

District-Narayangonj

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

Civil Revision No. 3372 of 2022

Asma Akter
..... Petitioner
Versus
Khaleda Akter
.....Opposite party

Mr.M. Ataul Goni with
Mr. Minarul Islam, Advocate
.....For the petitioner
Mrs.Esmat Sultana, Advocate
.... For the opposite party

Present:

Mr. Justice Gobinda Chandra Tagore

Heard on: 23.05.2023, 17.08.2023, 18.10.2023, and
Judgment on:07.05.2024.

1. In this Civil Revision, the Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 20.06.2022 (decree signed on 26.06.2022) passed by the learned District Judge, Narayangonj in Family Appeal No.01 of 2022 dismissing the appeal and thereby affirming the judgment and decree dated 28.11.2021 passed by the learned Senior Assistant Judge, 2nd Court, Narayangonj in Family Suit No.27 of 2018, decreeing the suit should not be set aside and/or why such other or further order or

orders as to this Court may seem fit and proper, shall not be passed.

Pending the hearing of the Rule, the operation of the judgment and decree dated 20.06.2022 (decree signed on 26.06.2022) passed by the Court of Appeal below was stayed initially for 1(one) year. Subsequently, the period of stay was extended from time to time.

2. The petitioner as plaintiff instituted Family Suit No.27 of 2018 in the 2nd Court of learned Senior Assistant Judge, Narayangonj under section 5(uma) of the Family Court Ordinance, 1985 for appointing her guardian of her minor son, Junayed Hasan.
3. The plaintiff's case, in short, is that the plaintiff's husband Md. Hasan Liton died on 28.12.2016 leaving behind his wife, the plaintiff and a minor son, Junayed Hasan. Md. Hasan Liton was the owner and possessor of 34.62 decimals of land. After his death, his minor son became the owner of 24.50 decimals of land. After the death of her husband, the plaintiff has been maintaining all the expenditures of the minor boy. To maintain the minor boy it was necessary

to transfer the property of the minor boy. Accordingly, she filed the Family Suit.

4. The defendant contested the suit by filing a written statement denying the material allegation and claim made in the plaint and contending, *inter alia*, that the suit is not maintainable, the plaintiff has no *locus standi* and there is no cause of action of the suit. Her specific case is that the minor's father, Md. Hasan Liton died on 28.12.2016 leaving behind his wife, the plaintiff, one minor son and his mother, the defendant. The minor's grandfather, Abul Hasnat was the owner and possessor of 59.33 decimals of land within Chasara mouza, Police Station-Narayangonj Sadar, District-Narayangonj. After his death, the defendant got 6.666 decimals of land and minor's father got 31.109 decimals of land and one daughter got 15.554 decimals of land and accordingly, they had been possessing the property jointly. After the death of the minor's father, the defendant got 5.183 decimals of land as his mother. The plaintiff got 3.888 decimals of land while the minor son got 22.036 decimals of land. The defendant had been enjoying and possessing a 4-storied building constructed on

4.33 decimals of land at Chasara Ma Khondo mouza under Narayangonj Sadar Police Station by letting out the building to various tenants and has been maintaining all the expenditures of her and minor's life but, the plaintiff in collusion with her brother was trying to grab the minor's property and accordingly, the suit should be dismissed.

5. Upon trial, the Trial Court decreed the suit appointing the plaintiff as the legal guardian of her minor son.
6. Against the judgment and decree of the Trial Court, the defendant preferred Family Appeal No.01 of 2022 in the Court of Learned District Judge, Narayangonj. After hearing both the parties, the Court of Appeal below by the judgment and decree dated 20.06.2022 (decree signed on 26.06.2022) dismissed the appeal and thereby, affirmed the judgment and decree of the Trial Court.
7. After obtaining the decree from the Trial Court, the plaintiff on 15.02.2021 filed an application for permission to sell the property of the minor as described in the schedule to the plaint. The said application was taken up for hearing on

04.07.2022. Against the said application, the defendant-petitioner raised an objection and accordingly, the said application for sale permission is still pending. The defendant filed the instant Civil Revision against the judgment and decree of affirmance passed by the Courts below appointing the plaintiff-opposite party as the legal guardian of the minor boy and accordingly, obtained the Rule and the interim order of stay.

8. The Rule was heard elaborately from both sides and the matter has been fixed for the pronouncement of judgment. At this stage, both parties filed a joint application for disposal of the Rule on compromise since they entered into a compromise agreement on 15.02.2024. By the compromise agreement, all the parties mutually partitioned their joint property as per the Mahomedan Law. At this stage, Mr. M. Ataul Goni, learned Advocate for the petitioner and Mrs. Esmat Sultana, learned Advocate for the opposite party jointly submit that since the dispute between the parties has been mutually settled, the Rule should be disposed of as per the Compromise Agreement. However, the learned

Advocate for the opposite party submits that though the dispute has been mutually settled upon entering into a compromise agreement, the compromise agreement has yet not been acted upon and accordingly, the parties should be directed to act upon the compromise agreement within the shortest possible time and in that case, the plaintiff-opposite party need not any sale permission to sale the property of the minor boy.

9. I have perused the Civil Revision along with the records of the Courts below and the joint application for compromise and also heard the learned Advocates from both sides.
10. It appears that the opposite party as plaintiff instituted Family Suit No.27 of 2018 in the 2nd Court of learned Senior Assistant Judge, Narayangonj for appointing her as the legal guardian of her minor boy, Junayed Hasan. The suit was decreed by the Trial Court and on appeal, the same was affirmed by the Court of Appeal below. Against the judgment and decree of the Court of Appeal below, the defendant as petitioner filed the instant Civil Revision. In the meantime, after obtaining the decree from the Trial Court, the plaintiff-opposite party filed

an application for permission to sell the property of her minor son to maintain his livelihood. The said application for sale permission is still pending before the Trial Court. During the hearing, the defendant-petitioner vehemently raised an objection against such sale permission contending that the plaintiff along with her brother has been trying to grab the property of the minor and as such, the sale permission should not be granted. However, upon elaborate hearing, the matter has been fixed for judgment. At this stage, all the parties including the minor boy, Junayed Hasan represented by his mother, the plaintiff entered into a compromise agreement. By the compromise agreement, they have mutually partitioned their joint property but, the said agreement has yet not been acted upon completely. At this stage, the learned Advocate for the opposite party also with the consent of her client submits that if the compromise agreement is acted upon, the plaintiff-opposite party need not the sale permission to sell the property of her minor son since by the rental proceeds, the livelihood of

the plaintiff and her minor son would be maintained satisfactorily.

- 11.** Since all the parties reached a compromise agreement partitioning their joint property, the dispute between them would be mutually settled if the said compromise agreement is acted upon. However, since the father of the minor boy already died, his mother is the natural guardian of the minor boy. Therefore, the mother was rightly appointed the legal guardian of the minor boy but mere appointment of a legal guardian would not authorize the legal guardian to dispose of the property of the minor boy. Moreover, admittedly if the compromise agreement is acted upon, the plaintiff need not such sale permission to sell the property of the minor boy.
- 12.** In such facts and circumstances, all the parties are hereby directed to act upon the compromise agreement within 2(two) weeks from the date.
- 13.** At this stage, the learned Advocate for the petitioner submits that to act upon the compromise agreement, it will require registering the same which would certainly take some time. Accordingly, the parties shall register the compromise agreement within 3(three) months.

However, the rental proceeds of their joint property shall be distributed as per the compromise agreement henceforth. Accordingly, the compromise agreement shall form part of the decree drawn by the Courts below and thus, the decree is modified.

14. With the above findings, observations and direction the Rule is disposed of.
15. The interim order of stay is hereby recalled and vacated.
16. However, there would be no order as to costs.
17. Send down the records of the Courts below immediately.