

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4371 OF 2023

In the matter of:

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

And

Md. A. Khalek

.... Petitioner

-Versus-

Md. Belayeat Gazi being dead his heirs-Mohammad Nesar Uddin Gazi and others

.... Opposite parties

Mr. Sk. Sharifuddin, Advocate

.... For the petitioner.

Ms. Syeda Nasrin, Advocate

....For the opposite party Nos.1(a)-1(d).

Heard and Judgment on 29.05.2025.

This Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 22.09.2022 passed by the learned Additional District Judge, Borguna in Title Appeal No.88 of 2017 disallowing the appeal and thereby affirming the judgment and decree dated 19.02.2017 passed by the learned Senior Assistant Judge, Sadar, Borguna in Title Suit No.222 of 2009 should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for partition of 1.15 acres land of S.A. Khatian No.750

seeking separate saham for $21\frac{2}{3}$ decimal land alleging that in above Khatian Dashar Uddin had 8 anas share and Lehaj Uddin and Mafiz Uddin each had is 4 ana share. Above Dashar Uddin while owning and possessing 57.5 decimal land died leaving four sons namely Abdul Hamid, Abdul Gani, Abdur Rahim and Abdul Karim. Above Abdul Gani died leaving wife Badrun Nessa, five sons namely Abdul Majid, Abdul Mannan, Motaleb, Idris and Abdur Rob and three daughters. Plaintiffs purchased $21\frac{1}{2}$ decimal land by 4 registered kabala deeds dated 18.11.1994, 03.05.1997, 06.04.1989 (Exhibit No.3 series) from above heirs of above Dasar Uddin. Above property has not been partitioned by meets and bounds and the defendants denied to effect an amicable partition.

Defendant Nos.1, 4 and 17 contested above suit by filing two separate written statements. Defendant No.1 claimed that from the heirs of Dasar Uddin defendant No.1 purchased 5.90 decimal land by two registered kabla deeds dated 06.04.1989 and 08.05.2005 and transferred three decimal land. Defendant No.1 further acquired 17.62 decimal land from above co-sharers of Dasar Uddin by two registered deed of nadabipatra dated 20.07.1995 and 3.05.1997. Thus defendant No.1 became owner and possessor of 25.6 decimal land and sought separate saham for above land.

Defendant Nos.4 and 7 alleged that Lehaj Uddin transferred his total land to his two sons Amin Uddin and Hakim by registered deed of

wasiotnama dated 28.12.1960 who transferred 14 decimal land to defendant No.4 and two daughters of above Abdul Hakim transferred 2.50 decimal land to defendant No.4 by registered kabala deed dated 18.08.2009. Defendant No.17 purchased 3.50 decimal land from defendant No.1 by a registered kabala deed dated 15.04.2003 and 18.10.2006 and possessing above land by erecting dwelling huts and they sought separate saham for above land.

At trial plaintiffs and defendant No.1 examined three witnesses each and defendant Nos.4 and 17 examined two witnesses. Documents of the plaintiffs were marked as Exhibit Nos.1-5 and those of defendant No.1 were marked as Exhibit Nos."Ka-1(1)" to "Ga-1" series and documents of defendant Nos.4 and 17 were marked as Exhibit Nos."Ka-2(1)" to Ka-2(5).

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed above suit and granted separate saham for the plaintiffs for 21.17 decimal land and defendant No.1 was granted separate saham for 2.15 decimal land and defendant Nos.4 and 17 were granted separate saham for 11.89 decimal land.

Being aggrieved by above judgment and decree of the trial Court defendant No.1 preferred Title Appeal No.88 of 2017 to the District Judge, Barguna which was heard by the learned Additional District Judge who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Sk. Sharifuddin, learned Advocate for the petitioner submits that defendant No.1 admits title and possession of the plaintiffs in 21.17 decimal land for which they were granted saham. But the learned Judge of the Court of Appeal below failed to appreciate that defendant No.1 acquired 25.61 decimal land from heirs of Dasar Uddin and Mafiz Uddin by two registered kabala deeds dated 06.04.1989 and 08.05.2005 and two registered deed of nadabipatra dated 20.07.1995 and 03.05.1997. Defendant No.1 transferred 3.50 decimal land to defendant No.17 and he was in possession in remaining 23 decimal land but the learned Judges of both the Courts below most illegally granted defendant No.7 separate saham only for 2.15 decimal land which is not tenable in law. The learned Advocate further submits that both the Courts below held that two deed of nadabipatra of defendant No.1 dated 20.07.1995 and 03.05.1997 did not pass any lawful and valid title in above land and refused to grant saham to defendant No.1 for above land. Defendant No.1 as plaintiff instituted Title Suit No.282 of 2019 against the executants of above two registered deed of nadabipatra, claiming title in 17.62 decimal on the basis of above two deeds and above defendants executed a solenama admitting title and possession of defendant No.1 in above land and accordingly above suit was decreed

on 01.02.2021. As such the impugned judgment and decree may be set aside and the suit may be remanded to the trial Court for retrial so that the defendant can adduce evidence to establish his title and possession in above decreetal land and get saham for above land.

On the other hand Mr. Syeda Nasrin, learned Advocate for the Opposite Party Nos.1(a) - 1(d) submits that defendant No.1 has admitted both in his written statement and evidence in Court the title and possession of the plaintiff in 21.17 decimal land. Accordingly both the Courts below on the basis of above four registered kabala deeds granted separate saham to the plaintiffs for above 21.17 decimal land. Defendant Nos.4 and 17 have accepted the share granted to them by the trial Court and they did not prefer any appeal. Defendant No.1 claimed 5.90 decimal land by purchase from the heirs of Dasar Uddin and Mafiz Uddin by two registered kabala deeds and transferred 3.5 decimal land to defendant No.17. As such the defendant No.1 has subsisting title only in 2.15 decimal land and both the Courts below rightly granted him separate saham for above 2.15 decimal land. As far as claim of the learned Advocate for the petitioner that defendant No.1 has obtained a compromise decree for 25.61 decimal land in Title Suit No.282 of 2019 is concerned the opposite parties were no party to above suit nor above decree is binding upon them. If defendant No.1 has acquired any other land from the heirs of Dasar Uddin and Mafiz Uddin after pronouncement of the judgment by the trial Court they may get saham for above land provided the same does not affect the valid share of any

other co-sharers. Since the impugned judgment and decree passed by the learned Additional District Judge suffers from no illegality or irregularity the same deserves to be upheld and the same cannot be set aside and the suit cannot be remanded for retrial.

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

It is admitted that 8 anna share of 1.5 acres land of S.A. Khatian No.750 belonged Dasar Uddin and remaining 8 anna share belonged to Lehaj Uddin and Mafiz Uddin in equal shares. Plaintiffs purchased 21.17 decimal land by four registered kabla deeds from successive heirs of Dasar Uddin namely Abdul Hamid and others and defendant Nos.1, 4 and 17 do not dispute title and possession of the plaintiff in above 21.17 decimal land. It is also admitted that defendant No.1 purchased 5.90 decimal land by two registered kabla deeds dated 20.07.1995 and 03.5.1997 and he transferred 3.50 decimal land to defendant No.17 and he is owning and possessing 2.15 decimal land and the learned Judges of both the Courts below have granted separate saham to defendant No.1 for above 2.15 decimal land. As far as defendant No.4 and 17 are concerned they were given separate saham for 11.15 decimal land and defendant No.1 do not have any dispute as to above saham of defendant Nos.4 and 17. Defendant Nos.4 and 17 have accepted above saham granted by the trial Court and they did not prefer any appeal.

Defendant No.1 has claimed to have acquired 17.62 decimal land from heirs of Dasar Uddin and Mafiz Uddin by two registered deed of

nadabipatra dated 20.07.1995 and 03.05.1997 and both the Courts below rightly held that above deeds of nadabipatra did not transfer title in above land and rightly refused to grant separate saham to defendant No.1 for above 17.62 decimal land.

Learned Advocate for the petitioner frankly concedes that there is no illegality or irregularity in above findings or decision of both the Courts below that by above two deeds of nadabipatra defendant No.1 did not acquire valid title in above 17.62 decimal land. The learned Advocate submits that in view of above findings of the Courts below defendant No.1 as plaintiff instituted Title Suit No.282 of 2019 to the Court of Senior Assistant Judge for declaration that above two registered deed of nadabipatra were in fact deeds of kabla and for further declaration of title in above 17.62 decimal land. The executants of above two deeds of nadabipatra namely the successive heirs of Dasar Uddin and Mafiz Uddin appeared in above suit and executed a solanama admitting title of the plaintiffs in above land and suit was decreed on compromise.

On consideration of facts and circumstances of the case and evidence on record I am also unable to find any illegality or irregularity in the impugned judgment and decree passed by learned Judge of the Court of Appeal below. The claim of defendant No.1 that after pronouncement of the judgment by the trial he has acquired title in 17.62 decimal land by obtaining a compromise decree in Title Suit No.282 of 2019 are concerned are subsequent facts. Defendant No.1 may

get separate saham for above decreetal 17.62 decimal land the time of preparation of final decree provided the same does not affect the saham of the plaintiffs or defendant Nos.4 and 17 or any other co-sharer excepting the defendants of Title Suit No.282 of 2019 who executed solenama admitting title and possession of defendant No.1 in above 17.62 decimal land.

In above view of the facts and circumstances of the case and evidence on record I am unable to find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there will be no order as to costs.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER.