

**District- Noagaon**

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

Present:

Mr Justice Md Atoar Rahman

**Civil Revision No 783 of 2022**

Mst Fotejan Bewa

... plaintiff-petitioner

- versus-

Mst Sarvan Bewa and others

... defendants-opposite parties

Mr Md Mesbahul Islam Asif, Advocate

...for the plaintiff-petitioner

Mr Md Ahmed Nowshed Jamil, Advocate  
with

Ms Lily Rani Saha, Advocate

... for the defendant-opposite parties

**Heard on: 16.01.2024, 21.01.2024 and  
05.02.2024**

**Judgment on: 18.02.2024**

This Rule was issued by leave on an application under section 115(4) of the Code of Civil Procedure, 1908 calling upon the opposite parties to show cause as to why the judgment and order dated 04.10.2021 passed by the learned Additional District Judge, 2<sup>nd</sup> Court Noagaon in Civil Revision No 56 of 2018 rejecting the same and thereby affirming the judgment and order dated 03.06.2018 passed by the learned Senior Assistant Judge, Manda, Noagaon in Other Class Suit No 220 of 2011 rejecting the application for stay should not be set

aside and/or passed such other or further orders as to this court may seem fit and proper.

The present petitioner Mst Fotejan Bewa instituted a suit being Other Class Suit No 220 of 2011 before the Senior Assistant Judge, Manda, Noagaon for a declaration that the judgment and decree dated 31.05.2011, passed by the learned Senior Assistant Judge, Manda, Noagaon in the Partition Suit No 84 of 1998 was collusive and not binding upon her stating *inter alia* that the opposite parties as plaintiffs filed a suit being Partition Suit No 84 of 1998 in respect of 09.74 acres including 00.1650 acres of land accrued by her vide a registered deed of gift No 4929 dated 16.02.1975 without making her party thereto. The suit was decreed on 31.05.2011 in preliminary form and separate saham was given to the opposite party which seriously affected the petitioner's right, title and interest over the property described in the schedule. Hence the original suit being No 220 of 2011 was filed. After filing the above suit the plaintiff-petitioner filed an application for staying the operation of the judgment and decree passed in the Partition Suit No 84 of 1998. The learned Senior Assistant Judge after hearing was pleased to reject the same by his judgment and order dated 03.06.2018 against which the plaintiff petitioner preferred a civil revision being Civil Revision No 56 of 2018 before the learned District Judge, Noagaon under section 115(2) of the Code of Civil Procedure. On transfer said civil revision was heard by the learned Additional

District Judge, 2<sup>nd</sup> Court, Noagaon who was pleased to disallow the same by his judgment and order dated 04.10.2011.

Being aggrieved by and dissatisfied with the above judgment and order of the revisional court the plaintiff petitioner moved this court with an application under section 115(4) of the Code of Civil Procedure and obtained the present Rule by leave and the order of stay.

Mr Md Mesbahul Islam Asif, the learned Advocate, appearing on behalf of the plaintiff petitioner submits that both the courts below committed an error of law resulting in an error in the decisions occasioning failure of justice in not considering that the judgment and decree passed in the Partition Suit No 84 of 1998 was not binding upon the petitioner as she had not been made party in that suit. He further submits that the petitioner by challenging the same filed the subsequent suit and if the operation of the impugned judgment and decree of the partition suit is not stayed the subsequent suit would become in fruituous and, as such, the Rule deserves to be made absolute.

Mr Ahmed Nowshed Jamil, the learned Advocate appearing on behalf of the defendant opposite parties submits that by the judgment and decree passed in the Partition Suit No 84 of 1998 the plaintiffs were allotted 00.8960 acres of land and contesting defendants were allotted 1.9510 acres of land and 06.893 acres of land remains as residuary. The plaintiff petitioner had an opportunity to seek saham in that suit from the residuary share. But without doing so she has filed

the instant suit just to frustrate the decree obtained by the opposite party. He further submits that the petitioner has failed to make out any case of exceptional circumstances by which she can pray exercise of inherent power of the court under section 151 of the Code of Civil Procedure, as such, application for stay was liable to be rejected and the learned Judge of the trial court rightly and perfectly rejected the prayer for staying operation of the Partition Suit No 84 of 1998 and learned Judge of the revisional court did not commit any error of law in disallowing the revisional application by the impugned judgment and order and, accordingly, the present Rule does not have any merit and accordingly the same is liable to be discharged.

I have heard the submissions placed by the learned Advocates for both the parties and perused the record along with the impugned judgment and other connected papers.

It transpires that quantity of the scheduled land in the Partition Suit No 84 of 1998 was 09.74 acres. Out of such land in two schedules the plaintiffs of that suit were allotted 00.8960 acres and the contesting defendants No 7Ka-7Cha were allotted 01.9510 acres of land by the preliminary decree. The present petitioner has claimed that out of 07.83 acres of land in the Ka schedule she has got 00.1650 acres of land from her husband Bodor Ali vide a deed of gift bearing No 4929 of 1975, dated 19.02.1975. Since the present plaintiff-petitioner was not made party in the partition suit she can challenge the judgment and decree

passed in that partition suit and learned trial judge also found that the suit filed by the present plaintiff challenging the partition suit was maintainable. However, it appears that the proceeding of the partition suit is still pending. Thus, the present petitioner has still an opportunity to seek saham in that suit from the residuary share of 06.893 acres of land. On the other hand, if further proceeding of the partition suit is stayed as per the prayer of the present petitioner till disposal of the Title Suit No 220 of 2011 the decree holders and the contesting defendants of the partition suit who got saham will be deprived from getting the fruits of that suit.

In view of the discussions made above, I am of the opinion that the learned Judge of the trial court rightly disallowed the application for stay and the learned Additional District Judge did not commit any error of law in disallowing the civil revision by the impugned judgment and order and, as such, the Rule does not have any substance and accordingly the same is liable to be discharged.

In the result the Rule is discharged without any order as to cost. The impugned judgment and order passed by the learned Additional District Judge in the Civil Revision No 56 of 2018 is affirmed and the order of stay granted during issuance of the Rule is hereby recalled and vacated.

Let a copy of this judgment be transmitted at once.