

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 2586 of 2023.

Sirajul Islam

..... -Petitioner.

-Vs-

Md. Ruhul Amin and others.

..... -Opposite parties.

Mr. Nirmalendu Deb with
Mrs. Rowshanara Akter, Advocates.

..... For the petitioner.

Mr. Md. Zahangir Alam, Advocate.

..... For the opposite parties.

Heard on 21.05.2025 and
Judgment on: 29.05.2025.

By this Rule, at the instance of the petitioner Sirajul Islam was issued upon opposite parties No. 1-10 to show cause as to why the order dated 04.01.2023 passed by the learned Joint District Judge, 2nd Court, Cumilla in Title Appeal No. 194 of 2020 rejecting the application filed under sections 151 and 152 of the Code of Civil Procedure for amendment of the judgment and decree dated 15.03.2022 passed in the appeal should not be set aside.

Relevant facts for the disposal of the Rule are that present opposite parties No.1-10 as plaintiffs instituted Partition Suit No. 52 of 2012 before the Court of Senior Assistant Judge, Cumilla for partition of 559 decimals of land as described in the schedule to the plaint. The present petitioner being defendant No.1 contested the suit by filing written statements denying the materials allegation in the plaint as well as praying for separate saham in respect of 78 decimals of the suit land including 6 decimals of the land which he purchased through a kabala deed bearing No. 1472 dated 13.02.1968 executed by Akbor Ali, the predecessor of the plaintiffs. During the trial, both parties adduced both oral and documentary evidence in support of their claims. The documentary evidence which were adduced by the parties were duly exhibited and the kabala deed bearing No. 1472 dated 13.02.1968, adduced by defendant No. 1, was

exhibited as ext. No. Fa. On conclusion of the trial, the learned Senior Assistant Judge, Cumilla by the judgment and decree dated 20.08.2020 dismissed the suit. Against the said judgment and decree the plaintiffs filed Title Appeal No. 194 of 2020 in the Court of District Judge, Cumilla which was subsequently transferred to the Court of Joint District Judge, 2nd Court, Cumilla for disposal who by the judgment and decree dated 15.03.2022 allowed the said appeal entitling the defendant No. 1 a separate saham of 69.14 decimals of suit land. After disposal of the appeal, the present petitioner filed an application under sections 151 and 152 of the Civil Procedure praying for amendment of the said judgment and decree by including 6 decimal of land of ext. Fa, stating, inter alia, that the court failed to consider the said exhibit. The learned Joint District Judge, 2nd Court, Cumilla after hearing the application by the order dated 04.01.2023 rejected the said application holding, inter alia, that since in the schedule of the said deed no plot number was mentioned and khatian number was written 68 in the first part and 58 in the middle part, so the said exhibit was not considered to give saham which cannot be counted as an error within the meaning of section 152 of the Code of Civil Procedure.

Being aggrieved thereby the petitioner moved before this Court and obtained the Rule and an order of stay.

Mr. Nirmalendu Deb along with Ms. Rowshanara Akhter, the learned Advocates appearing for the petitioner submit that the petitioner purchased six decimals of land from the predecessor of the plaintiffs by ext. Fa but said exhibit was not considered erroneously in giving saham to the petitioner which is curable under the provision of section 152 of the Code of Civil Procedure, but the court of appeal below without considering this aspect of the case passed the impugned order thereby committed error of law resulting an error in the decision occasioning failure of justice.

On the other hand, Mr. Md. Zahangir Alam, the learned Advocate appearing for the opposite parties No.1-10 submits that since there was no plot

number and khatian number was written improperly, the impugned deed was not considered at the time of pronouncement of the judgment, and therefore, there was no scope to consider the same under the provision of section 152 of the Code of Civil Procedure.

Heard the learned Advocates of the contending parties, and perused the revisional application and other materials on record.

It appears that the plaintiffs instituted the suit for partition impleading the petitioner as defendant No.1 who contested the suit by filing a written statement praying for separate saham in respect of 78 decimals of the land including 6 decimals of ext. No.-Fa. The suit was dismissed and in appeal, the suit was decreed entitling the petitioner a separate saham of 69.14 decimals of suit land. After disposal of the appeal, the present petitioner filed an application under sections 151 and 152 of the Civil Procedure praying for amendment of the said judgment and decree by including 6 decimals of the land of ext. No. Fa, stating, inter alia, that the court failed to consider the said exhibit. By the impugned order said application was rejected by the impugned order holding, inter alia, since in the schedule of the said deed no plot number was mentioned and khatian number was written 68 in the first part and 58 in the middle part, so the said exhibit could not be considered to give saham which cannot be considered as an error under the provision of section 152 of the Code of Civil Procedure.

The petitioner contended that non-consideration of the ext.-Fa is curable under the provision of section 152 of the Code of Civil Procedure and the opposite parties contended that non-consideration of an exhibit is not curable under the provision of section 152 of the Code of Civil Procedure.

For proper appreciation of the issue the provision of section 152 of the Code of Civil Procedure is reproduced herein below:-

“S. 152. Amendment of judgments, decrees or orders.- Clerical or arithmetical mistakes in the judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be

corrected by the Court either of its own motion or on the application of any of the parties.”

From the said provision it appears that a Court can correct clerical or arithmetical mistakes or an error arising from any accidental slip or omission in the judgments, decrees or orders. In other words, this section confers a power upon the court to minimise litigation and avoid multiplicity of proceedings on the grounds of clerical or arithmetical mistakes or an error arising from any accidental slip or omission in the judgments, decrees or orders. This section enables the court to vary its judgment to give effect to its meaning and intention. On a careful perusal of the said provision, we do not find any scope under the said provision to consider an exhibit that was not considered at the time of pronouncement of the judgment.

In the case of Dr. S.M. Yunus Ali vs. Joint District Judge and Artha Rin Adalat and another reported in 16 BLT (AD) 167 our apex Court held to the effect:-

“As it appears the High Court Division rejected the revisional application summarily holding that the prayer as made in the application dated 2.11.2004 for setting aside the judgment and decree dated 25.7.2004 being not covered by section 152 CPC, the Court cannot allow such relief and further the Court became functus officio after passing of the judgment and decree and the learned Joint District Judge having passed its judgment and decree dated 25.7.2004 on the basis of the sanction letter, there was no accidental or arithmetical mistake and the relief as sought in the application dated 2.11.2004 under Section 152 CPC Could only be made in the form of an appeal as there was no mistake on the part of the Court and rather the same may be regarded as a case of non-consideration of Ext. G.

We are of the view that the judgment and order of the High Court Division do not suffer from any illegality or infirmity so as to call for any interference. The petition is dismissed”

In the above facts and circumstances, I do not find any error of law in the impugned judgment and order occasioning failure of justice and therefore, do not find any reason to interfere with the same.

In the result, this Rule is discharged, however, there is no order as to costs.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Communicate a copy of this judgment at once.

Kashem, B.O