

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2464 of 2023

In the matter of:

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

And

Md. Harunur Rashid

... Petitioner

-Versus-

Motiar Rahman and others

... Opposite parties

Mr. Mridhul Datta, Advocate

... For the petitioner.

None appears

... For the opposite parties.

Heard and Judgment on 05.12.2024

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-7 and 16-17 to show cause as to why the impugned judgment and decree dated 14.03.2023 passed by the learned Additional Joint District Judge, 2nd Court, Borguna in Title Appeal No.04 of 2019 allowing the appeal upon reversing the judgment and decree dated 27.09.2018 passed by the learned Assistant Judge, Pathorghata, Borguna in Title Suit No.160 of 2008 (Pathorghata) allowing the suit should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for partition seeking a separate saham for 1.99 acres land from S.A. Khatian No.391.

It was alleged that 8.16 acres land appertaining to R.S. Khatian No.797 belonged to Amin Uddin, Safil Uddin, Radha Lakhkhi and Rajendra in separate shares. But due to nonpayment of rent by Amin Uddin, Safil Uddin, and Radha Lakhkhi their above share in R.S. Khatian No.797 was sold in auction pursuant to the decree passed in Rent Suit No.510 of 1954 and above auction was purchased by the predecessors of the plaintiffs namely Hazrat Ali, Hossain Ali, Akram Hossain and Nur Miah in separate shares on 28.02.1955 and they obtained certificate of sale and delivery of possession. But above auction purchased land was erroneously recorded in S.A. Khatian No.391 in the name of judgment debtor Safil Uddin and others. Above property has not been partitioned by metes and bounds and the defendants refused to effect an amicable partition.

Defendant Nos.2-5 contested above suit by filing a joint written statement alleging that disputed land appertaining to R.S. Khatian No.797 belonged to Safil Uddin and others in various sharers and above property was never sold in auction. All documents produced

by the plaintiffs of above auction sale are void, forged and collusive documents. Above Safil Uddin continued his possession in above land and in his name S.A. Khatian No.391 was correctly prepared and the defendants purchased above land from Safil Uddin and his heirs by a several registered kabala deeds and there in possession in above property.

At trial plaintiff examined 2 witnesses and documents of the plaintiff were marked as Exhibit Nos.1-6 series. Defendants examined 7 witnesses and their documents were marked as Exhibit Nos.'Ka' to 'Umo' series.

On consideration of facts and circumstanced of the case and evidence on record the learned Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree of the trial Court the defendant Nos.2-5 as appellants preferred Title Appeal No.04 of 2019 to the District Judge, Borguna which was heard by the learned Joint District Judge, 2nd Court who allowed above appeal, set aside the judgment and decree of the trial Court and dismissed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondent as petitioner moved to this Court and obtained this Rule.

Mr. Miridhul Datta, learned Advocate for the petitioner submits that 7.59 acres land was rightly recorded in R.S. Khatian No.797 in the name of Safil Uddin, Amin Uddin and Rada Lakhkhi in separate shares and due to nonpayment of rent by above tenants the superior landlord instituted Rent Suit No.510 of 954 and obtained a decree and in a execution of above decree disputed land was sold in auction which was purchased by predecessors of the defendants namely Hazrat Ali, Hossain Ali, Akram and Nur Miah in separate shares and they are in possession in above land and above auction sale was confirmed on 19.03.1955. Above auction purchasers received registered sale certificate as well as delivery of possession from the Court but erroneously in S.A. Khatian No.391 was erroneously recorded in the name of Safil Uddin who was a judgment debtor of Rent Suit No.510 of 1954. Since the right, title and interest of above Safil Uddin was sold in auction in Rent Decree Execution Case No.1174 of 1954 on 27.01.1954 above S.A. Khatian was erroneous. Defendant Nos.2-5 did not acquire any valid title and possession in

above land by way of purchase from Safil Uddin and his heirs. The plaintiffs produced and proved sale certificate and delivery of possession and mutation of their names in the relevant kahtian and payment of rent to the Government for above land to prove their continuous possession in the disputed land on the basis of auction purchase. On correct appreciation of evidence on record the learned Assistant Judge rightly decreed the suit but the learned Judge of the Court of Appeal below failed to appreciate above facts and circumstances of the case and evidence on record and most illegally allowed the appeal and set aside the lawful judgment and decree of the trial Court and dismissed the suit which is not tenable in law.

No one appears on behalf of the opposite parties at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

I have considered the submissions of the learned Advocate for the petitioner and carefully examined all materials on record.

It is admitted that 7.59 acres land including disputed 1.99 acres land belonged to Safil Uddin, Amin Uddin and Radha Lakhkhi in separate shares and the same was correctly recorded in R.S. Khatian No.797 and in S.A. Khatian No.391 3.34 acres land has been

separately recorded in the name of Safil Uddin alone. It is admitted that defendant No.2-5 claimed title and possession in disputed 1.99 acres land by way of purchase by registered kabala deed from above Safil Uddin Munshi who was the tenant of R.S. Khatian No.797 and in whose name S.A. Khatian No.319 was prepared.

The learned Advocate for the petitioner frankly concedes that Safil Uddin or defendant Nos.2-5 are not co-sharers of the palintiffs in the disputed joma since their title was extinguished by auction sale which was purchased by the plaintiffs. It is well settled that a suit for partition can be instituted by one or more co-sharers against the other co-sharers and in such a suit all disputes regarding title or possession between the co-sharers are finally determined and in such a suit the status of both the parties are equal and possession of one co-sharer is regarded as possession for all. None can file a suit for partition as plaintiff against others as defendants whom he does not admit as co-sharer. Plaintiff claims that title of Salim Uddin predecessor of the defendants was extinguished by auction sale of the disputed joma which was purchased by the plaintiffs. As such the plaintiff do not admit any right, title and possession of the defendants in the land of disputed S.A. Khatian No.391 nor the defendants admit that the

plaintiffs are their co-sharers in above joma. As such filing of this suit for partition by the plaintiff against defendant No.2-5 who are successive purchasers from Safil Uddin was misconceived and not tenable in law. But the learned Judges of both the Courts below have failed to appreciate above aspect of this case and entertained this suit for partition and passed judgments on merit which is not tenable in law.

The learned Advocate for the petitioner rightly pointed out that the plaint of this case was drafted by the appointed Advocate of the plaintiff who is an illiterate village man and having no knowledge of the law and procedure and he should not be made to suffer for the professional inexperience and lack of skill of his appointed Advocate.

I find substance in above submissions of the learned Advocate for the petitioner that the ends of justice will be met if the plaintiff is given an opportunity to institute an appropriate suit to vindicate his grievance against the defendant Nos.2-5 and in counting the limitation for that suit the period wasted in prosecuting this erroneous and illegal suit be excluded.

In above view of the materials on record I am unable to find any illegality or infirmity in the impugned judgment and decree of the Court of Appeal below nor I find any substance in the 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 discharged.

However, there is no order as to costs.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER