

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.272 OF 2021

In the matter of:

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

And

Manu Mia being dead his heirs- Sharful Begum and others

... Petitioners

-Versus-

Ramiz Mia being dead his heirs- Josna Begum and others

... Opposite parties

Mr. Khondaker Md. Taufiqul Huq, Advocate

.... For the petitioners.

Mr. Md. Fazlur Rahman, Advocate

.... For the opposite party Nos.1-2.

Heard on 21.11.2024 and Judgment on 26.01.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-2 to show cause as to why the impugned judgment and decree dated 30.09.2020 passed by the learned Joint District Judge, Additional Joint District Judges Court, Cumilla in Title Appeal No.406 of 2011 modifying the judgment and decree dated 11.10.2011 passed by the learned Senior Assistant Judge, Daudkandi, Cumilla in Title Suit No.117 of 2003 decreeing the suit should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for partition of 211 acres land appertaining to C.S Khatian No.220 seeking a separate saham for 127.16 acres land alleging that above property belonged to Rahim Uddin who transferred 81 acres land to the plaintiff Mono Mia and Lal Miah by registered deed of gift dated 25.02.1942 and he again transferred 130 decimal land to the plaintiff and Shamorthaban by registered deed of gift and plaintiff is in possession in above land and which had not been partition by metes and bounds and the defendants refused to effect an amicable partition.

The suit was contested by defendant Nos.1, 2, 15, 18, 20, 21 and 49 by submitting separate written statements. All above defendants denied the legality and effectiveness of above two registered deed of gifts executed by Rahim Uddin and stated that above two gift deeds were never acted upon. Rahim Uddin died leaving four sons namely Anu Miah, Lal Miah, Abdur Rahman and Abdul Aziz and one daughter Samorthaban and Anu Miah died during the life time of his father leaving the plaintiff as only heir and plaintiff inherited the share of his deceased father Anu Miah but he has transferred his land in the disputed joma by several registered kabala deeds to defendant Nos.1, 2 and 49 and he has title and possession only in remaining 5 decimal land.

At trial plaintiff examined 2 witnesses and defendants examined 4 witnesses and they also submitted their respective registered gift deeds and kabala deeds which were marked exhibits.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed above suit in part and granted the plaintiff separate saham for 28.5 decimal land and defendant Nos.15, 18, 20 and 21 were granted separate saham.

Being aggrieved by judgment and decree defendant Nos.1 and 2 preferred Title Appeal No.406 of 2011 to the District Judge, Cumilla which was heard by the learned Joint District Judge, Additional Court who allowed the appeal and modified the saham of the plaintiff to 5 decimal land, defendant No.1 was granted separate saham for 10.79 decimal, defendant No.2 was granted saham for 8.29 acres, defendant No.20 was given saham for 4 decimal land, defendant 21 was given sahum for 4.96 decimal land and defendant No.49 was allotted separate sahum for 24 decimal land.

Being aggrieved by above judgment and decree of the Court of Appeal below respondent No.1 who was plaintiffs of the original suit as petitioner moved to this Court with this revisional application under Section 115(1) of the Code of Civil Procedure and obtain this Rule.

Mr. Khandoker Md. Taufiqul Huq, learned Advocate for the petitioners submits that the petitioner claimed separate saham for 28.5 decimal land on the basis of two registered deed of gift dated 25.02.1942

and 16.03.1948 but the Courts below concurrently held the land of the later deed of gift marked as Exhibit No.3 does not attract the disputed land and the registered deed of gift dated 25.03.1942 (Exhibit No.2) was not acted upon and plaintiff was given saham 28.5 decimal land as grandson and heir of Rahim Uddin but on scrutiny of the registered kabala deeds allegedly executed by the plaintiff in favor of defendant No.1, 2 and other defendants and produced in the Court of Appeal below it appears that the plaintiff has in fact transferred 23.5 decimal land and he had subsisting interest and title only in 5 decimal land and the learned Judge of the Court of Appeal below has rightly modified the share of the plaintiff and granted him separate saham for remaining 5 decimal land. The learned Advocate frankly concedes that he is unable to find any infirmity or illegality in the impugned judgment and decree of the Court of Appeal below and filing this Civil Revision at instance of the plaintiff was misconceived.

On the other hand Mr. Md. Fazlur Rahman, learned Advocate for the opposite party Nos.1 and 2 submits that the learned Court of Appeal below on consideration of additional evidence of defendant Nos.1 and 2 and other oral and documentary evidence adduced by other defendants correctly calculated the share of the plaintiffs and each and every defendant who sought saham and rightly allocated 5 decimal land in the saham of the plaintiff and defendant Nos.1 and 2 were granted separate saham for 10.79 and 8.29 decimal land. Defendants

were satisfied with the judgment and decree of the Court of Appeal below and the share granted in favor of every contesting defendant. Since plaintiffs had subsisting interest only in 5 decimal lands the Court of Appeal below rightly reduced the share of the plaintiff to 5 decimal land which calls for no interference.

I have considered the submissions of the learned Advocate for respective parties and carefully examined the pleadings, judgment of the courts below and evidence adduced at trial.

As mentioned above 2.11 acres land of C.S Khatian No.222 belonged Rahim Uddin and plaintiff and defendant Nos.1 and 2 are successive heirs of above Rahim Uddin. It is also admitted that the plaintiff and defendant Nos.1 and 2 have transferred their land by several registered kabala deeds to other defendants. The learned judge of the court of appeal below has on a detailed analysis of the oral and documentary evidence recalculated the respective shares of the plaintiff and defendants and reduced the share of the plaintiff from 28.5 decimal land to only 5 decimal and modified and granted separate share for defendant Nos.1 and 2 for 10.79 and 8.29 decimal land respectively. The learned Judge also granted separate saham for defendant No.49 for 24 decimal lands.

All above defendants are satisfied with the quantum of share allotted to their saham by the Court of Appeal below and it was only respondent No.1/plaintiff who challenged the legality and propriety of

above judgment and decree of the Court of Appeal below. The learned Advocate for the petitioner has conceded that the plaintiffs having transferred his land to defendants by several registered kabala deeds and in fact his saham reduced to only 5 decimal land and the learned Judge of the Court of Appeal below has rightly granted plaintiff separate saham for above 5 decimal land which calls for no interference.

On consideration of above submissions of the learned Advocate for the petitioner and opposite party Nos.1 and 2 and materials on record I am unable to find any infirmity or illegality in the impugned judgment and decree of the Court of Appeal below nor I find any substance in this Civil Revision under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection liable to be discharged.

In the result, Rule is discharged. The order of stay granted at the time of issuance of the Rule is vacated.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER