

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2383 OF 2021

In the matter of:

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

And

Md. Mojibur Rahman Howlader @ Md. Ruhul Amin
Howlader and others

... Petitioners

-Versus-

Joinal Bepari @ Sheikh and others

... Opposite parties

Mr. Garib Newaz with

Mr. Mohammad Abdul Khaleque, Advocates

...For the petitioners.

Mr. Md. Mahadi Hassan, Advocate

... For the opposite party Nos.1-3.

Heard on 06.11.024 and Judgment on 20.11.2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-7 to show cause as to why the judgment and decree dated 24.08.2021 passed by the learned Additional District Judge, Madaripur in Title Appeal No.137 of 2014 allowing the appeal upon reversing the judgment and decree dated 31.08.2014 passed by the learned Senior Assistant Judge, Madaripur, Madaripur Sadar, Madaripur in Title Suit No.156 of 2004 dismissing 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 opposite parties as plaintiffs instituted above suit for a decree of partition seeking a separate saham for 52 decimal land out of 1.44 acre of S.A. Khatian No.21.

It was alleged that above property belonged to Deraj Uddin and his three sisters namely Saju Bibi, Maju Bibi and Boru Bibi. Deraj Uddin got 57 decimal land and his each sister got 29 decimal land. Above Deraj Uddin transferred 16 decimal land to Reaz Uddin. Plaintiffs are in possession in 52 decimal land by way of inheritance and purchase.

Defendant Nos.1-11 contested the suit by filing a joint written statement alleging that 2.98 acre land including the disputed land belonged to Jahir Uddin and C.S. Katian No.14 was correctly recorded. Jahir Uddin died leaving 2 sons Ansar Uddin and plaintiffs predecessor Deraj Uddin and 3 daughters Boru Bibi, Maju Bibi and Saju Bibi and by amicable partition land of R.S katian No.24 was possessed by Deraj Uddin and above three sisters. Above Deraj Uddin transferred 73 decimal land to the predecessor of the defendant namely Rafiz Uddin by registered kabala deed dated 21.09.1948. The heirs of above Maju and Saju transferred 14 decimal land to the predecessor of the defendant by registered kabala deed dated 07.02.1949. Thus the defendants are owning and possessing 92 decimal land and above land was correctly recorded in their names in the relevant R.S. and S.A. khatians. The defendants further claim that they also purchased 5 decimal land orally from Deraj Uddin and above land was correctly

recorded in the names of the defendants in the relevant R.S. and S.A. khatians.

At trial plaintiffs examined 4 witnesses and defendants examined 3. Documents of the plaintiff were marked as Exhibit No.1 series and 2 and those of the defendants were marked as Exhibit Nos.Ka, Kha, Ga, Gha, Uma, Cha and Chaa series respectively.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree of the trial Court plaintiffs preferred Title Appeal No.137 of 2014 to the District Judge, Madaripur which was heard by the learned Additional District Judge who allowed the appeal set aside the judgment and decree of the trial court and decreed the suit.

Being aggrieved by and dissatisfied with the above judgment and decree of the Court of Appeal below respondents as petitioners moved to this court and obtained this Rule.

Mr. Garib Newaz, learned Advocate of the petitioner submits that the plaintiffs have claimed that disputed land belonged to Deraj Uddin and his three sisters Saju Bibi, Maju Bibi and Boru Bibi but they did not mention the source of their title. The defendants stated in their written statement that the disputed property originally belonged to Jahir uddin who died leaving two sons Deraj Uddin and Ansar Uddin and three daughters Saju Bibi, Maju Bibi and Baru Bibi. Plaintiff No.1(Ka) while

giving evidence as PW1 has admitted in cross examination that disputed property belonged to Jahir Uddin who died leaving two sons Ansar uddin and Deraj Uddin and three daughters Baro Bibi, Maju Bibi, Saju Bibi as his heirs. The plaintiffs have excluded Ansar Uddin from the plaint nor the plaintiffs have brought into hotspot the total 2.98 acres land of Jahir Uddin. The learned Judge of the Court of Appeal below failed to appreciate above evidence on record and most illegally allowed the appeal and decreed the suit which is not tenable in law.

Mr. Md. Mahadi Hassain, learned advocate for the opposite party Nos.1-3 frankly concedes that originally disputed property belonged to Jahir Uddin and he died leaving two sons Ansar Uddin and Deraj Uddin and three daughters Boru Bibi, Maju Bibi and Saju Bibi who acquired above property by inheritance. Above Ansar Uddin was not impeaded in this suit as a defandent. Moreover, Jahir Uddin had title and possession in 2.98 acres land and the same was correctly recorded in C.S katian No.14 but this suit for partition was instituted for partial land of Jahir Uddin and his total 2.98 acres land was not brought into the hotchpot. Above deficiency in the plaint was caused due to professional inexperience and lack of skill of the concerned Advocate for the plaintiffs who drafted the plaint and the plaintiffs who are illiterate village residents should not made to suffer for that. The learned advocate submits that the ends of justice will be met if the impugned judgment and decree of the Court of Appeal below is set aside and the suit is remanded to the trial Court for retrial after giving

both parties an opportunity to amend their pleadings and adduce further evidence.

I have considered the submissions of the learned advocate for respective parties and carefully examined all materials on record.

Admittedly 2.98 acre land including disputed 52 decimal land belonged to Jahir Uddin and C.S. khatian No.14 was recorded and he died leaving two sons Ansar Uddin and Deraj Uddin and three daughters Boru Bibi, Maju Bibi and Saju Bibi.

Plaintiffs claim 57 decimals land by inheritance as heirs of Deraj Uddin and by purchase from the heirs of Boru Bibi and Maju Bibi. On the other hand defendants claims 92 decimal land on the basis of purchase from Deraj Uddin and the heirs of Maju Bibi and Saju Bibi by registered kabala deeds. As such plaintiffs and defendants are co-shares in the land of C.S. khatian No.14. The plaintiffs have instituted this suit for partition without impleading Ansar Uddin nor they have incorporated total 2.98 acres ejmali property of Johir Uddin. It is well settled that in a suit for partition each co-sharer and every piece of ejmali property must be brought into the hotchpot of the suit and if one co-sharer or any part of the ejmali property is excluded the suit must fail. In view of above fatal deficiency in the plaint this suit for partition is liable to be dismissed.

Learned advocate for the opposite party Nos.1-3 has rightly pointed out that above deficiency and errors in designing and drafting the plaint was caused due to inexperience and lack of skill of the

concerned Advocate and the plaintiffs had no contribution in the same. A litigant should not be made to suffer for the errors or mistakes committed by his appointed Advocate. Since the plaintiffs and defendants are co-shares none will be barred by law from bringing a fresh suit for partition. But the parties of this suit are litigating for a long period of time. As such dismissing above suit for above procedural grounds and leaving the parties to institute a fresh suit for partition will cause further delay and monetary loss for both the parties. But if the impugned judgment and decree is set aside and the suit is remanded to the trial court for retrial that will benefit both the parties in terms of money and time.

In above view of the materials on record I hold that the ends of Justice will be met if the impugned judgment and decree passed by the learned Judge of the Court of Appeal below is set aside and suit is remanded to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduced further evidence.

In the result, the Rule is hereby made absolute with cost of Tk.20,000/- (twenty thousand) to be paid by the opposite parties Nos.1-11 to the petitioners within 60 days from the date of receipt of this order in default this Rule shall stand discharged .

The impugned judgment and decree dated 24.08.2021 passed by the learned Additional District Judge, Madaripur in Title Appeal No.137 of 2014 is set aside and the Title Suit No.137 of 2014 is remanded

to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence if any.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER