

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

**CIVIL MISCELLANEOUS NO. 34 OF 2023**

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Shah Abdullah Farhad, son of late Farhad Rahman of Flat No. 1C, House No. 43, Road No. 3/A, Dhanmondi, Dhaka-1209, Bangladesh.

.... Petitioner

-Versus-

Sadia Tabassum, wife of late Farhad Rahman, daughter of Mohiuddin Bhuiyan and others.

....Opposite-parties

Mr. M. M. Shafiullah, Advocate

... For the petitioner

**Heard and Judgment on 15.05.2024.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J:**

On an application under section 24 of the Code of Civil Procedure filed by the defendant no. 1 in Title Suit No. 175 of 2022, this rule was issued calling upon the opposite-party to show cause as to why the Title

Suit No. 175 of 2022, now pending before the Joint District Judge, 1<sup>st</sup> Court, Brahmanbaria will not be withdrawn and transferred to the court of learned Joint District Judge, 1<sup>st</sup> Court, Dhaka to be tried simultaneously or analogously with Title Suit No. 347 of 2022, now pending before the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka and/or such other or further order or orders be passed as to this court may seem fit and proper.

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

The present petitioner as plaintiff initially filed a Title Suit being Title Suit No. 347 of 2022 in the court of learned Joint District Judge, 1<sup>st</sup> Court, Dhaka seeking following reliefs:

*“a. A decree declaring that the plaintiffs are the owners of  $\frac{28}{112}$  shares in the ‘A’ scheduled property by way of inheritance.*

*b. A decree declaring that the ‘Kha’ scheduled Hebanama is forged, fabricated, collusive ineffective and not binding upon the plaintiffs.*

*c. A preliminary decree for partition of learned Joint District Judge, 1<sup>st</sup> Court, Dhaka  $\frac{28}{112}$  shares in favour of the plaintiffs and against the defendants in the ‘A’ scheduled property;*

*d. Appoint a survey knowing advocate commissioner for commissions to make partition in light of the preliminary decree;*

- e. Accept the advocated commissioner's report and draw final decree treating the commissioner's report as part of the decree;*
- f. A decree awarding costs in favour of the plaintiff.*
- g. Any other or further relief or reliefs to which the plaintiff is entitled in law and equity."*

Afterwards, the present opposite-party nos. 1-3 as plaintiffs also filed a suit against the present petitioner and his brother making them as defendant nos. 1-2 being Title Suit No. 175 of 2022 before the learned Joint District Judge, 1<sup>st</sup> Court, Brahmanbaria also seeking following reliefs:

- “(ক) বাদীগণ নালিশী তপছিল বর্ণিত সম্পত্তি ও তদস্থিত নালিশা ব্যবসা প্র তিষ্ঠান অস্থিত নামার দলিল মোতাবেক ৫০% (অর্ধেক) মালিকানা বাবদে পৃথক ছাহাম পাইতে অধিকারী বিধায় বিবাদীপক্ষকে তদবাবদে এক পৃথক ছাহাম মঞ্জুর করিয়া প্র াথমিক ডিক্রি দিতে;
- (খ) মাননীয় আদালতের নির্দেশ মোতাবেক বিবাদীগণ যদি নালিশা ভূমি ও তদস্থিত ব্যবসা প্র তিষ্ঠান বাদীপক্ষের পাওনীয় ছাহাম পৃথক করিয়া না দেয় তবে মাননীয় আদালত কর্তৃক সার্ভে অভিজ্ঞ অ্যাডভোকেট কমিশনার নিয়োগ ক্রমে নালিশা ভূমি ও তদস্থিত ব্যবসা প্র তিষ্ঠান বাবতে পৃথক ছাহাম চিঠা ফিল্ড বুক, ম্যাপ এবং হিসাবাদি প্র স্ত ত ক্রমে আনাইয়া বন্টনের প্র াথমিক ডিক্রির অনুবলে বন্টনের এক চূড়ান্ত ডিক্রি দিতে;

(গ) ১নং বাদীনি ও ১নং বিবাদী উভয়ের যৌথ একাউন্টের মাধ্যমে নালিশা 'খ' তপছিলে বর্ণিত নালিশা সাফকো সিএনজি রিফুয়েলিং স্টেশনের তহবিল ও যাবতীয় লেনদেন পরিচালনা করিতে অধিকারী মর্মে ঘোষণা ক্রমে এক ডিক্রি দিতে;

(ঘ) নালিশা 'খ' তপছিলে বর্ণিত নালিশা ব্যবসার লভ্যাংশের টাকা আগস্ট ২০২১ ইং থেকে আগস্ট ২০০২ ইং পর্যন্ত (অছিয়তনামা অনুসারে) প্র তি মাসের হিসাব অনুযায়ী বাদীপক্ষের পাওনীয় তাহাদের হিস্যা অনুযায়ী ৫০ হারে প্র ১প্য লভ্যাংশের ৫৭,৬০,৮১৯/- (সাতান্ন লক্ষ ষাট হাজার আটশত উনিশ) টাকা বাদীর বরাবরে পরিশোধের নিমিত্তে বাদীর অনুকূলে এবং বিবাদীর প্র তিকূলে ডিক্রি দিতে;

(ঙ) বিবাদীগণ যদি ডিক্রির মর্মমতে নালিশা 'খ' তপছিলে বর্ণিত ব্যবসার বাদীপক্ষের প্র ১প্য লভ্যাংশের টাকা নির্ধারিত সময়ের মধ্যে বাদীপক্ষ বরাবরে পরিশোধ না করেন তাহা হইলে বিজ্ঞ আদালত কর্তৃক উক্ত টাকা আদায়ের নিমিত্তে প্র যোজনীয় আইনানুগ ব্যবস্থা গ্র হণ করিয়া বাদীর অনুকূলে বিবাদীর প্র তিকূলে ডিক্রি দিতে;

(চ) মোকদ্দমার যাবতীয় ব্যায় বাদীর সপক্ষে এবং বিবাদীর বিরুদ্ধে ডিক্রি দিতে;

(ছ) আইন, ন্যায়নীতি ও ন্যায় বিচারে বাদী আর যে সকল প্র তিকার পাওয়ার হকদার বলিয়া বিবেচিত হন সেই সকল প্র তিকারাদিও বাদী বরাবর মঞ্জুর করিতে মামানীয় আদালতের আজ্ঞা হয়।”

The present petitioner at first filed the suit in the 1<sup>st</sup> Court of Joint District Judge, Dhaka while the present opposite-party nos. 1-3 as

plaintiffs filed the suit in the 1<sup>st</sup> Joint District Judge, Brahmanbaria. When both the suits were proceeding in two different courts and in two different districts, the defendants of Title Suit No. 175 of 2022 prayed for transferring that suit in the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka to be tried with Title Suit No. 347 of 2022 analogously or simultaneously.

Mr. M. M. Shafiullah, the learned counsel appearing for the petitioner upon taking us to the revisional application in particular, the plaintiffs of both the suits which has been annexed as of Annexure-‘A’ and ‘B’ to the revisional application at the very outset submits that, since the present opposite-party nos. 1-3 filed suit for partition in respect of ‘ka’ and ‘kha’ scheduled property which is also inserted in the plaint of his suit as schedule ‘C’ and ‘B’ so for the effectual adjudication of both the suits, the Title Suit No. 175 of 2022 pending before the learned Joint District Judge, 1<sup>st</sup> Court, Brahmanbaria be withdrawn and to transfer the same to the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka and tried with Title Suit No. 347 of 2022 either analogously or simultaneously.

The learned counsel by referring to the cause title of both the plaintiffs further contends that, since the parties of both the suits reside in Dhaka so there would have been no inconvenience if the suit so filed by the present opposite-party nos. 1-3 before the learned Joint District Judge, 1<sup>st</sup> Court, Brahmanbaria be withdrawn and transferred to the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka and heard analogously or simultaneously.

The learned counsel next submits that, apart from prayer for declaration that the schedule ‘kha’ hebanama which was alleged to have executed by the father of the present petitioner in favour of his step-

mother named, Sadia Tabassum, the plaintiff of Title Suit No. 175 of 2022 so there will have no impediment if both the suits were heard in a single court.

Though the notice of the rule has duly been served upon the opposite-parties to the rule but none appeared to oppose the same.

We have considered the submission so advanced by the learned counsel for the petitioner and perused the revisional application. We have also gone through the schedules so appended with both the plaints of Title Suit No. 175 of 2022 and 347 of 2022.

Furthermore, since it has been informed by the learned counsel for the petitioner that, in both the suits, the defendants entered appearance to contest the same and the parties to the suits have been residing in Dhaka having no reason to suffer any inconvenience if the title suit which is now pending before the learned Joint District Judge, 1<sup>st</sup> Court, Brahmanbaria be withdrawn and transfer to the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka and tried analogously or simultaneously. We find ample substance to the submission so placed by the learned counsel for the petitioner.

Accordingly, the rule is made absolute however without any order as to cost.

The learned District Judge, Brahmanbaria is hereby directed to take necessary step in withdrawing Title Suit No. 175 of 2022 from the court of learned Joint District Judge, 1<sup>st</sup> Court, Brahmanbaria and transfer it to the learned District Judge, Dhaka.

The learned District Judge, Dhaka is hereby directed to transmit the case record of Title Suit No. 175 of 2022 moment it receives the record of

the said suit to the court of learned Joint District Judge, 1<sup>st</sup> Court, Dhaka directing it to dispose of the said suit simultaneously with Title Suit No. 347 of 2022.

Let a copy of the judgment be communicated to the learned District Judge, Brahmanbaria as well as learned District Judge, Dhaka forthwith.

**Md. Bashir Ullah, J:**

I agree.