

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.2913 of 2021

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Ruhul Amin and others

....Defendant-Respondent-petitioners

-Versus –

Rehana Begum and others

...Plaintiff-Appellant-Opposite Parties

Mr. Md. Moazzem Hossain, Advocate

.... For the petitioners

No one appears

.....For the Opposite-Parties

**Heard on 05.11.2023, 12.12.2023
and judgment on 14.12.2023**

Md. Kamrul Hossain Mollah, J:

On an application by the petitioners, under section 115(1) of the Code of Civil Procedure, this Rule was issued in the following terms:

Let a Rule be issued calling upon the plaintiff-opposite party No.1 to show cause as to why the judgment and decree dated 25.08.2021 (decree signed and sealed on 06.09.2021) passed by the learned Additional District Judge, Madaripur in Title Appeal No.127 of 2013 arising out of Title Suit No.08 of 2011 allowing the Title Appeal No.127 of 2013 and thereby

reversing the judgment and decree dated 23.09.2013 (decree signed and sealed on 29.09.2013) passed by the learned Assistant Judge, Rajoir Assistant Judge Court, Madaripur should not be set-aside and or pass such other order or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court directed the parties to maintain status-quo in respect of possession and position of the suit land for a period of 06(six) months from date.

Facts necessary for disposal of the Rule, in short are that, Ahmed Shake, Jobedali Shake, Monazuddin Shake, hasem Dhali, Munsuruddin Shake, Emanuddin Shake and Shutu Bibi were the recorded owner of .82 decimals of land under S.A. Plot Nos.252,256,257,265 under S.A. Khatian No.44. Thus, being owner of .1366666 decimal of land as recorded owner, Munsuruddin Shake has died leaving behind two daughters namely Manikko Bibi and Saheron Bibi and one brother namely Emanuddin Shake. Thus, two daughters get .09111115 acre and brother get .04555555 acre of land. Manikkobibi and heirs of Saheron Bibi are the defendant Nos.17,18 and 19 respectively. Enanuddin as recorded owner and heirs from his brother become the owner of total .1822222 acre of land and died leaving behind one son namely Monasef Shake and two daughters namely Kulsum Bibi (defendanbt No.2) and Rehana Begum, who is the plaintiff-appellant-opposite party. Monasef Shake get .0911111 acre and each Kulsum and Rehanget .455555 acre of land respectively. Thus, the opposite parties Nos. 20-24 are the heirs of Monasef Shake, opposite parties Nos.15-16 are the heirs of recorded owner Hasen Dhali. The petitioners and opposite parties

Nos.3-14 are the heirs of Monazuddin Shake, opposite party No.25 is the heir of Jobedali Shake and the opposite party No.26 is the heir of Chutu Bibi. Another recorded owner Ahmed Shake has died leaving behind two daughters who have died without having any heirs. The opposite party No.1 has also stated in the plaint that the scheduled .52 acre land was previously null land (cultivated land) and the plaintiff-opposite party No.1 being owner of her share of .0455555 acre of land has developed the land planted different trees and build her residential house where she resides and the opposite party No.1 has no other land except this house. On dated 02.01.2011 the petitioner disclosed that she has purchased the scheduled land from the sister of the plaintiff namely Kulsum Bibi who is the opposite party No.2 and claimed possession. The opposite party No.1 for the first time became informed about the sale of the scheduled property and she has jumped over to the yard and struck her chest in repentance. At that time the local person namely Abdul Gafur Mollah, Sekender Faraji came to that place and saw the opposite party No.1 and in their presence the opposite party No.1 requested the petitioner to receive the consideration money and return the scheduled land to the plaintiff, but the petitioner has refused to do so and thereafter, on 03.01.201 the opposite party No.1 get the certified copy of the impugned deed where it is apparent that the petitioner purchased the scheduled land vide deed No.2185 dated 06.06.2010. Though the petitioner purchased the scheduled land, but she has never come to the possession of that land and before purchase of the scheduled land the petitioner have never issued any notice upon the opposite party No.1. The petitioner resides in her own house which is under plot No.252

and she has no need of the scheduled land, whereas the opposite party No.1 resides in the scheduled plot and the scheduled land is her adjacent land and the scheduled land is mostly needed for her. Thus, the opposite party No.1 has filed this suit for Muslim Pre-emption.

On the other hand, the petitioner contested the suit by filing a written statement where the defendant has denied all the material facts made on the plaint and contending inter alia that the case is barred by limitation, principle of waiver and stopple, plaintiff has no cause of action and locus standi, the suit is not maintainable in its present form and manner and stated in the fact that Monajuddin Shake was one of the recorded owner of the scheduled land and as his heirs the plaintiff and the defendant No.2 have become the owner of the scheduled plot. The defendant No.2 namely Kulsum Bibi, being owner as heir of her father, has declared to sell the scheduled land and requested the plaintiff and the defendant No.20 to purchase the scheduled land, but they have refused to purchase. Then with the knowledge of the plaintiff and with the mediation of the defendant No.20, this petitioner has purchased the suit land. The defendant No.20 has settled the price of the land also and in the presence of the plaintiff and the defendant No.20, on 06.06.2010 the sale deed has executed and registered and on that date in the presence of the plaintiff and other co-sharers this defendant No.1 got possession of the scheduled land. Thus, the defendant No.1 has become the owner of the scheduled land vide the impugned deed and also in possession. The plaintiff collusively with ill motive has filed this suit and also has not performed the mandatory provision of Muslim Law. Thus, this defendant prayed for dismissing the suit.

The opposite party No.1 adduced as many as 3 witnesses and the defendant petitioner adduced as many as 3 witnesses to prove this case. After examining the oral and documentary evidence of the parties, the learned Judge of the trial Court dismissed the suit by his judgment and decree dated 23.09.2013 (decree signed and sealed on 29.09.2013).

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 23.09.2013 (decree signed and sealed on 29.09.2013) passed by the learned Assistant Judge, Rajoir Assistant Judge Court, Madaripur in Title Suit No.08 of 2011 the opposite parties preferred the Title Appeal No.127 of 2013 before the learned District Judge, Madaripur. Thereafter, the same was transferred to the learned Additional District Judge, Madaripur for disposal. After hearing both the parties the learned Additional District Judge, Madaripur allowed the appeal and thereby reversed the judgment and decree dated 23.09.2013 (decree signed and sealed on 29.09.2013) by his judgment and decree dated 25.08.2021 (decree signed and sealed on 06.09.2021).

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 25.08.2021 (decree signed and sealed on 06.09.2021) passed by the learned Additional District Judge, Madaripur in Title Appeal No.127 of 2013 allowing the appeal and setting-aside judgment and decree dated 23.09.2013 (decree signed and sealed on 29.09.2013) passed by the learned Assistant Judge, Rajoir Assistant Judge Court, Madaripur in Title Suit No.08 of 2011 the petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of Status-quo.

Mr. Md. Moazzam Hossain, the learned Advocate appearing for the petitioner at the very outset submits that the statement and submission made by the plaintiff in the plaint and examination in chief, and the witnesses adduced by him is contradictory among them, but the appellate Court below passed the impugned judgment without taking into consideration of the said documentary evidence and examination of the witnesses occurs error of law resulting in an error in the decision occasioning failure of justice and as such, the impugned judgment and decree of reversal is liable to be set-aside.

He further submits that since the suit is decreed, the opposite party No.1 is trying to evict the petitioners from the suit property in question. The learned Appellate Court did not consider the deposition of the defense witness No.2, rather, most illegally allowed the appeal reversing the judgment and decree passed by the learned trial Court, which appears to have committed error of law resulting in an error in such decree, occasioning failure of justice and hence, the impugned judgment and decree of reversal is liable to be set-aside.

He next submits that the plaintiff did not perform the provision of Talab-i-mowasibat and Talab-i-ishhad according to the provision of Muslim Law. Accordingly, the trial Court correctly took the decision and dismissed the pre-emption case, but the appellate Court most illegally allowed the appeal with wrong finding.

The learned Advocate lastly submits that the appellate Court below passed the impugned judgment without reversing the finding and decision of the trial Court which have committed error of law resulting in an error in

the decision occasioning failure of justice. Accordingly, he prays for making the Rule absolute.

No one appears to oppose the instant Rule for the opposite-parties.

I have considered the submission of the learned Advocate for the petitioner minutely, perused the revisional application, the impugned judgment and decree of the Court below, the papers and documents as available on the record.

It is found from the lower Court records and evidences from both the parties that Monajuddin Shake was one of the recorded owner of the scheduled land and as his heirs the plaintiff and the defendant No.2 have become the owner of the scheduled plot. The defendant No.2 namely Kulsum Bibi, being owner as heir of her father, has declared to sale the scheduled land and requested the plaintiff and the defendant No.20 to purchase the scheduled land, but they have refused to purchase. Then with the knowledge of the plaintiff and with the mediation of the defendant No.20, this petitioner has purchased the suit land. The defendant No.20 has settled the price of the land also and in the presence of the plaintiff and the defendant No.20, on 06.06.2010 the sale deed has executed and registered and on that date in the presence of the plaintiff and other co-sharers this defendant No.1 got possession of the scheduled land. Thus, the defendant No.1 has become the owner of the scheduled land vide the impugned deed and also in possession. The plaintiff collusively with ill motive has filed this suit and also has not performed the mandatory provision of Muslim Law that is Talab-i- mowsibat and Talab-i- ishad. After hearing, the learned Judge of the trial Court dismissed the suit by his judgment and

decree dated 23.09.2013 (decree signed and sealed on 29.09.2013) rightly. Being aggrieved by and dissatisfied with the impugned judgment and decree dated 23.09.2013 (decree signed and sealed on 29.09.2013) passed by the learned Assistant Judge, Rajoir Assistant Judge Court, Madaripur in Title Suit No.08 of 2011 the opposite parties preferred the Title Appeal No.127 of 2013 before the learned District Judge, Madaripur. Thereafter, the same was transferred to the learned Additional District Judge, Madaripur for disposal. After hearing both the parties the learned Additional District Judge, Madaripur allowed the appeal and thereby reversed the judgment and decree dated 23.09.2013 (decree signed and sealed on 29.09.2013) by his judgment and decree dated 25.08.2021 (decree signed and sealed on 06.09.2021) illegally because the evidence of PW.1 is not corroborated by the PW. 2 and PW. 3 about the performance of mandatory provision of Muslim law that is Talab-i- mowsibat and Talab-i- ishad and for that reason as which is not maintainable in the eye of law.

Considering the above facts, circumstances and Court's record, this Court come to the conclusion that, the case of the plaintiff-opposite parties is barred by limitation, principle of waiver and stopple, plaintiff has no cause of action and locus standi, the suit is not maintainable in its present form and manner and the learned Additional District Judge, Madaripur without considering materials on record illegally passed the impugned judgment and decree dated 25.08.2021 in Title Appeal No.127 of 2013 allowing the Appeal and setting-aside the judgment and decree dated 23.09.2013 passed by the learned Assistant Judge, Rajoir Assistant Judge Court, Madaripur in Title Suit No.8 of 2011.

In view of the above discussion, facts and circumstances, this Court finds merit in the present Civil Revision Case and as such, in the impugned judgment and decree warrants interference by this Court and as such, the Rule is maintainable in the eye of law.

In the result, the Rule is made absolute without any order as to costs.

The judgment and decree dated 25.08.2021 passed by the learned Additional District Judge, Madaripur in Title Appeal No.127 of 2013 is hereby set-aside and the judgment and decree passed by the learned trial Court vide judgment and order dated 23.9.2013 is upheld and confirmed.

The order of Status-quo granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

Send down a copy of this judgment and order with the LCR to the concerned Court below at once for necessary action.