

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 856 of 2022

Md. Abu Bakkar Mia

.....Petitioner.

-Versus-

Md. Alamgir Kabir and others

.....Opposite parties.

Mr. Md. Enamul Haque, Advocate

.....For the petitioner.

Mr. A.Q.M. Sohel Rana, Advocate

..... For the opposite parties.

Heard and judgment on 29th July, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 26.10.2021 passed by the District Judge, Chapainawabganj in Title Appeal No. 11 of 2020 reversing those dated 23.02.2017 passed by the Assistant Judge, Gomostapur, Chapainababgonj in

Other Class Suit No. 182 of 2009 decreeing the suit should not be set aside.

Petitioner as plaintiff filed the above suit for partition of the suit land measuring .5350 acres of land.

Plaint case in short inter alia, is that the schedule land of suit belonged to Samsuddin, Roisuddin and Abu Bakkar in equal share. At the time of possessing the same that the one Samsuddin died leaving his 2 sons named Abdul Khaleq and Abdul Samad and 4 daughter named Azizan Nesa, Nasrin Sultana, Samsun Nahar and Mahasin Aktar and one wife named Abeda Khatun. The aforesaid inherit ants of Samsuddin sold their entire land about .1733 acres of the suit land to the plaintiff petitioner through kabala deed being No. 7246 of 1990 dated 29.08.1990 and accordingly the plaintiff-petitioner began to possess the same freely. The plaintiff as a owner of R.S. record and a purchaser of another share total $\frac{2}{3}$ of the suit land was possessing and at last by means and bounds with the another co-sharer making paka Ghar and Chatal in the northern side of the suit land began to possess the same. As the father of the defendants, Roisuddin has been possessing the same from the southern side of the suit land.

There is public road of the southern side of the suit land for spreading the way that the .550 acres of land is acquired by the local government through the LA case being No.7/96-97 and accordingly the road has been prepared and value of the same is received by the father of the defendants Roisuddin and as such the government is included in this suit as the defendant. For the communication of the plaintiff petitioner .225 acres of land is left by the father of the defendants and accordingly plaintiff petitioner have been communicating through that road but suddenly the defendants began to hidden the petitioner and as such the plaintiff petitioner on 01.10.2009 asked the defendants to make partition the same but they refused to do the same and accordingly having no way that the plaintiff filed this partition suit in the court of learned Assistant Judge, Gomostapur, Chapainababgonj being Other Class Suit No. 182 of 2009.

That suit was decreed exparte on 16.05.2011 and that preliminary decree was made final on 02.07.2012 thereafter on 27.03.2013 an application was filed for staying the proceeding of the Execution Case by one of the defendant of the suit and ultimately on 21.09.2014 that misc. case was allowed and suit was

restored to its file but even then ultimately that suit was again disposed of by the order dated 23.02.2017 *ex parte* and the decree was made final on 05.03.2019.

Opposite party No.1 Md. Alamgir Kabir thereafter filed Title Appeal being No. 11 of 2020 before the Court of District Judge, Chapainababgonj with the fact that he purchased .0275 acres of land from defendant No.8 vide registered sale deed No. 3005 dated 09.05.2018 and accordingly got interest in this property and thus he challenged the final decree in the partition suit.

By the impugned judgment and decree dated 26.10.2021, the District Judge allowed the appeal and set aside the final decree dated 05.03.2019 passed on Other Class Suit No. 182 of 2009.

Challenging the said judgment and decree, plaintiff petitioner obtained the instant Rule.

Mr. Md. Enamul Haque, the learned advocate appearing for the petitioner drawing my attention to the impugned judgment submits that the judgment passed by the trial court is illegal in as much as the reasons shown in the impugned order for allowing the appeal as well as setting aside the decree passed in partition suit

was not made on the prayer of the appellant, who is apparently claim to be a purchaser in the suit land from one of the non contesting defendant long after the final decree of the partition suit is been made. Since his predecessor was a party in the suit and did not contest the suit and no appeal was preferred against the final decree made in partition suit by the contesting defendants as well as there is no finding that there was any irregularity in making the decree against the defendant No.8 from whom the appellant purchased the suit property, the impugned judgment appears to be illegal and not sustainable in law.

Mr. A.Q.M. Sohel Rana, the learned advocate appearing for the opposite party, on the other hand oppose the rule by filing a supplementary affidavit and submits that as a valid purchaser from defendant No.8 he was made a party in the suit and accordingly has got interest over the suit land as well as in the decree passed in the suit, so he was a necessary in the party and was given to contest the suit accordingly the appellate court committed no illegality in allowing the appeal and restoring the suit.

Heard the learned Advocate and perused the Lower Court Record and the impugned judgment.

This is a partition suit filed by the plaintiff. That suit was decreed against the defendant by way of a ex parte judgment on 16.05.2011 and the preliminary decree passed on the said partition suit was ultimately made final on 05.03.2019. Opposite party No.1 Md. Alamgir Kabir filed Title Appeal No. 11 of 2020 on 09.02.2020 with the claim that he purchased .0275 decimals of land vide registered sale deed No. 3005 dated 09.05.2018 from Sadequl Islam, who was defendant No.8 in the suit. The appeal was filed long after disposal of the partition suit. Even if it is taken that the plaintiff appellant was valid purchaser in the suit property but his sale deed dated 09.05.2018 was long after the decree passed in partition suit. The appellate court while allowing the appeal in support of his observation in allowing the appeal has passed the following orders:

“মূল মামলাতে গত ১৫/০১/১৫ইং তারিখে মোঃ সাদিকুল ইসলামকে ৮নং বিবাদী শ্রেণীভুক্ত করা হয়। গত ০৯/০৫/১৮ ইং তারিখে আপীলকারী মোঃ আলমগীর হোসেন ৩০০৫নং দলিল মূলে সাদেকুল ইসলামের নিকট হইতে নালিশী ১৩৫৮ দাগের দক্ষিণ-পূর্ব দিকে .০২৭৫ একর সম্পত্তি খরিদ করিয়াছেন। অথচ এ্যাডভোকেট কমিশনারের রিপোর্ট দৃষ্টে দেখা যায় যে উক্ত

দাগের দক্ষিণ-পূর্ব অংশে বাদীকে ও ৯নং বিবাদীকে ছাহাম প্রদান করা হইয়াছে। অথচ বাদী তার আরজিতে দাগের উত্তর অংশে এবং ৯নং বিবাদীর দলিলমতে পশ্চিম-দক্ষিণ দখল থাকার কথা। সুতরাং আপীলকারীকে পক্ষ ভুক্ত না করিয়া সরজমিনে বিভাগ বন্টনের পূর্বে আপীলকারীকে নোটিশ প্রদান না করিয়া কমিশন কার্য সম্পন্ন করা এবং কমিশন রিপোর্ট গ্রহণের পূর্বে আপীলকারী কমিশন রিপোর্টের বিরুদ্ধে আপত্তি দাখিলের সুযোগ না পাওয়ায় আপীলকারী পক্ষে অপূরণীয় ক্ষতি হইয়াছে বলিয়া আদালতের নিকট প্রতীয়মান হয়।”

While observing the above findings appellate court totally failed to consider that in the suit or before making the decree final in the partition suit while Advocate Commissioner going to have its commission done, the appellant had got no interest in the property because he purchased long thereafter and got interest in the suit property on 09.05.2018. So question of his presence or gave a notice to him as well as report submitted in the commission beyond the knowledge of the appellant does not arise at all, accordingly the appellate court on an imaginary observation allowed the appeal, which is not sustainable in law. The appellant Md. Alamgir Kabir if is found to be a valid purchaser from one of

the defendant in the partition suit as well as from any one of the co-sharer in the suit jote they have got right to claim his title in the suit property by way of a separate suit since he has purchased the land long after the decree passed in partition suit. In the instant suit when the main defendants did not come forward to challenge the preliminary decree saying that there was any irregularity and illegality in drawing up a final decree passed in a partition suit, appeal can be allowed but herein in the instant case none of the defendants either contesting or non contesting come forward to challenge the decree passed in the partition suit, the appellant appears to be a outsider. He is apparently found to have claimed title in a portion over the suit land to be a purchaser from own of the co-sharer in the suit jote. But it is obviously long after the partition decree and accordingly his claim of title if it is been threatened by any co-sharer of the suit jote, he can resist it by filing a separate suit but in the instant appeal he has got no right to challenge the decree, which was duly been passed and not been challenged by any co-sharer of the suit jote, who were defendant in the said suit.

Regard being had to the law, fact and circumstances of this case, I am of the view that appellate court committed illegally in allowing the appeal as well as setting aside the judgment of the partition suit.

I thus find merit in this rule.

In the result, the rule is made absolute and the judgment and decree passed by the appellate court is hereby set aside and the judgment and decree passed by the trial court is hereby restored.

Send down the L.C.R and communicate the judgment at once.