

Present:

Mr. Justice Sheikh Abdul Awal
and
Mr. Justice S.M. Iftekhar Uddin Mahamud
In the Matter of:

First Miscellaneous Appeal No. 539 of 2025

Most. Hasna Begum and others.
Defendant-appellants.

-Versus-

Rojina Akter Tisha
Plaintiff-respondent.

Mr. Md. Jalal Uddin with

Mr. Md. Harunur Rashid, Advocates.

..... For the appellants.

Mr. Toufiq Anwar Anwar Chowdhury,
 Advocate

..... For the respondent.

Heard on 01.02.2026, 15.02.2026, 03.03.2026,
04.03.2026 and Judgment on 05.03.2026

Sheikh Abdul Awal, J:

This First Miscellaneous Appeal is directed against the judgment and order dated 04.03.2025 passed by the learned District Judge, Brahmanbaria in Miscellaneous Health Case No. 38 of 2022 allowing the Miscellaneous Health Case under section 21(1) of the Mental Health Act, 2018 appointing the plaintiff as guardian of her disabled son and permitting her to sell the land of her disabled son.

The brief fact relevant for disposal of this appeal is that the respondent as petitioner filed Miscellaneous (Mental Health) Case

No. 38 of 2022 before the learned District Judge, Brahmanbaria under section 21(1) of the Mental Health Act, 2018 seeking appointment as guardian of her crippled son, Md. Safayt Ullah Nabil who is suffering mental illness and further seeking permission to sell 60.01 decimals of land of her mentally unsound son as described in the schedule 4 of the petition.

The appellant Nos. 1-3 as opposite parties contested the miscellaneous case by filing written objection stating, inter-alia, that earlier the petitioner's husband transferred his property by so many registered deeds totalling 176 decimals and the plaintiff's husband belonged only 28 decimals of land and that the plaintiff is entitled to get permission to sell only 28 decimals of land, if so required.

The learned District Judge, Brahmanbaria without taking any evidence whatsoever passed the impugned order No. 20 dated 04.03.2025 allowing the plaintiff-respondent, Rojina Akter as guardian of her mentally unsound child and permitting her to sell total 60.01 decimals of land as described in the schedule of the miscellaneous case.

Aggrieved defendants then as appellants preferred this appeal before this Court.

Mr. Md. Jalal Uddin, the learned Advocate appearing for the defendant appellants submits that the trial court abruptly allowed the plaintiff to sell the entire ejmali property being 60.01 decimals of land beyond the scope of law as there is no partition of the ejmali property by metes and bounds. The learned Advocate further submits that the impugned order is perverse being contrary to law and facts inasmuch as the defendants resisted the petition

for sale total 60.01 decimals of land as described in the schedule of the miscellaneous case by filing written objection although the learned District Judge without taking any evidence most illegally allowed the prayer of the plaintiff as mother of the mentally unsound boy.

Mr. Taufique Anwar Chowdhury, the learned Advocate appearing for the respondents at the very outset referring an application for remand submits that the findings of the learned District Judge to sale total 60.01 decimals land is cryptic, unspecific and as such, in order to proper adjudicate the matter the case may be remanded to the learned District Judge for passing an appropriate/specific order to execute the sale deed. He adds that in absence of a clear specification of the case property, the impugned order is incapable for execution. The learned Advocate further criticized the impugned order in submitting that the impugned order is a non-speaking order and in absence of clear specification of the case land the sale deed cannot be executed or registered.

Having heard the learned Advocate for both the sides, perused the impugned order along with other documents, application for remand and supplementary affidavit as filed thereto.

On scrutiny of the record, it appears that impugned judgment and order does not disclose the true position of facts and law inasmuch as the impugned order manifests that the plaintiff is allowed to transfer 60.01 decimals of land which is not at all separated land by metes and bounds. It further appears that the learned appellate Court below, in fact, did not give any

finding on the point of specification and ownership and possession of the case land but allowed case permitting to transfer 60.01 decimals of unspecified and un-demarcated land. On a query from the Court, the learned Advocate for the appellants did not dispute the proposal advanced by Mr. Taufique Anwar Chowdhury. Rather he also submits that he has no objection if the case is sent back on open remand in order to properly adjudicate the matter.

Since both the parties have agreed that they have no objection if the case is sent back on open remand to the trial Court by giving an opportunity to the parties to adduce evidence in support of their respective cases, we are inclined to send back the case to the learned District Judge, Brahmanbaria on open remand for re-trial.

In the result, the Appeal is allowed without any order as to cost. The impugned order dated 04.03.2025 is set aside. The impugned judgment and order dated 04.03.2025 passed by the learned District Judge, Brahmanbaria in Miscellaneous Health Case No. 38 of 2022 allowing the application under section 21(1) of the Mental Health Act, 2018 is set aside and the case is sent back to the learned District Judge, Brahmanbaria for fresh hearing and both the parties will be at liberty to adduce evidence in support of their respective cases and thereafter the learned District Judge, Brahmanbaria shall dispose of the case on merit in accordance with law.

The order of stay granted by this court earlier is hereby vacated.

In the facts and circumstances of the case since the treatment of mentally unsound boy is involved, the learned District Judge, Brahmanbaria is directed to dispose of the matter as early as possible preferably within 2 (two) months from date.

Since the First Miscellaneous Appeal is allowed, the connected Rule being Civil Rule 464 (FM) of 2025 is discharged.

In the facts and circumstances of the case there will be no order as to costs.

Communicate this order at once.

S.M. Iftekahar Uddin Mahamud, J:

I agree.