

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4771 OF 2011

In the matter of:

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

And

Belait Hossain being dead his heirs- Afia Begum @
Ayesha and others

... Petitioners

-Versus-

Nijam Guni and others

... Opposite parties

Mr. Tasmia Prodhan, Advocate

... For the petitioner.

Mr. Ashraf -Uz- Zaman, Advocate

.... For the opposite parties.

Heard on 28.01.2025.

Judgment on 20.04.2025

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 25.05.2011 passed by the learned Additional District Judge, Kishoregonj in Other Appeal No.115 of 2004 affirming the judgment and decree dated 27.09.2004 passed by the learned Senior Assistant Judge, Kishoregonj in Other Suit No.19 of 2003 granting the permanent injunction 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 petitioner as plaintiff instituted above suit for permanent injunction for 15 decimal land appertaining to Plot No.46

of C. S. Khatian No.35 corresponding to ROR Khatian No.32 alleging that above property belonged to Sadir who died leaving four sons namely Abdur Razzak, Abdur Rahman, Abdul Helim and Abdul Foyez. Above Abdur Razzak died leaving four sons including plaintiff and ROR Khatian of above land was recorded in the name Abdur Razzak along with other co-shares. The plaintiff by way of amicable partition got exclusive possession of above 15 decimal land and possessing the same by growing paddy and paying rent to the Government. Defendants threatened the plaintiff with dispossession on 15.03.2003.

Defendant Nos.1-3 contested above suit by filling a joint written statement stating that disputed land belonged to Sadir and in his name C. S. Khatian No.35 was rightly recorded. Above Sadir died leaving four sons namely Abdur Razzak, Abdur Rahman, Abdul Helim and Abdul Foyez as heirs and by amicable partition Abdul Helim got exclusive possession of above land and died leaving wife Jaheda two sons Osman Gani and Awal Uddin and a daughter Shahera Ambia and they are in possession in above land by cultivation.

At trial plaintiff examined three witnesses and defendant examined two. Documents of the plaintiff were marked as Exhibit Nos.1-3 and those of the defendants were marked as Exhibit "Ka"- "Ga".

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

Being aggrieved by above judgment and decree of the trial Court above plaintiff as appellant preferred Other Class Appeal No.19 of 2003 to the District Judge, Kishoreganj which was heard by the learned Additional District Judge 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.

Ms. Tasmia Prodhan, learned Advocate for the petitioner submits that admittedly disputed 15 decimal land belonged to Sadir who died leaving four sons namely Abdur Razzak, Abdur Rahman, Abdul Helim and Abdul Foyez and defendants are heirs of Abdul Helim and plaintiffs are heirs of Abdur Razzak. By amicable partition with other co-sharers the plaintiff got exclusive possession of above land and he is in possession of the same by growing paddy and paying rent to the Government. The draft B. S. Khatian of above land has been recorded in the name of the plaintiff and possession of the plaintiff has been proved by consistent evidence of two competent witnesses namely PW2 who gives irrigation water in the disputed land and PW3 who is the owner of the contiguous land. Moreover, DW1 and DW2 have admitted that

the defendants live in Sylhet and Dhaka and they did not pay rent of the disputed land.

On consideration of above facts and circumstance of the case and evidence on record the learned Additional District Judge should have allowed the appeal, set aside the flawed judgment and decree of the trial Court and decreed the suit but the learned Additional District Judge utterly failed to appreciate above evidence on record and most illegally dismissed the appeal and affirmed the unlawful judgment and decree of the trial Court which is not tenable in law.

On the other hand Mr. Ashraf -Uz- Zaman, learned Advocate for the opposite parties submits that the plaintiff could not disclose any cause of action for filling of this suit for permanent injunction against admitted co-sharers of the disputed property. There is no specific mention in the plaint or in the evidence of the plaintiffs witnesses when the defendants attempted to dispossess the plaintiff or obstructed the possession of the plaintiff. It is admitted that R. S. Khatian of disputed land was recorded rightly in the names of four sons of Sadir including defendants predecessor Helim and plaintiffs predecessor Abdur Razzak. The plaintiff could not prove that on the basis of amicable partition he alone got exclusive possession of disputed 15 decimal land.

On consideration of above facts and circumstance of the case and evidence on record the learned Judges of the both the Courts below rightly held that the plaintiff could not prove exclusive possession in

the disputed land and accordingly the learned judge of the Court of Appeal below dismissed the appeal and affirmed the lawful judgment and decree of the trial Court 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.

It is admitted that disputed 15 decimal land of Plot No.46 belonged to Sadir and in his name C. S, Khatian No.35 was rightly recorded and above Sadir died leaving four sons namely Abdur Rahman, Mohammad Helim, Abdul Zayed and Abdul Razzak and plaintiff is one of the four sons of Abdur Razzak and defendants are heirs of Abdul Helim. It is also admitted that in ROR Khatian No.32 above 15 decimal land was recorded jointly in the name of above four brothers namely Abdur Rahman, Abdul Selim, Zayed and Abdul Razzak. It is also admitted that above Abdur Razzak died leaving 4 sons including the plaintiff and plaintiff alone claimed exclusive possession in above land on the basis of amicable partition.

The legal status of all the co-shares of a joint property is equal and possession of one co-sharer is treated as possession of all.

The plaintiff admits that the defendants are their co-share and above property has not been partitioned by meets and bounds. The plaintiff and the defendant both claim exclusive possessions on the basis of amicable partitioned. There is no specific claim in the plaint that there was an amicable partition among above four sons of Sadir

and Abdur Razzak, father of the plaintiff was allocated exclusive possessions of above 15 decimal land. It has been merely stated that plaintiff got exclusive possession pursuant to an amicable partition without mentioning with whom plaintiff had above amicable partition. As mentioned above plaintiff has other three brothers who have not been impleaded in this suit nor their names have been mentioned in the plaint. In his evidence as PW1 the plaintiff did not make any claim that he had amicable partition of disputed land with his other three brothers. On the contrary PW1 stated that pursuant to amicable partition his father got possession of above 15 decimal land. But above claim is beyond the plaint and unspecific. There is no mention with whom his father amicably partitioned above land.

A co-sharer is entitled to get a decree for permanent injunction against another co-shares only if the plaintiff succeeds to prove that by amicable partition he is in exclusive possession of above land. But the plaintiffs neither made out a case of amicable partition and exclusive possession of the basis above partition nor made any endeavor to prove the same by evidence.

In above view of the facts and circumstance of the case and evidence on record I am unable to find any illegality or infirmity in the impugned judgment and decree passed by the learned Judge of the Court of Appeal below nor I find any substance in this Civil Revisional

application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, this Rule discharged.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER