

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.811 OF 2011

In the matter of:

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

And

Sharif Khatun

.... Petitioner

-Versus-

Md. Eshak and others

.... Opposite parties

Mr. Md. Aminul Ehsan, Advocate

.... For the petitioner.

None appears

.... For the opposite parties.

Heard on 28.11.2024.

Judgment on 02.12.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 08.07.2010 passed by the learned Joint District Judge, 1st Court, Feni in Title Appeal No.16 of 2009 disallowing the appeal and affirming the judgment and decree dated 19.03.2009 passed by the learned Assistant Judge, Parsuram, Feni in Title Suit No.33 of 2007 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 suit for partition seeking a separate saham for one decimal land.

It was alleged that Anjumer Nessa and Nawabjan two sisters purchased two decimal land from heirs of Golam Rasul and Ashraf Ali by registered kabala deed dated 22.02.1979 and above Anjumer Nessa transferred 2 decimal land to the plaintiff by a registered kabala deed on 24.01.1984.

Above suit was contested by defendant Nos.1 and 3 by filing separate statements. Defendant No.1 denied plaintiff's title and possession in the above land and defendant No.3 sought separate saham for his land in the above joma.

At trial plaintiff examined 5 witnesses and documents of the plaintiff were marked as Exhibit Nos.1-4. On the other hand defendants examined 6 witnesses and their documents were marked as Exhibit Nos.'Ka'-'Chaa'.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree of the trial Court above plaintiff preferred Title Appeal No.16 of 2009 to the District Judge, Feni which was heard by the learned Joint District Judge, 1st Court who dismissed above appeal and affirmed the judgment and decree of the trial Court.

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

Mr. Md. Aminul Ehsan, learned Advocate for the petitioner submits that contesting defendants have admitted plaintiff's title in 1 decimal land and further admitted that above land comprises a dwelling hut of the plaintiff. But the learned Assistant Judge dismissed above suit merely for non production of the original kabala deed of the plaintiff which is misconceived and not tenable in law. The learned Judge of the Court of Appeal below also found that the plaintiff lawfully purchased 1 decimal land by registered kabala deed dated 22.01.1979. But the learned Judge erroneously dismissed the appeal and affirmed the flawed judgment and decree of the trial Court which is not tenable in law.

No one appears on behalf of the opposite parties when the Rule was taken up for hearing although this matter appeared in the list for several dates.

I have considered the submissions of the learned Advocate for the petitioner and carefully examined the impugned judgments of the Courts below and all other materials on record.

In the judgment of the trial Court the learned Assistant Judge held as follows:

“আজ্ঞামের নেসা ২২/০১/১৯৭৯ ইং তারিখের
দলিলমূলে ১ ডিক্রি ভূমিতে মালিক হয় তা
বিবাদীপক্ষ স্বীকার করে এবং প্রদঃ ৪(ক)
পর্যালোচনায় প্রতীয়মান হয়। কিন্তু আজ্ঞামের নেসা

২৪/০১/১৯৮৪ ইং তারিখের দলিল মূলে ২ ডিক্রি
ভূমি বাদীর নিকট বিক্রয় করে যা মালিকানার
অতিরিক্ত ভূমি মর্মে প্রমাণিত হয়।”

In this regard the learned Joint District Judge has recorded following findings in the impugned judgment of the Court of Appeal below:

“বাদীর নিকট বড় জোর ০১ শতক বিক্রয় করিতে
পারেন।”

From above concurrent findings of the Courts below it appears that the plaintiff acquired valid title in 1 decimal land by way of purchase from her foster mother Anjumer Nessa by registered kabala deed dated 24.01.1984.

It is true that Anjumer Nessa, predecessor of the plaintiff and her sister Nawabjan jointly purchased two decimal land by registered kabala deed dated 22.01.1979 from the heirs of Galam Rasul and Arshad Ali. As such Anjumer Nessa was owner and possessor of only one decimal land but she transferred two decimal land to the plaintiff by registered kabala deed dated 24.01.1984 (Exhibit No.4Ka).

If any person sell land in excess of his legitimate share that sale deed shall not become void or voidable but the deed shall be effective and lawful only to the extent of the lawful ownership of the seller. A buyer cannot get a better title than his or her seller. As such by Exhibit No.4Ka plaintiff acquired 1 decimal land although in above document Anjumer Nessa transferred two decimal land which was more than her

lawful share. But it turns out from the plaint that on the basis of above kabala deed dated 24.01.1984 (Exhibit No.4Ka) plaintiff has claimed a separate saham from one decimal land and the plaintiff did not claim title and possession or saham for two decimal land.

On consideration of above facts and circumstances of the case and evidence on record I hold that the learned Judge of the Court of Appeal below committed serious illegality in dismissing the appeal and affirming the flawed judgment and decree of the trial Court on an erroneous perception of facts and law which is not tenable in law.

In above view of the materials on record I find substance in this civil revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, this Rule is hereby made absolute. The impugned judgment and decree dated 08.07.2010 passed by the learned Joint District Judge, 1st Court, Feni in Title Appeal No.16 of 2009 disallowing the appeal and affirming the judgment and decree dated 19.03.2009 passed by the learned Assistant Judge, Parsuram, Feni in Title Suit No.33 of 2007 is set aside and above suit is decreed on contest against defendant Nos.1 and 3 and ex-parte against the rest without costs. Plaintiff is granted a separate saham for one decimal land and defendants are directed to effect an amicable partition for above land

within 60 days from this date but if they fail to do so the plaintiff shall get the same through Court.

However, there is no order as to costs.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER