

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3476 OF 2024

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure.

And

Bibijan

... Petitioner

-Versus-

Khaleda Akhter Khatun and others

.... Opposite parties

None appears

....For the petitioner.

Mr. Humayun Kabir Sikder, Advocate

.... For the opposite party Nos.1-17,
18(a)-18(j) and 19-21.

Heard and Judgment on 25.02.2025.

On an application under Section 115(4) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 19.10.2023 passed by the learned District Judge, Netrokona in Civil Revision No.14 of 2023 upholding and confirming order dated 23.08.2023 passed by the learned Senior Assistant Judge, Sadar, Netrokona in Partition Suit No.77 of 1997 should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above Title Suit No.176 of 2023 for declaration that registered deed of gift dated 28.01.1957 executed by plaintiff No.1 to predecessor of the defendants namely Jamal Uddin on 28.01.1987 for 99 decimal land is illegal, collusive, fraudulent, ineffective and not binding upon the plaintiff. In Partition Suit No.77 of 1997 defendant No.2 submitted a petition on 28.08.1923 for staying further proceedings of the suit till disposal of Title Suit No.176 of 2023.

The learned Senior Assistant Judge summarily rejected above petition and above plaintiff challenging the legality and propriety of above judgment and order of the trial Court preferred Civil Revision No.14 of 2023 to the District Judge, Netrokona who summarily rejected above Civil Revision and being aggrieved by and dissatisfied with above judgment and order of the learned District Judge above petitioner as petitioner moved to this Court with this Civil Revisional application under Section 115(4) of the Code of Civil Procedure and obtained this Rule.

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

Mr. Humayun Kabir Sikder, learned Advocate for the opposite party Nos.1-17, 18(a)-18(j) and 19-21 submits that the petitioner was

defendant No.2 in Partition Suit No.77 of 1997 and in above suit legality and propriety of registered deed of gift No.3252 dated 28.01.1957 was an issue and the trial Court decreed above suit on contest and above defendants preferred Title Appeal No.190 of 2004 to the District Judge which was allowed in part and the respondents of above appeal preferred Civil Revision No.4590 of 2015 to the High Court Division which was allowed and the Rule was made absolute. Challenging the legality and propriety of above judgment and decree of the High Court Division above opposite parties preferred Civil Petition for Leave to Appeal No.302 of 2019 which was rejected on 15.01.2023 and Civil Review Petition No.35 of 2023 preferred by the above petitioners was also rejected on 15 June 2023. As such the judgment and decree passed in Partition Suit No.77 of 1997 reached its finality by the judgment of the Appellate Division on contest. As such above defendant cannot submit a petition for staying proceedings of above Partition Suit No.77 of 1997 in the Court of the Assistant Judge and on correct appreciation of above materials on record the learned Additional District Judge rightly rejected above Civil Revision which calls for no interference.

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

Pursuant to above submissions the learned Advocate for the opposite party has produced relevant judgments of the trial Court, Court of Appeal, High Court Division and Appellate Division which show that the judgment and decree passed by the trial Court in Partition Suit No.77 of 1997 reached its finality by the judgment and order of the Appellate Division passed on 15 January 2023 in Civil Petition for Leave to Appeal No.302 of 2019. The opposite party filed Civil Review Petition No.35 of 2023 against above judgment but the same was rejected on 15 June 2023.

It further turns out from the judgment of the High Court Division passed in Civil Revision No.4596 of 2015 that impugned registered deed of gift dated 27.01.1957 was produced and marked as Exhibit No.2 and the High Court Division found that above deed of gift was genuine and the same was acted upon.

As such Other Class Suit No.176 of 2023 filed by the defendant No.2 of above Partition Suit as plaintiff claiming that above deed of gift dated 27.10.1957 (Exhibit No.2) was an ineffective and void deed was barred by Section 11 of the Code of Civil Procedure.

In above view of the facts and circumstances of the case and materials on record I am unable to find any illegality or irregularity in the impugned judgment and order passed by the learned District Judge nor I find any substance in this Civil Revisional application

under Section 115(4) 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.

MD. MASUDUR RAHMAN
BENCH OFFICER