendant No. 1 mother the grandmother of the plaintiff No. 2 and mother of the deceased but however the learned advocate for the petitioner concedes that the defendants in the suit did not raise the issue of the finding on shares in appeal.

There was another query from this bench regarding the counsel for the opposite parties' contention that meanwhile pending the Rule the plaintiff No. 2 daughter has already attained majority of age and therefore the Rule has become infructuous. To this query the learned advocate for the petitioner concedes that meanwhile the defendant No. 2 daughter has attained majority of age pending the Rule. He however concludes his submissions upon assertion that the courts below erroneously gave the judgment and the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned advocate Mrs. Olia Ferdous vehemently opposes the Rule. She submits that the Rule is infructuous under the circumstances since it is admitted fact that the daughter the plaintiff No. 2 has meanwhile attained majority pending the Rule. She further argues that the courts below

correctly divided the respective shares of the deceased father of the plaintiffs No. 2 following the Shariah Law. She however did not elaborate the reasons of such argument. She concludes her submissions upon assertion that therefore the Rule bears no merit and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides, perused the application and materials. Admittedly the plaintiff No. 2 was born in the year 1999 and therefore evidently she attained majority in the meanwhile pending the Rule. Therefore I am also of the considered view that so far as the Rule regarding guardianship is concerned the Rule has become infructuous.

The instant suit arose out of a suit filed by the mother plaintiff No. 1 for guardianship of her minor child following the death of the plaintiff No. 2, father. Admittedly the mother and father (the parents of the plaintiff No. 2 daughter) were divorced during the life time of the deceased father. So when the deceased died, the couple were already divorced. However in the judgment of the courts below particularly the trial court also divided the shares of the parties as to the property of the deceased and the percentage of the share that each such heirs of the deceased would be entitled to. Notice of the bench was also drawn upon the fact that in the original suit the defendant No. 1 was the mother of the deceased that is the grandmother of the plaintiff No. 2.

According to the Muslim Shariah Law the parents of any person is entitled to a share of the property of a deceased son or daughter whatever if he/she dies during the life time of the parents. In this case it appears that the trial court while dividing the shares of the parties did not take this factor into consideration. The defendants admittedly did not however raise this issue in appeal. Nevertheless, pursuant to the principles of Shariah Law and since our personal laws are guided by the Muslim Shariah Law the mother of the deceased is also entitled to her share of the property of her deceased son. However the matter of entitlement of property cannot be decided in a suit which was primarily filed for guardianship of a minor. The division of shares of property in a suit for guardianship is superfluous and ought not to have been done. The courts below ought not to have decided the shares of the parties in a suit for guardianship. The share of parties ought to be decided in an appropriate suit whatsoever.

Under the foregoing discussion made above and the facts and circumstances of the case, the Rule is infructuous so far as the guardianship of the plaintiff No. 2 is concerned.

In the result, the Rule is disposed of with directions and observations. So far as the issue of the guardianship of the plaintiff No. 2 is concerned since she has already gained majority of age, the Rule is infructuous. However as to the observation of

the courts below on the issue of the shares those observation and findings are expunged and rendered invalid. If the parties are so advised they can file an appropriate suit before the appropriate forum for division of their shares respectively in accordance with the Muslim Shariah Law.

The order of stay granted earlier by this court is hereby recalled and vacated.

Send down the Lower Court Record at once.

Communicate the order at once.

Shokat (B.O)