

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 832 of 2011

Firoj Ali Sheikh and others

.....Petitioners.

-Versus-

Md. Daood Ali Gaji being dead his
legal heirs 1 (a) Shamim Gaji and others

.....Opposite parties.

Mr. Khurshida Akter, Advocate

.....For the petitioners.

None appears.

.....For the opposite parties.

Heard and judgment on 20th June, 2023.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 14.11.2010 passed by the Additional District Judge, 1st Court, Bagerhat in Title Appeal No. 27 of 2005 affirming those dated 22.03.2005 passed by the Senior Assistant Judge, Mollahat,

Bagerhat in Title Suit No. 23 of 1998 decreeing the suit in part should not be set aside.

Plaintiff opposite party filed Title Suit No. 23 of 1998 against the defendant petitioner and other proforma opposite parties before the Court of Senior Assistant Judge, Mollahat, Bagerhat for partition.

Said suit was although opposed by the defendant petitioner but ultimately by the judgment and decree dated 22.03.2005 the Senior Assistant Judge decreed the suit on contest against defendant No. 31 and ex parte against the rest without cost. The plaintiff got his separate saham of 50.62 decimals of land from the schedule property. The said decree was challenged by the defendant in appeal being Title Appeal No. 27 of 2005, which was affirmed by the Additional District Judge, 1st Court, Bagerhat to whom it was transferred by the District Judge, Bagerhat and who by the impugned judgment and decree dated 14.11.2010 dismissed the appeal and affirmed the judgment of the trial court, which is challenged by the defendant petitioner in this rule.

At the time of pronouncing of judgment of the rule petitioner by filing an application prayed for their saham in respect of 10 kathas of land from the suit property. Without depositing the court fees on the share they claim.

However none appears to oppose the rule as well as the application.

In a partition suit when any party can asked for his separate saham if he is found to be co-sharer in the suit jote, if by paying court fees. Accordingly since the application is not opposed. By allowing this application, I am hereby sending this case to the trial court for allocating the saham to the petitioner if they are found to be a legal and valid claimant for getting their share in the suit property.

Accordingly the rule is made absolute and the matter is send back on remand to the Assistant Judge, Mollahat, Bagerhat to decide the matter afresh considering the application of the petitioner for saham in the suit property, expeditiously as early as possible preferably within a period of 3(three) months after receiving of the judgment.

The order of stay granted earlier is hereby recalled and vacated.

Send down the L.C.R and communicate the judgment at once.