

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

**Civil Revision No. 5878 of 2023 with  
First Miscellaneous Appeal No. 355 of 2015**

**IN THE MATTER OF**

Sita Nath Basak and others  
.....Plaintiffs-Respondents-Petitioners

-Versus-

Promila Rani Basak being dead her heirs: Paltu  
Basak @ Paltu Bosak and others  
..... Defendants-Appellants-Opposite parties

Mr. Shaikh Forhadul Haque, Advocate  
.....For the petitioners  
(In civil revision no.5878 of 2023)

Ms. Purabi Saha, Advocate  
.....For opposite party Nos. 1-6  
(In civil revision No.5878 of 2023)

**IN THE MATTER OF**

1(Ka) Promila Rani Basak and others  
...Defendant Nos. 1(Ka) to 1 (Chha)-Appellants

-Versus-

1. Sita Nath Basak and others  
.....Plaintiffs-Respondents  
2. A. Karim and others  
.....Defendants-Respondents

Ms. Purabi Saha, Advocate  
..... For the appellants  
(In F.M.A. No.355 of 2015)

Mr. Shaikh Forhadul Haque, Advocate  
.....For respondent Nos.1 to 12, 53 and 56  
(In F.M.A. No.355 of 2015)

No one appears  
.....For respondent No.55  
(In F.M.A. No.355 of 2015)

**Heard on 19.06.23, 10.07.23, 11.07.23, 13.07.23, 07.02.2024  
and judgment passed on 08.02.2024**

**Present:**

***Mr. Justice Kazi Md. Ejarul Haque Akondo***

**Kazi Md. Ejarul Haque Akondo, J.**

In Civil Revision No.5878 of 2023, a Rule, on an application under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following manner-

*“Records need not be called for. Let a Rule be issued calling upon opposite party Nos. 1-6 to show cause as to why the impugned judgment and decree dated 29.05.2023 passed by the learned Additional District Judge, 1<sup>st</sup> Court, Kishoreganj in Other Appeal No. 240 of 2010 disallowing the appeal and thereby modified the judgment and decree dated 24.08.2010 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Kishoreganj in Title Suit No. 1 of 1998 decreeing 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.”*

At the time of issuance of the Rule, an order was passed to the effect that the instant civil revision would be heard analogously with First Miscellaneous Appeal No. 355 of 2015.

The present petitioners of the civil revision as the plaintiffs filed Title Suit No. 1 of 1998 in the Court of learned Joint District Judge, First Court, Kishoregonj for partition which was decreed on

24.08.2010 against which the defendants as the appellants preferred Title Appeal No. 240 of 2010 before learned District Judge, Kishoregonj and after hearing the same the learned Additional District Judge, First Court, Kishoregonj by judgment and decree dated 29.05.2013 disallowed the appeal and affirmed the judgment and decree of the Trial Court in a modified form.

Being aggrieved by the same the plaintiffs' petitioners filed an application for review of the above judgment and decree passed by the Appellate Court and the same was registered as Miscellaneous Case No. 1 of 2013. After hearing the same the learned Additional District Judge, 1<sup>st</sup> Court, Kishoregonj by the judgment and order dated 04.05.2014 allowed the review petition and modified his earlier judgment and decree dated 29.05.2013, against which the defendants as the appellants preferred First Miscellaneous Appeal No. 355 of 2015 before this Court. Thereafter, the plaintiffs-petitioners being aggrieved by the said judgment and decree dated 29.05.2013 passed by the learned Additional District Judge, 1<sup>st</sup> Court, Kishoregonj in Other Appeal No. 240 of 2010 filed the instant civil revision before this Court.

Anyway, at the time of hearing of the Rule along with the First Miscellaneous Appeal, the learned Advocate appearing on behalf of the petitioners in the civil revision by filing an application under Order 41 Rule 23 read with section 151 of the Code of Civil Procedure, 1908 prayed for sending back the case on remand for the reasons stated in the application and submits that the Trial Court decreed the suit giving saham to the plaintiffs' petitioners to the extent of  $82\frac{1}{5}$  decimals of land, while defendant Nos. 4-9 got  $8\frac{3}{4}$  decimals, defendant Nos. 14-16 got 43 decimals, defendant Nos. 19 and 20 got  $80\frac{1}{2}$  decimals, defendant No. 21 got  $18\frac{4}{5}$  decimals, and defendant Nos. 11(Ga)- 11(Uma) got  $5\frac{1}{2}$  decimals of land and thus they got saham of in total  $2.38\frac{3}{5}$  acres of land.

He further submits that the Appellate Court below disallowed the appeal and modified the judgment and decree of the Trial Court giving the plaintiffs a saham of  $52\frac{7}{40}$  decimals of land instead of  $82\frac{1}{5}$  decimals while defendant No.21 got  $8\frac{7}{40}$  decimals

of land instead of  $18\frac{4}{5}$  decimals, defendant Nos. 1(Ka)- 1(Cha) got 81 decimals of land, defendant Nos. 70-71 got 43 decimals of land, defendants Nos. 4-9 got  $8\frac{3}{4}$  decimals of land, defendant Nos. 14-16 got 43 decimals of land, defendant Nos. 19-20 got  $80\frac{1}{2}$  decimals of land and defendant Nos. 11(Ga)- 11(Uma) got  $5\frac{1}{2}$  decimals of land, and thus the total saham stands at  $3.21\frac{118}{120}$  acres of land.

He next submits that in Review Miscellaneous Case No. 01 of 2013, the learned Judge of the Review Court allowed the review petition and modified his earlier judgment and decree dated 29.05.2013 giving saham to the plaintiffs to the extent of  $65\frac{1}{2}$  decimals instead of  $52\frac{7}{40}$  decimals of land, and defendant No. 21  $12\frac{1}{2}$  decimals instead of  $8\frac{7}{120}$  decimals of land while the shares of other defendants remained same as it was given in the appeal, and thus the total saham of land stands at  $3.39\frac{1}{4}$  acres.

He goes on to submit that C.S. Khatian No. 1125 was prepared in the names of Horo Kumar Das, Dinanath Das, Horonath Das, and Amrita Sundari Dashia in different shares and in the said C.S. Khatian No. 1125 there was total 2.58 acres of land. Dinonath Das was the owner to the extent of 5 annas, 13 gandas, and 1 kranti share which stands at .8125 acres of land. Dinonath Das died leaving behind one son Darokanath Basak, who died leaving behind 5 sons namely Sitanath Basak, Sree Nibash Basak, Gouranga Basak, and defendant Nos. 18 and 21 Satendra Basak, and Haridas Basak and according to their share, each son got .1625 acres of land, and as such, the plaintiffs got .6550 acres of land and defendant No. 21 got .1625 acres of land. Defendant No. 18 sold his share to plaintiff Nos. 1-3, defendant No. 21 sold 7 decimals of land to plaintiff No. 10, and thus, the plaintiffs got in total of .7225 acres of land, and defendant No. 21 got .0925 acres of land.

He lastly submits that the learned Judge of the Appellate Court below and the Review Court exceeded the total quantum of land measuring 2.58 acres in giving saham to the contending parties and as such, the appeal is liable to be remanded to the

Appellate Court below for rehearing, and the judgment and decree of the Appellate Court below including the Review Court are liable to be set aside.

Conversely, Ms. Purabi Saha, the learned Advocate appearing on behalf of the appellants in the first miscellaneous appeal finds it difficult to oppose the submissions as advanced by the learned Advocate for the petitioners in the civil revision as well as for respondent Nos. 1-12, 53, and 56 in the first miscellaneous appeal.

However, the learned Advocates appearing on behalf of their respective parties both in the first miscellaneous appeal and the civil revision agreed on a point that the learned Judge of the Appellate Court below and the Review Court exceeded the suit land in giving saham to the contending parties and thereby committed miscarriage of justice, which needs to be corrected otherwise the parties will suffer irreparable loss and injury and may fall in legal complications giving rise to further litigation.

Hearing the learned Advocates of the contending parties and perusal of the materials on record it appears that the learned Judge of the Appellate Court below and the Review Court exceeded the

total quantum of land measuring 2.58 acres in giving saham to the contending parties and thereby committed illegality causing failure of justice. In the premises, it appears to me that justice will better be served if the case is sent back on remand to the Appellate Court below by setting aside the judgment and decree of the Appellate Court below and the judgment and order of the Review Court for rehearing the appeal afresh in view of the observations made hereinbefore giving the parties equal opportunity.

Given the above, the application for remand is allowed for the ends of justice.

As a result, the Rule issued in the instant civil revision is hereby discharged, and First Miscellaneous Appeal No. 355 of 2015 is dismissed without cost.

The order of stay passed in First Miscellaneous Appeal No. 355 of 2015 is hereby recalled and vacated.

The impugned judgment and order dated 04.05.2014 passed by the learned Additional District Judge, First Court, Kishoregonj in Review Miscellaneous Case No. 1 of 2013, and the judgment and decree dated 29.05.2013 passed by the learned Additional District



Judge, First Court, Kishoregonj in Other Appeal No. 240 of 2010 are hereby set-aside.

Because of the above, let the instant case be sent to the Appellate Court below for rehearing the appeal afresh by giving the parties equal opportunity.

Send a copy of this judgment along with the L.C.R, if any, to the Appellate Court below at once.

(Md. Rafiqul Alam, B.O.)