

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3822 OF 2024

In the matter of:

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

And

Sahadeb Das

... Petitioner

-Versus-

Sumitra Das @ Soniya Das

... Opposite party

Mr. Md. Akter Rasul, Advocate

... For the petitioner.

Mr. Laxman Biswas, Advocate

....For the opposite party.

Heard on 11.08.2025 and Judgment on 28.08.2025.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated dated 14.02.2024 passed by the learned Joint District Judge, 3rd Court, Khulna in Family Appeal No.10 of 2021 allowing the appeal and thereby reversing the judgment and decree dated 01.02.2021 passed by the learned Senior Assistant Judge, Paikgachha, Khulna in Family Suit No.67 of 2014 dismissed the suit 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 opposite party as plaintiff instituted above suit for recovery of maintenance alleging that the defendant married her on 11.10.2012 according to the Hindu religious rites. The defendant on demand of dowry subjected the plaintiff to physical assaults and drove away from his house on 05.06.2013.

Defendant contest above suit by filling written statement alleging that he did not marry the plaintiff nor the plaintiff was his wife.

Plaintiff examined 2 witnesses and produce and proved the document which were marked as Exhibit No.1. The defendant did not produce and prove any document.

On consideration of facts and circumstance of the case and evidence on record the learned Judge of the Family Court dismissed above suit holding that the plaintiff could not prove lawful marriage with the defendant.

Being aggrieved by above judgment and decree of the trial court above plaintiff as appellant preferred Family Appeal No.10 of 2021 to the District Judge, Khulna which was heard by the learned Joint District Judge, 3rd Court who allowed above appeal, set aside the judgment and decree of the trial court and decreed above suit holding that the plaintiff has succeeded to prove her lawful marriage with the defendant.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of appeal below above respondent as petitioner moved to this Court with this Civil Revisional Application under Section 115(1) of the Code of Civil Procedure and obtain this Rule.

Mr. Md. Akter Rasul, learned Advocate for the petitioner submits that the opposite party has claimed that her marriage with the petitioner was solemnized in a Hindu Temple and by swearing an Affidavit on 11.10.2012. But while giving evidence as PW1 she claimed that her marriage with the defendant was solemnized in the house of her father but she could not prove above claim by oral evidence of competent witnesses. On consideration of above facts and circumstances of the case and materials on record the learned Judge of the Family Court rightly dismissed above suit. But the learned Judge of the Court of Appeal below totally failed to appreciate above materials on record and most illegally allowed above appeal, set aside the lawful judgment and decree of the trial Court and decreed above suit which is not tenable in law.

On the other hand Mr. Laxman Biswas, learned Advocate for the opposite party submits that on consideration of facts and circumstance of the case and evidence on record the learned Judge of the Court of Appeal below rightly allowed above appeal, set aside the unlawful judgment and decree of the Family Court and decreed above suit which calls for no interference.

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

As mentioned above opposite party as plaintiff instituted above suit for recovery of maintenance claiming that the defendant married her on 11.10.2012 in accordance with Hindu Religious rites. Defendant entered appearance and contested above suit by filing written statement alleging that he did not marry the plaintiff nor the plaintiff is his lawful wife. As such, plaintiff is not entitled to get a decree for maintenance.

It turns out from the record that the plaintiff and the defendant both adduced evidence in support of their respective case of existence of valid marriage and no marriage respectively and on consideration of evidence on record the learned Judge of the Family Court held that the plaintiff could not prove lawful marriage with defendant and dismissed above suit. On the other hand the learned Judge of the Court of Appeal below on reassessment of the evidence on record held that the plaintiff succeeded to prove her lawful marriage with the defendant and accordingly allowed the appeal and decreed the suit.

It is crystal clear from above pleadings, evidence and submissions of the learned Advocates for the respective parties that in above suit plaintiff has claimed the existence of marriage and on the other hand defendant has denied the existence of marriage between the plaintiff and the defendant. As such above suit involved a dispute

of jactitation of marriage, where one party claims the existence of marriage but the other party denies the existence of marriage.

The Family Court constituted under the Family Court Ordinance, 1985 does not have the jurisdiction to entertain and try a suit involving a dispute as to the existence or non existence of marriage and such a suit exclusively falls in the jurisdiction of a competent Civil Court. Section 5 of the Family Court Ordinance, 1985 provides as follows:

“Subject to the provisions of Muslim Family Laws Ordinance, 1961 a Family Court shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to, or arising out of all or any of the following matters, namely:-

- (a) dissolution of marriage;
- (b) restitution of conjugal rights;
- (c) dower;
- (d) maintenance;
- (e) Guardianship and custody of children.”

As such it is crystal clear that any dispute as to existence or non-existence of a marriage is outside of the jurisdiction of the Family Court.

The learned Judge of both the courts below completely failed to appreciate that the subject matter of above suit was outside of their

lawful jurisdiction and the learned Judge of the family Court instead of returning the plaint to the plaintiff for presentation to an appropriate Civil Court most illegally dismissed above suit holding that the plaintiff could not prove her marriage with the defendant and the learned Judge of the court of Appeal below most illegally held that the plaintiff succeeded to prove her lawful marriage with the defendant which was totally outside of their jurisdiction and not tenable in law.

However, the plaintiff/opposite party be at liberty to move to the competent Civil Court for establishment of her marriage with the defendant if the same is not otherwise barred by law.

In above view of the facts and circumstances of the case and evidence on record I find substance in this Civil Revisional Application 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 14.02.2024 passed by the learned Joint District Judge, 3rd Court, Khulna in Family Appeal No.10 of 2021 allowing the appeal and reversing the judgment and decree dated 01.02.2021 passed by the learned Senior Assistant Judge, Paikgachha, Khulna in Family Suit No.67 of 2014 and decreeing above suit is set aside and above suit is dismissed on contest against the defendant without any cost.

However, there will be no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER