In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:
Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 513 OF 2011

Md. Jamal Uddin being dead his legal heirs: 1(a) Jobena Khatun and others
Defendant-Appellant-Petitioners

Versus

Most. Rokeya Khatun and others
Plaintiff-Respondent No.1-Opposite Party No. 1

Most. Fatema Khatun and others
Proforma-Opposite Parties

Mr. Md. Zafar Sadek, Advocate
for the Defendant-Appellant-Petitioners

Mr. Shameem Haider Patwary, Advocate
for the Opposite Party No. 1

Mr. Abdur Razaque Khan, Senior Advocate with
Mr. Hasan Rajib Prodhan, Advocate
for the Opposite Party Nos. 14-15

Judgment on: 12.7.2023

This Rule was issued calling upon the opposite party No. 1 show cause as to why the impugned Judgment and Decree dated 29.7.2010 passed by the learned Joint District Judge, 1st Court, Lalmonirhat (In charge) in Other Class Appeal No. 19 of 2007 affirming with modification of those dated 18.2.2007 passed by the learned Assistant Judge, Aditmari Court, Lalmonirhat in Other Class Suit No. 17 of 2003 decreeing the suit in part should not be set aside and/or such other or further order or orders passed as to

this Court may seem fit and proper.

The opposite party No. 1 as plaintiff instituted Other Class Suit No. 17 of 2003 before the learned Assistant Judge, Aditmari Court, Lalmonirhat against the present petitioner and proforma opposite parties for partition with a further declaration that the Talak Nama dated 13.6.1982 being No. 3 of 1982 under the Registry Office, Barua, Police Station Patgram, District Lalmonirhat is collusive, void and not binding upon the plaintiff.

The Case of the plaintiff, in short, is that the 'Ka' schedule land belongs to the late Safor Uddin and S.A. Khatian Nos. 42 and 6 were duly recorded in his name and while in possession in the suit land the said Safor Uddin out of 2.10 acres of land of S.A. Dag No. 313 measuring 90 decimals and from S.A. Dag No. 114 out of 1.68 acre the land 1.0650 acres total 1.9650 acres of land transferred in favour of 2 sons namely Hafej Uddin and Jamaluddin by way of Heba Bil Ewaj deed and handed over the possession. Thereafter Safor Uddin died leaving behind one wife Abejan Bewa who succeeded, 3650 decimals of land, 3 sons namely Hafejuddin, Shahbuddin and Jamaluddin .50 decimals succeeded by each and 4 daughters also succeeded 26 decimals each. Thereafter Shahabuddin died leaving behind one wife as defendant No. 6 and 02 sons defendant Nos. 7 and 8 and 5 daughters as defendant No. 9 to 13 and all of them succeeded the

share of late Shahabuddin. Thereafter Abejan Bewa while possessing .61 decimals died leaving behind sons and daughters and the defendant Nos. 1-5 are the heirs of Saforuddin being born in the womb of their first mother and defendant Nos. 7 and 13 were born in the womb of the second wife of Saforuddin. The plaintiff was the legal wife of late Hafej Uddin and after his death she got married to another person Shah Alam Mia and in this way the plaintiff along with the defendant are in possession in the disputed land. The plaintiff being legal heir of her first husband late Hafej Uddin she claimed for .37 decimals of land for partition in favour of the plaintiff but on 16.3.2003 she was refused by the defendant to do the same. It is the further case of the plaintiff that since the defendant No. 1 in his written statement claimed a Talak Nama dated 13.6.1982 being Number 3 of 1982 was given by the late Hafej Uddin to the plaintiff during his life time and as such the plaintiff instituted the present suit for partition claiming .37 decimals of land as well as for a declaration that the Talak Nama dated 13.6.1982 issued by late Hafej Uddin in favour of the plaintiff is collusive, void and not binding upon the plaintiff.

The defendant No. 1 contested the suit by filling a separate written statement denying the plaint case contending, inter alia, that Hafej Uddin on 15.2.1976 vide registered Talak Nama being No. 3 of 1982 divorced the plaintiff. The plaintiff during the life

time of Hafej Uddin remarried Shah Alam and continued conjugal life and Hafej Uddin after divorce and being childless died leaving behind his mother Abejan Bewa, 03 (three) sisters and step brother defendant No. 1 and thereafter three sisters of late Hafej Uddin vide Registered Sale Deed No. 5717 transferred 1.06 acres of land in favour of the defendant No. 1. Thus the defendant No. 1 by way of succession and purchase got 3.26 acres of land and subsequently transferred some portion of land in favour of some persons. The defendant No. 1 by filing an additional written statement denied the claim of the plaintiff that the said Talak Nama was not created and late Hafej Uddin being dissatisfied with the misbehavior of the plaintiff ultimately divorced her and thereafter completion of Iddat period the plaintiff remarried Shah Alam and he prayed for dismissal of the suit as well as prayed for Saham.

The defendant Nos. 15-27 also contested the suit by filing a joint written statement adopted the statements of plaint of the plaintiff and contending, inter alia, that the defendant No. 1 transferred 1.06 decimals of land in favour of this defendants and also transferred .2550 decimals of land and .04 decimals of land in favour of the present defendants by different sale deeds. The defendant Nos. 15-27 prayed for their respective Shaham before the Trial Court.

The defendant Nos. 7 and 8 also contested the suit by filling

a joint written statement adopted the case of the plaintiff contending, inter alia, that being legal heirs of Shahabuddin the present defendants succeeded .48 decimals of land and thereafter .48 decimals of land has been transferred by different subsequent sales the present defendants are in possession of .17 decimals of land and they prayed for Shaham before the Trial Court.

The defendant Nos. 14 and 15 also contested the suit by filling a joint written statement adopted the case of the plaintiff by way of purchase they obtained .20 decimals of land and they also prayed for Shaham in respect of .20 decimals of land.

The defendant Nos. 16, 18, 19, 21 and 22 also contested the suit by filing a joint written statement and also adopted the case of the plaintiff contending inter alia that by way of purchase from different dates from the heirs of Shahbuddin the present defendant became of the owner of .37 decimals of land and they also prayed for Shaham in respect of .37 decimals of land.

The learned Assistant Judge, Aditmari Court, Lalmonirhat decreed the suit in part vide judgment and decree dated 18.2.2007 in Other Class Suit No. 17 of 2003.

Against the aforesaid judgment and decree the defendant No. 1 as appellant preferred Appeal being Other Class Appeal No. 19 of 2007 before the learned District Judge, Lalmonirhat and thereafter which was transferred before the learned Joint District

Judge, 1st Court, Lalmonirhat who disallowed the Appeal vide Judgment and Decree dated 29.7.2010 and thereby affirmed the Judgment and Decree dated 18.2.2007 in Other Class Suit No. 17 of 2003 passed by the learned Assistant Judge, Aditmari Court, Lalmonirhat.

Being aggrieved by and dissatisfied with the impugned judgment and decree the defendant-appellant as petitioner moved this application under Section 115(1) of the Code of Civil Procedure, 1908 before this Court and obtained this Rule.

During pendency of the Rule petitioner Jamaluddin died and his legal heirs were substituted.

Mr. Md. Zafar Sadek, learned Advocate for the defendant-appellant-petitioners, submits that in support of divorce by late Hafej Uddin to the plaintiff the D.W. 2 Md. Mahbubur Rahman concerned Officer of the said Nikah and Talak Registry Office of Patgram who also adduced the volume of the said Registered Talak Nama dated 13.6.1982 and the same was marked as an Exhibit-Ga and it will appear from the judgment of the Court below who upon total non-consideration of the evidence of D.W.2 as well as the Exhibit-Ga concurrently found that the said Talak Nama is not a genuine one and thus gave respective Shaham in favour of the plaintiff declaring the same as collusive, void and not binding upon the plaintiff and as such the judgment of both Courts below

seriously suffers from non-consideration of evidence of D.W. 1 and D.W. 2 and thus committed an error in the decision occasioning failure of justice. He further submits that where the plaintiff being legal heir of her first husband late Hafej Uddin claim for her share and whereas she merely examined P.W. 2 and 3 in support of her claim that the said Talak Nama is collusive, created and not binding upon her but in spite of submission of volume of the said Talak Nama and as per Section 62 of the evidence Act and the said Exhibit Ga is more valuable than the evidences of P.W. 2 and 3 and the Courts below upon misconception of the aforesaid Section of the Evidence Act decreed the suit and disbelieved the Talak by late Hafej Uddin in favour of the plaintiff. He lastly submits that this is the settled principle of Muslim Law of inheritance that a divorced wife is not entitled to get any share of her previous husband but in the instant case in spite of adducing oral and documentary evidences in support of divorce by late Hafej Uddin to the plaintiff on behalf of the defendant No. 1 but both the Courts below upon misconception of law disbelieved the said divorce and gave the plaintiff her respective share of her first husband treated her being legal heir and thus both the Courts below committed an error in the decision occasioning failure of justice.

Learned Advocate Mr. Shameem Haider Patwary appearing

with Md. Ali Reza Mohammad Suzauddowla, learned Advocate and Md. Mizanur Rahman, learned Advocate appearing for the plaintiff-opposite party No. 1 has made submission and placed both oral and documentary evidence as adduced by both the parties and formulated point:

a) The Muslim Family Law Ordinance, 1961 expressly imposed mandatory obligation to give notice in writing who wishes to divorce his wife in following terms:-

   (7) (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of Talak in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

b) Considering the case records along with defendant witnesses deposition it would be crystal clear that no written notice was issued to legalize the so called Talak Nama. Defendant witness No.1 (son of the Defendant No. 1) clearly admitted during cross examination that "লালমনিরহাট সদর এলাকাধিন বিবাহ ও তালাক রেজিষ্ট্রি হয় সদর কাজী অফিসে এবং একই তালাকনামাটি বাউবা রেজিষ্ট্রিকৃত, এই সাক্ষীরা আরও বলিয়াছেন যে, হাফেজ উদ্দিন তাহার সম্মুখে বাদিনীকে তালাক দেন নাই এবং তালাকনামায় ১নং বিবাদী সাক্ষী ছিলেন না। তালাকনামার সাক্ষী মারা গিয়াছেন এবং হাফেজ উদ্দিন তালাকের নোটিশ বা তালাকনামা বাদিনীকে বা বাদিনীর ইউনিয়নের চেয়ারম্যানকে দিয়েছিলেন কি না তাহা তিনি জানেন না এবং তালাক নামার সাক্ষীরা তাহার চাচা

সাহাব উদ্দিন টিপ সহি কম দিতেন এবং নাম সাক্ষর বেশী করিতেন।

c) Defendant witness No. 2 (From Qazi Office) clearly admitted that the 'thumb mark' is vague during cross examination "DW-2" তালাকনামার সহি মোহর কৃত নকল প্রদঃ গ চিহ্নিত করেছেন। এই সাক্ষী জেরার জবাবে তিনি লালমনিরহাট বা আদিতমারির কাজী নহেন এবং এই এলাকার আর কোন তালাক এই রেজিষ্ট্রারে নাই এবং আদালতের প্রশ্নের উত্তরে তালাকনামার টিপসহি vague মনে হয় মমে স্বীকার করেন এবং তালাকের নোটিশ বাদিনীকে দেওয়া হইয়াছে এই মর্মে কোন কাগজপত্র দাখিল করেন নাই।

d) Plaintiff Witness Nos. 2 and 3 strongly denied any suggestion in relation to divorce between late Hafez Uddin and this plaintiff "PW2 and PW3 এর সাক্ষ্য দ্বারা ইহা পরিস্কার যে, বাদিনী তাহাদের নিকট আত্মীয় এবং বাদিনী কে তাহার স্বামী তালাক প্রদান করিলে তাহারা জানিতেন এবং PW2 and PW3 এই মোকদ্দমার কোন স্বার্থ সংশ্লিষ্ট ব্যক্তি নহেন এবং ১নং বিবাদী মোকদ্দমার স্বার্থ সংশ্লিষ্ট এবং তিনি আদালতে সাক্ষ্য দিতে আসেন নাই। এই অবস্থায় উপস্থিত উপস্থাপিত সাক্ষ্য প্রমাণাদি ও পারিপার্শ্বিকতায় বিবেচনায় আদালতে এইরুপ সিদ্ধান্তে উপনীত হইল যে, হাফেজ উদ্দিন তাহার মৃত্যুর পূর্বে বাদিনীকে তালাক প্রদান করেন নাই এবং ১নং বিবাদীপক্ষ বাদিনীর সম্পত্তি হইতে বঞ্চিত করিবার জন্য উক্ত তালাকনামা সৃষ্টি করিয়াছেন।

e) After carefully considering witnesses depositions, learned Trial Court justly and fairly observed that "পুত্র হাফেজ উদ্দিন পিতার নিকট থেকে হেবা বিল এওয়াজ দলিল মুলে নালিশী জোতের .৯৮ একর

জমি এবং ওয়ারিশ সূত্রে .৫২ একর জমি একুনে ১.৫০ একর জমি প্রাপ্ত হইয়া স্ত্রী রোকেয়া বেগম, মা আবেজান বেওয়া ও ৩ বোন ফাতেমা, নবিজান, কুলসুম কে ওয়ারিশ সূত্রে প্রাপ্ত হন। তাকে তাঁর স্বামী হাফেজ উদ্দিন তালাক দেন নাই মর্মে দাবী করেন। তাকে যে হাফেজ উদ্দিন তালাক দেন নাই মর্মে হাফেজ উদ্দিনের বোন সাহেরান নেছা পি ডবিব্লউ-২ হিসাবে সাক্ষ্য দিয়েছেন। এ ছাড়া হাফেজ উদ্দিনের ভাই সাহাব উদ্দিনের ছেলে আইয়ুব আলী পি-ডব্লিউ-৩ হিসাবে সাক্ষ্য দিতে এসেও উক্ত তালাকের কথা অস্বীকার করেন।"

f) Furthermore, after carefully considering case records and witnesses depositions Courts below concurrently observed that "আপীলকারী-বিবাদীপক্ষ যে দাবী করেন-বাদিনী কে তাঁর ভাই হাফেজ উদ্দিন মৃত্যুর পূর্বে তালাক দিয়েছেন, এর স্বপক্ষে বিশ্বাসযোগ্য কোন সাক্ষ্য প্রমান দাখিল করতে পারেন নাই। কথিত তালাক নামার কপি দাখিল করলেও এর স্বপক্ষে প্রমান না থাকায় বোঝা যায় যে, বাদিনী রোকেয়া বেওয়াকে স্বামীর পরিত্যক্ত সম্পত্তি হতে বঞ্চিত করায় উদ্দেশ্যেই আপীলকারী বিবাদিপক্ষ উক্ত তালাক নামা সৃষ্টি করেছেন। কথিত তালাক নামাটি যে জাল এতে কোন সন্দেহ নাই। এই সম্পর্কে তর্কিত রায়ে বিজ্ঞ সহকারী জজ বিস্তারিত আলোচনা ক্রমে তর্কিত তালাক নামাটি জাল ঘোষনা করে সঠিক সিদ্ধান্ত দিয়াছেন মর্মে প্রতিয়মান হয়।"

The learned Advocate submits that the plaintiff opposite party No. 1 has duly proved her entitlement to inherit the property of her late husband Hafej Uddin and submits that the plaintiff-opposite party No. 1 sought for partition claiming 37 decimals of land.

On behalf of the opposite party No. 14 and 15 learned

Senior Advocate Mr. Abdur Razaque Khan submits that both of them have been given Saham by the Trial Court and affirmed by the Appellate Court below to the extent of .20 decimals of land which is the land acquired by 3 Saf Kabala deeds executed and registered by heirs and transfer of late Saforuddin and in the instant revisional application the defendant-petitioner has not made any statement against them and their share of land and thus no interference is called for.

Considering the facts and circumstances of the Case, I find no substance in this Rule.

In the result, the Rule is discharged without any order as to costs.

The impugned Judgment and Decree dated 29.7.2010 passed by the learned Joint District Judge, 1st Court, Lalmonirhat (In charge) in Other Class Appeal No. 19 of 2007 affirming with modification Judgment and Decree dated 18.1.2007 passed by the learned Assistant Judge, Aditmari Court, Lalmonirhat in Other Class Suit No. 17 of 2003 decreeing the suit in part is hereby affirmed.

Send down the lower Court's record with a copy of the Judgment to the Courts below at once.

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