

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

CIVIL REVISION NO. 1039 OF 2024

In the matter of:

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

AND

In the matter of:

Arjuman Ara and others

.... Petitioners

-Versus-

Sheikh Afil Uddin and others

....Opposite-parties

Mr. Mukunda Chandra Debnath, Advocate with
Mr. Polash Kanti Das, Advocate

... For the petitioners

Mr. A.K.M. Badruddoza, Senior Advocate

....For the opposite party no. 1

Mr. Md. Nurul Amin, Senior Advocate with

Mr. Musfiqur Rahman, Advocate

...For the opposite party nos. 2, 5-7

Heard and Judgment on 04.05.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the plaintiff in Title Suit No. 695 of 2023, this rule
was issued calling upon the opposite-party no. 1 to show cause as to why
the order no. 8 dated 08.02.2024 passed by the learned Joint District Judge

1st Court, Dhaka in Title Suit No. 695 of 2023 filed by the plaintiffs-petitioners allowing an application filed by the defendant no. 5 for recalling the judgment and decree dated 09.11.2023 passed in favour of the plaintiffs-petitioners should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, the operation of the impugned order dated 08.02.2024 passed in the said title suit was stayed for a period of 01(one) month.

The short facts leading to issuance of the instant rule are:

The present petitioners as plaintiffs filed the foresaid suit seeking following reliefs:

- (ক) তফসিল বর্ণিত নালিশী সম্পত্তির মধ্যে বাদীগণের প্রাপ্ত অংশের সম্পত্তি বাদীপক্ষের অনুকূলে বন্টনের প্রাথমিক ডিক্রী প্রদান করিতে ;
- (খ) একজন সার্ভে জানা অ্যাডভোকেট কমিশনার নিয়োগক্রমে নালিশী সম্পত্তি বাদী ও বিবাদীগণের প্রাপ্ত ছাহাম নির্দিষ্ট করিয়া এবং বাদীবিবাদীগ দখল বুঝাইয়া দি৷;
- (গ) অ্যাডভো উক্ত রিপোর্ট/ প্রতিবেদন ডিক্রীর একাংশ গণ্যে চূড়ান্ত ডিক্রী প্রদান করি৷;
- (ঘ) মোকদ্দমার যাবতীয় খরচের ডিক্রী বাদীগণের অনুকূলে দি৷;
- (ঙ) আইন ও ইকুইটি মোতা পাইবার অধিকারী হয় তদ বিষয়ে যথোপযুক্ত ডিক্রী প্রদান করিতে ।

The said suit was filed for partition measuring a total area of 984.43 decimals of land.

In the said suit, defendant nos. 1-3, 4,6 and 7 herein the opposite party nos. 2-8 entered appearance and filed a joint written statement

denying all the material averment so made in the plaint. After filing of the said suit, and the written statement, the plaintiffs and those defendant nos. 1-3, 4,6 and 7 on 26.10.2023 jointly filed a compromise petition and prayed for a decree in terms of the said compromise application. However, the application was taken up for hearing by the learned judge of the trial court and vide order dated 09.11.2023 decreed the suit on compromise upon taking evidence of the witnesses from both the plaintiffs and the defendant no. 1 as PW 1 and DW 1 and accordingly decree was drawn up on the basis of the said compromise on 14.11.2023 vide order no. 5. After passing the said decree on compromise, in preliminary form, the present opposite party no. 1 who stood as defendant no. 5 in the suit on 17.01.2024 filed an application for recalling the said judgment and decree passed on 09.11.2023 stating *inter alia* that, in spite of appearing in the suit on 26.10.2023 by filing power vis-à-vis an application, seeking time for filing written statement, the learned judge of the trial court did not bother to take into account of that assertion and therefore the said the judgment and decree passed on compromise is require to be recalled and suit be restored to its original file and number. However, the said application was ultimately taken up for hearing by the learned judge of the trial court and vide impugned judgment and order dated 08.02.2024 allowed the same exercising power under section 151 of the Code of Civil Procedure and thereby set aside the compromise decree restoring the suit to its original file and number keeping the compromise petition with the record.

It is at that stage, the plaintiffs as petitioners came before this court and obtained instant rule and order of stay.

Mr. Mukunda Chandra Debnath along with Mr. Polash Kanti Das, the learned counsels appearing for the petitioners upon taking us to the impugned judgment and order made three fold of submissions **firstly**, the learned judge under no circumstances can recall the judgment and decree passed on compromise as nothing has been provided in the entire Code of Civil Procedure that ever empowers the trial court to recall any decree even though there has been no mention under what provision of the Code of Civil Procedure the application has been filed by the opposite party no. 1.

The learned counsel in his second leg of submission contends that, the defendant no. 5 opposite party no. 1 could either file civil revision or a Miscellaneous Case to challenge the judgment and decree dated 9.11.2023 but without doing so, the learned judge on the one hand, recalled the decree and on the other hand, retained the petition for compromise in the record for consideration for consideration at the time of disposal of the suit-which is self contradictory and can never stand.

The learned counsel lastly contends that, since it has not been shown from order no. 3 dated 26.10.2023 of the suit, that any power has been tendered by the defendant no. 5, opposite party no. 1 let nor any application has been filed and pressed seeking time for filing written statement, so there has been no reason to hold that, on that very date a vakalatnama was filed by the defendant no. 5 and therefore, the learned judge of the trial court has not committed any error of law in passing the judgment and decree dated 09.11.2023. Agreeing the said submission, Mr. Md. Nurul Amin, the learned senior counsel appearing for the opposite party nos. 2,5-7 just adds that the opposite party no. 1 has got every scope to get his respective share before final decree of the suit is passed as the suit has been

filed for partition simpliciter and only a preliminary decree has been passed. However, the learned senior counsel very robustly submits that, the learned judge of the trial court has committed a gross illegality in passing the impugned order recalling the judgment and decree passed on compromise which cannot be sustained in law.

On the contrary, Mr. A.K.M. Badruddoza, the learned senior counsel appearing for the opposite party no. 1 vehemently opposes the contention taken by the learned counsels for the petitioners and submits that, the trial court has been misguided by the conspiracy hatched by the plaintiff and some of the defendants who kept the opposite party no. 1 out of the entire proceeding of the suit only to grab the suit land in spite of appearing in the suit when the court has not noted down his appearance nor observe about the application seeking time for filing written statement dated 26.10.2023 for which there has been no scope for the defendant no. 5 after then to challenge the alleged judgment and decree dated 09.11.2023 by filing an application for recall.

The learned counsel further contends that, though in the application dated 17.01.2024 filed for recalling the judgment and decree dated 09.11.2023 there has been no mention of section 151 of the Code of Civil Procedure but from the body of the application, it construe that, the petitioner sought exercise of inherent power of the trial court and the learned judge has thus rightly passed the impugned order exercising power under section 151 of the Code of Civil Procedure which is liable to be sustained and finally prays for discharging the rule.

We have considered the exhaustive submission so advanced by the learned senior counsel for the petitioners and that of the opposite party no.

1 and 2,,5-7. We have also gone through the impugned judgment and order and the order preceeded to the impugned orders including judgment and decree dated 09.11.2023. From the order dated 26.10.2023 we find that, on that very date, the plaintiff and the defendant nos. 1-4, 6 and 7 filed a joint application for compromise on which plaintiff witnesses no. 1 and the defendants witnesses no. 1 were examined and on the basis of the evidence, judgment and decree was passed on 09.11.2023 on compromise among the parties and after that the decree was drawn up in preliminary form on 14.11.2023. However, long after 2 months of passing the decree, the present opposite party no. 1 who was defendant no. 5 in the suit on 17.01.2024 filed an application for recalling the order asserting that, his *vokalatnama* has not been recorded in the order book of the suit for which he became aggrieved and then compelled to file the application for recalling the judgment and decree. But as has been stated herein above, from the order no. 3 dated 26.10.2023 it does not reflect the alleged assertion made in the application because had there any application seeking time for filing written statement of the defendant no. 5, it would have been mentioned in the order passed on that date by the trial court. Even from the subsequent orders that is from order nos. 4-6, we don't find that the defendant no. 5 has taken any attempt to raise that point of filing power or of application seeking time. Curiously enough, in the impugned judgment and order nothing of the sort has been asserted by the learned judge of the trial court. Rather, the learned judge of the trial court in a very slipshod and halfhearted manner allowed the application by recalling the judgment and decree dated 09.11.2023 going beyond the provision of law. Fully enough, the trial court on the one hand recalled the judgment and decree dated

09.11.2023 and on the other hand, he kept the compromise petition in the record which itself is self contradictory having no legal basis. It is not denying by the learned counsels for both the parties that, the opposite party no. 1 had the option to challenge the judgment and decree to any other forum as appeal is completely barred under section 96(3) of the Code of Civil Procedure. But in spite of availing any legal recourse open to him the opposite party no. 1 has simply dropped an application for recalling the judgment and decree without mentioning therein under what provision of law that very compromise judgment and decree should be recalled. It is now well settled proposition of law set by our Appellate Division that, if there has been any statutory remedy, exercise of inherent power under section 151 of the Code of Civil Procedure cannot be entertained and we can readily rely the decision on that score which was reported in 60 DLR (AD) 38 where it has been held that:

“Where an alternative remedy exists a party cannot have recourse to the inherent jurisdiction of the court under section 151 of the Code of Civil Procedure”

Even though, as stated herein above, the application has not been filed by the present opposite party no. 1 under section 151 of the Code of Civil Procedure in spite of that, the trial court on his own volition has very misconceivedly exercised his jurisdiction under section 151 of the Code of Civil Procedure which cannot be sustained.

Regard being had to the above facts and circumstances we don't find any merit or substance in the impugned judgment and order which stands recalled.

Resultantly, the rule is made absolute however without any order as to costs.

The impugned judgment and order dated 08.02.2024 passed by the learned Joint District Judge 1st Court, Dhaka in Title Suit No. 695 of 2023 is thus set aside.

The order of stay grated at the time of issuance of the rule is thus recalled and vacated.

Let a copy of this judgment and order be transmitted to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.