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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 4165 of 2011

IN THE MATTER OF:
An application under section 115(1) of the Code of Civil Procedure.
(Against Judgment & Decree)
And
IN THE MATTER OF:
Aleya Betgum and others {Petitioner No. 4 died leaving behind his legal heirs 4(a)-4(e)}
--- Defendant-Petitioners.
-versus-
(Fatema Bibi is already discharged.)
Md. Sharif Ali Khan {during the pendency of the proceedings of the case opposite party No. 2 died leaving behind his legal heirs as being opposite party Nos. 2(a)-2(e)} and others
--- Opposite Parties.

Mr. Md. Ekramul Islam, Advocate
--- For the Petitioners.
Mr. Md. Shahidul Islam with
Mr. Ferdous Ahmed Asif, Advocates
--- For the Opposite Parties.

Heard on: 23.02.2023, 29.02.2023 and 02.04.2023.
Date of Judgment: 02.04.2023.

At the instance of the present defendant-appellant-petitioners, Aleya Begum and others, this revisional application has been filed under section 115(1) of the Code of Civil Procedure and the Rule was issued calling upon the opposite party Nos. 1-8 to show cause as to why the judgment and decree dated 20.04.2011 respectively

passed by the learned Additional District Judge, Jhalakathi in the Civil/Title Appeal No. 60 of 1999 affirming the judgment and decree dated 16.02.1999 passed by the learned Subordinate Judge the then Joint District Judge, Court No. 2, Jhalakathi in the Civil/Title Suit No. 47 of 1994 suffers from an error of law resulting in an erroneous decision occasioning failure of justice should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party Ns. 1-8 and proforma opposite party No. 51 filed the Civil/Title Suit No. 47 of 1994 in the court of the then learned Subordinate Judge (now Joint District Judge), Court No. 2, Jhalakathi. The suit property is situated under District- Jhalakathi, Police Station- Nalchity, Mouza- Raiapur, Khebot No. 296 land measuring 3.78 acres, Khebot No. $\frac{297}{1}$ land measuring 1.91 acres and Khebot No. $\frac{297}{2}$ land measuring 1.34 acres.

Khebot No. 296 was Mirash Kharsha Right in the name of Vholai which was purchased by one Sattya Bhushan as per the plaint. There existed Mirash Kharsha Right in the name of Sherullah who died leaving behind his legal heirs and they leased out .50 acres of land in favour of one Abdul Kader by a registered Kabala Deed dated 07.03.1923 who died leaving behind his legal heirs, widow Jahanara Bibi, son Abdus Jabbar, 3 daughters,

Amena, Jamila and Zamela Bibi. Abdul Jabbar died leaving behind his legal heirs' widow Hayatunnesa who died leaving behind her property was inherited by 3 daughters who were sisters and out of three sisters, one Jamela died Fatema made an oral gift, thus, the plaintiffs succeeded as herirs of Abdul Kader. The plaintiff sold $.76\frac{1}{2}$ acres of land in favour of the defendant Nos. 3-6. Thereafter, they again purchased $.8\frac{1}{2}$ acres both are in possession in their respective land.

The present opposite parties as the defendant Nos. 1-6 contested the suit by filing a written statement contending, *inter alia*, that the plaintiffs made a false claim regarding the land in C. S. Khebot Nos. $\frac{297}{1}$, $\frac{297}{2}$ and C. S. Khebot No. 296. Covering the entire land the defendant Nos. 1-6 claimed .25 aces of land on 17.04.1958 by a purchased deed from the heirs of one Rupbhan who inherited in C. S. Khebot No. 296. The defendant Rupbhan and the petitioner also claimed .5 acres of land by way of a deed dated 12.02.1954 from Hachenuddin from Khebot No. $\frac{297}{2}$. Ahasanullah, Rupbhan and others were owners of C. S. Khebot No. 296 who sold to Intazuddin who died leaving behind his sons who transferred $.11\frac{1}{4}$ acres in favour of the defendant No. 1, Rahela Khatun and

she sold .1$\frac{1}{4}$ acres and record was prepared in their names and S. A. Khatian Nos. 786, 437 and 311 which have been owning and possessing the land.

The learned trial court after hearing the parties and considering the evidence both documentary and depositions of the PWs and DWs came to a conclusion to decree the suit in a preliminary form by allocating sahams with the required formalities for claiming petitioner Nos. 1-8 and the appellant preferred the Civil/Title Appeal No. 60 of 1999 before the learned District Judge, Jhalakathi which was heard by the learned Additional District Judge, Jhalakathi who after hearing the parties disallowed the appeal by affirming the judgment and decree of the learned trial court. Being aggrieved the present defendant-petitioners filed this revisional application under section 115(1) of the Code of Criminal Procedure challenging the concurrent judgments of the learned courts below and this Rule was issued thereupon.

Mr. Md. Ekramul Islam, the learned Advocate, appearing on behalf of the petitioners (Petitioner No. 4 died and substituted) submits that none of the courts considered the Kabuliat (কবুলিয়ত) which was unilateral and there is no evidence that it was accepted by the landlord, thus, committed an error of law occasioning failure of justice.

He also submits that the contesting defendant-petitioners prayed saham before the court specifically mentioned in the written statement and both the courts did not form any issue regarding the saham prayer of the defendants and passed the impugned judgment and decree without considering and discussing the claim of the defendants and did not given any findings regarding the prayer of the defendants and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

The learned Advocate further submits that both the courts below have failed to assess the shares of the plaintiffs according to the evidence adduced and produced by PW- 1 and arbitrarily decreed the suit and thereby committed an error of law, as such, the Rule should be made absolute.

The Rule has been opposed by the present opposite party Nos. 1-8 (Opposite Party No. 1 is discharged earlier and Opposite Party No. 2 deceased and substituted) and proforma-opposite party No. 51.

Mr. Md. Shahidul Islam, the learned Advocate, appearing along with the learned Advocate, Mr. Ferdous Ahmed Asif, for the opposite parties, submits that both the learned courts below concurrently found in favour of the defendants that the learned trial court and also the learned appellate court below after perusing the documents and assessing the evidence on record both oral and

documentary and applying their judicial mind the learned trial court partly decreed the Title Suit No. 47 of 1994 and also the learned appellate court below passed the impugned judgment affirming the judgment and decree of the learned trial court.

He also submits that the Title Suit was quite maintainable in its present form. It is submitted that the superior landlord accepted two Kabuliats (কবুলিয়ট) dated 07.03.1923 AD which was marked as exhibit Nos. 1-1(Ka) and granted Estate Dakhila (সম্পত্তি দাখিলা) in favour of the Abdul Kader. It is submitted that there is a case law reported in 24 DLR at page- 11 an agricultural land may be leased out by unilateral deed, as such, the Rule is liable to be discharged.

Considering the above submissions made by the learned Advocates, appearing for the respective parties and also considering the revisional application filed by the defendant-appellant-petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree and also perusing the beneficial materials available in the records of the lower courts, as well as the supplementary affidavit filed by the petitioners and counter affidavit filed on behalf of the opposite parties, it appears to this court that the present opposite party Nos. 1-8 and proforma opposite party No. 51 as the plaintiffs filed a title suit for partition of the suit land mentioning the property of subject matter of

Kabuliat (কবুলিয়ত) (as being Exhibit-1 series) to accept under the Superior Landlord but subsequently their property were entered in the S. A. and R. S. Record of right being Exhibit-2 series. On the other hand, the present petitioners being defendant Nos. 1-6 contended the suit that they were the owners of their land but both the learned trial court and the learned appellate court below misread and failed to consider as to the entitlement of the defendant-petitioners' right upon the suit land and failed to give any saham as per the claim made in the written statement.

From the above given factual aspects, it appears that the plaintiff-opposite parties filed the partition suit in order to get their saham (সাহাম) upon the suit land and the learned courts below gave saham (সাহাম) to the plaintiffs and others but not the defendant-petitioners because they could not fulfill the certain legal requirements of the law, as such, the courts below did not give any saham (সাহাম) to the present defendant-petitioners despite the facts that they might have a claim in the suit land.

The most beautiful legal aspect of a partition suit is that both the plaintiffs and the defendants are equally entitled to get respective saham (সাহাম) which means both parties can win in a partition suit. In the instant partition suit, the plaintiff-opposite parties got their respective saham (সাহাম) from the learned trial court

but the learned appellate court below reduced or modified the saham.

The learned trial court allocated saham of .25$\frac{1}{2}$ acres in favour of the plaintiff-opposite party Nos. 1-8 and .21 acres in favour of the opposite party Nos. 51 as the defendant No. 49 and other sahams also allocated in favour of the other defendants.

I have carefully examined the documents and exhibits adduced and produced by the parties and I found it clear that the learned courts below committed no error of law by allocating saham to the parties who have claimed sahams from the land mentioned in the schedule of the plaint.

The learned Advocate for the petitioners claimed that the learned trial court failed to frame any issue as to the claim of the defendant Nos. 1-6 and also failed to give any saham in their favour.

In this regard, I consider that the learned courts below did not fail to consider the case of the present defendant-petitioner Nos. 1-6 as they could not provide the relevant documents as to their claim of any sahams (সাহাম) and also they failed to comply with the legal requirements, as such, the learned courts below committed no error of law by passing the concurrent findings upon the partition suit.

In view of the above, I am not inclined to interfere upon the concurrent judgments of the learned trial court and also the learned

appellate court below who passed the impugned judgments and the preliminary decree. I therefore consider that this Rule does not require any further consideration.

Accordingly, I do not find merit in this Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 20.04.2011 passed by the learned Additional District Judge, Jhalakathi in the Civil/Title Appeal No. 60 of 1999 affirming the judgment and preliminary decree dated 16.02.1999 passed by the learned Subordinate Judge (now Joint District Judge), Court No. 2, Jhalakathi in the Civil/Title Suit No. 47 of 1994 is hereby upheld.

The interim order of direction passed by this court at the time of issuance of the Rule to maintain *statuesque* in respect of the possession and position by the parties is hereby recalled and vacated.

The pertinent section of this Court is hereby directed to send down the lower courts record along with a copy of this judgment and decision as soon as possible.