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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 4206 OF 2001

IN THE MATTER OF:

An application under section 115(1) of the Code of Civil Procedure.
(Against Decree)

-And-

IN THE MATTER OF:

Shib Mondal @ Shib Pramanik @ Shib Sarker and others

--- Defendant-Appellant-Petitioners.

-Versus-

Haricharan Mondal @ Pramanik {died leaving behind his legal heirs: 1(a)-1(b)} and others

--- Plaintiff-Respondent-Opposite Parties.

Mr. Bivash Chandra Biswas, Advocate

---For the Defendant-Appellant-Petitioners.

Mr. M. A. Muntakim with
Mr. Chowdhury Shamsul Arefin, Advocates

--- For the Plaintiff-Respondent- O.Ps.

Heard on: 02.11.2023, 05.11.2023, 07.11.2023, 12.11.2023, 14.01.2024 and 21.01.2024.
Judgment on: 22.01.2024.

At the instance of the present defendant-appellant-petitioners, Shib Mondal @ Shib Pramanik @ Shib Sarker and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1 {who died leaving behind his legal

heirs: 1(a)-1(b)} to show cause as to why the judgment and decree of affirmance dated 19.04.2001 passed by the then learned Subordinate Judge, Court No. 1, Bagerhat in the Title Appeal No. 82 of 1998 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the opposite party No. 1. Haricharan Mondal @ Pramanik (now deceased and substituted) as the plaintiff filed the Title Suit No. 24 of 1997 in the court of the learned Assistant Judge, Fakirhat, Bagerhat for partition of the suit land by claiming sahams (সাহাম). The plaint contains that the suit land measuring 1.4375 acres is a portion of C. S. Khatian Nos. 131, 681 and 18 at Mouza-Moubag and Bil-Moubag. The plaint further contains that the land measuring 2.61 acres recorded in 3 Khatians in the names of Darik, Mathur and Sattaram. The said Sataram died leaving behind his son Pachuram and Mathur died leaving behind 2 sons, namely, Krishnapada and Pagal. In the above manner, Panchuram, Darik, Krishnapada and Pagal obtained their proportionate shares. The said Darik died leaving behind his son Natobar who was not above 3 Khatians. In the course of the above-mentioned inheritance, the said Natobar died leaving behind the plaintiff who obtained 12 (twelve) anna shares upon

the suit land measuring 1.4375 acres. The said land was never partitioned and the plaintiff approached to the defendant-petitioners for partition the suit land who refused the proposal of partition.

The present petitioners as the defendants contested the suit by filing a written statement denying claims made by the plaintiff. The defendant contended that the plaintiff did not have any *locus standi* who filed this partition suit. The defendant further contended that in the course of succession Darik, Pachuram, Krishnapada and Pagal belonged to a share of 8 (eight) annas, 2 (two) annas, 4 (four) annas and 2 (two) annas respectively. According to these shares Darik, Pachuram, Krishnapada and Pagal possessed 1.64 acres, 3.28 acres, 0.82 acres and 0.82 acres respectively. Pachuram died leaving behind his wife Vokti Dashi and a daughter Labu Dashi. Vokti Dashi settled her land to Raghu Nath Biswas through a patta (পাট্টা) dated 29.01.1927. Raghu Nath sold his property to Kali Dashi (Defendant No. 6) and Haricharan (Plaintiff No. 1) by a registered sale deed dated 02.08.1956 and the original copy of the said sale deed was under the custody of the plaintiff. The plaintiff gave a Photostat copy of that sale deed to Kali Dashi

and Darik. The said Darik died leaving behind 2 sons Natobar and Mohadeb who got land measuring 0.1650 acres each of them. Subsequently, Natobor died leaving behind a son who is the plaintiff i.e. an owner. The plaintiff, thereafter, had no right upon the land of Khatian. The plaintiff was in possession upon the suit land measuring 0.3250 acres. While Pagal and Krishnapada have been in possession upon the land measuring 1.64 acres jointly. Krishnapada died leaving behind a daughter Debijani and she died leaving behind no issue. Pagal died leaving behind the present petitioners' and proforma opposite party No. 2 had been possessing the land measuring 1.64 acres of land by inheritance and defendant No. 6 had been possessing the land measuring 0.31 acres by purchasing the said deed dated 02.08.1956. The defendant Nos. 1-6 were possessing 1.95 acres of land., therefore, the plaintiff has no right, title or possession of the suit land.

The learned Assistant Judge, Fakirhat, Bagerhat heard the parties and obtained evidence from the respective parties and decreed the suit in preliminary form by the judgment and decree dated 30.08.1998. Being aggrieved the present petitioners preferred the Title Appeal No. 82 of 1998 in the court of the

learned District Judge, Bagerhat which was heard by the then learned Subordinate Judge (Joint District Judge), Court No. 1, Bagerhat disallowed the appeal through his judgment and decree dated 19.04.2001. Being aggrieved this revisional application has been filed by the present defendant-petitioners under the provision of section 115(1) of the Code of Civil Procedure and this Rule was issued thereupon.

Mr. Bivash Chandra Biswas, the learned Advocate, appearing on behalf of the present petitioners submits that both the courts below came to a wrongful conclusion by allocating shahams (সাহাম) in favour of the plaintiff-opposite parties by misreading and non-considering the evidence adduced and produced by the parties, as such, came to a wrongful conclusion to decree the suit in a preliminary form which is liable to be *set aside*.

The learned Advocate further submits that Sattaram, Darik and Mathur were C. R. recorded tenants and they got right to the properties as Rayoti right and Pachuram died leaving behind his wife Vokti Dashi who inherited the land of Pachuram and she left the land property to Raghu Nath Biswas by patta deed dated 29.01.1927 who is an owner and sold the same to Kali Dashi and

Haricharan (plaintiff-predecessors) but the courts misread, misconstrued and non-considered those registered pattas and kabala, as such, the courts below committed an error in the decision and decreeing the suit which resulted in an error in the decision occassioning failure of justice.

The Rule has been opposed by the present plaintiff-respondent-opposite parties.

Mr. M. A. Muntakim, the learned Advocate, appearing along with the learned Advocate Mr. Chowdhury Shamsul Arefin for the plaintiff-respondent-opposite parties, submits that the present opposite party filed a partition suit when the present petitioner as the defendant refused to entertain an amicable partition and this suit was filed by the opposite party No. 1 as the plaintiff and the learned trial court being the learned Assistant Judge, Fakirhat, Bagerhat as to the claim of the plaintiff for allocating shahams (সাহাম) upon the suit land who after hearing the respective parties allocated shahams (সাহাম) to the present plaintiff-opposite party land measuring 1.4375 acres and the present petitioners as the defendant did not pray for any shahams (সাহাম) from the suit land. Accordingly, the learned trial court decreed the suit in preliminary form and thereby committed no

error of law in the decision by partitioning the suit land but the present petitioners obtained this Rule by misleading the court, as such, the Rule is liable to be discharged.

The learned Advocate also submits that the learned appellate court below came to a concurrent finding for allocating shahams (সাহাম) to the opposite party by affirming the judgment and decree passed by the learned trial court on the basis of the claim of shahams (সাহাম) from the suit land, thereby, the learned appellate court committed no error of law and this court should not interfere upon the impugned judgment and decree passed by the learned appellate court below.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed by the present defendant-petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below and also perusing the materials available in the lower court records, it appears to this court that the present opposite party No. 1 as the plaintiff filed the Title Suit No. 24 of 1997 for partition of the suit land in the court claiming shahams

(সাহাম) from the suit land measuring 2.61 and the learned trial court passed the preliminary decree by allocating shahams (সাহাম) to the plaintiff-opposite parties upon the land measuring 1.4375 acres but the defendant contested the suit without claiming any shahams (সাহাম) rather denying any entitlement by the present plaintiff-opposite parties. In a partition suit both the respective parties can claim and get the equal respective shahams (সাহাম) from the suit land. In the instant case the defendant-petitioners did not claim any shahams (সাহাম) from the suit land rather denying the entitlement of the present opposite parties.

In view of the above conflicting claims and counterclaims as to the entitlement by the respective parties both the courts below considered the evidence both oral and documentary and concurrently found an entitlement by the present opposite parties on the basis of right approved by them. The beauty of a partition suit is that both parties get relief as per the evidence of entitlement and possession. The learned trial court allocated the above-mentioned shahams (সাহাম) to the plaintiff- opposite parties on the basis of the documentary evidence adduced and produced by the parties and the learned appellate court below concurrently found the above-mentioned land measuring 1.4375 acres in

favour of the present opposite parties and the learned appellate court below concurrently found for allocating shahams (সাহাম). The present petitioners as the defendants claimed to have no shahams (সাহাম) upon the suit land and the preliminary decree upon the petitioners did not comply with by allocating shahams (সাহাম). It further appears that the defendant-petitioners should have claimed shahams (সাহাম) by adducing and producing sufficient documents which they failed.

I am now going to examine the judgments and decrees passed by the learned courts below:

The learned trial court came to a lawful conclusion on the basis of the following findings:

> …"Plaintiff has inherited the total 12 anna as a successor of Darik. Plaintiff had right, title and possession in 1.9575 acre of land as 12 anna share. It is raised by a written statement and admitted by PW-1's cross-examination that the plaintiff has sold 0.52 acres of land to Khaleque, Malek, Motleb and Rajab Master. So, the rest (1.9575 acre – 0.52 acre) = 1.4375 acre of land is possessed by the plaintiff and he is entitled to get a decree for partition in a preliminary form on account of that land."…

The learned appellate court below concurrently found and came to the conclusion to allocate shahams (সাহাম) to the plaintiff-opposite party on the basis of the following findings:

> ...“বাদী সি. এস. ৬৮১ এবং সি. এস. ১৮ খতিয়া-নর জমি দাবী করিয়া-ছ। এই খতিয়া-নর সমস্ত জমি মামলায় আনা হইয়া-ছ। নালিশী জমির মালিক ছিল পাচু, কৃষ্ণপদ এবং পাগল তাহা উভয়পক্ষ কর্তৃক স্বীকৃত। বাদী পক্ষ পাচু রা-মর অংশ ক্রমিক ওয়ারিশ হিসাবে দাবী ক-র। নালিশী জমায় দারি-কর ১২ আনা অংশ প্রাপ্ত হয় তাহা সি. এস. খতিয়ান দৃষ্টে প্রতীয়মান হয়। বিজ্ঞ নিম্ন আদালত বিবাদীপক্ষের জবাবে দাবীকৃত রঘুনাথ বিশ্বা-সর নিকট ০২/০৮/১৯৫৬ ইং তারি-খর কবলার বিষ-য় যে সিদ্ধান্ত দেন উহাতে -কান ভুল ক-রন নাই। কেননা ০২/০৮/১৯৫৬ ইং তারি-খর কবলা বিবাদীপক্ষ আ-দৌ প্রমাণ করি-ত পা-রন নাই। পি. ডব্লিউ. ১ জেরা ও জবানবন্দি-ত উ-ল্লখ ক-রন যে, ওয়ারিশ সূত্রে প্রাপ্ত জমির পরিপূর্ণ বর্ণনা প্রদান ক-রন। ডি. ডব্লিউ. ১ বাদীর উক্ত দাবীকে জেরায় স্বীকার করে। সুতরাং এই ক্ষেত্রে বিজ্ঞ নিম্ন আদালত সঠিক সিদ্ধান্ত প্রদান করিয়া-ছন। বাদীপক্ষ উ-ল্লখ ক-রন যে, দারি-কর ১ পুত্র ছিল। অপর দিকে বিবাদীপক্ষ উল্লেখ করেন যে, দারি-কর ২ পুত্র- নটবর ও মহা-দব। প্রকৃতপ-ক্ষ মহা-দ-বর অস্তত্ব সম্প-র্ক বিবাদীপক্ষ এই মামলায় আ-দৌ প্রমাণ করি-ত পা-রন নাই।”...

In view of the above findings for allocating shahams (সাহাম) for the plaintiff-opposite party, I do not consider that the learned courts below committed any error of law or any misreading having evidence adduced and produced by the

parties. I am, therefore, not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 19.04.2001 passed by the then learned Subordinate Judge (Joint District Judge), Court No. 1, Bagerhat in the Title Appeal No. 82 of 1998 disallowing the appeal thereby affirming the judgment and decree dated 30.08.1998 passed by the learned Assistant Judge, Fakirhat, Bagerhat is hereby upheld and confirmed.

The interim order passed by this court at the time of issuance of the Rule staying the operation of the impugned judgment and decree dated 19.04.2001 passed by the learned appellate court below is hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower court records along with a copy of this judgment and order to the learned courts below immediately.