

District: Gopalganj

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

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 4105 of 2012

In the matter of :

Shamsul Haque Sheikh and others

... Petitioners

-Versus-

Aleya Begum and others

...Opposite parties

Mr. Md. Rezaul Karim, Advocate with

Mr. Md. Nur Mohammad Talukder, Advocate

...For the petitioners

Heard on: 20.01.2025 and 21.01.2025

Judgment on: 05.02.2025

Rule was issued on an application under section 115(1) of the Code of Civil Procedure calling upon the opposite parties to show cause as to why the judgment and decree dated 19.09.2012 passed by the Joint District Judge, First Court, Gopalganj in Title Appeal No. 11 of 2000, reversing those of dated 31.01.2000 passed by the Assistant Judge, Muksudpur, Gopalganj in Title Suit No. 95 of 1997 should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The present petitioners being plaintiffs filed Title Suit No. 95 of 1997 sought for a declaration of their title regarding $.16\frac{1}{4}$ decimals of land out of .38 decimals of the latest khatian No. 512 of Gopinathpur mouza under Police Station- Muksudpur, Gopalganj.

The plaint case briefly are that .38 decimals of land appertaining to R.S. khatian No. 402 was originally belonged to Esharat Sheikh and Basharat Sheikh. Esharat Sheikh died intestate leaving behind only son, Hanif Sheikh. The S.A. khatian No. 454 was prepared in the name of Hanif Sheikh and Basharat Sheikh in respect of their aforesaid shares. Basharat Sheikh gifted his entire share to his wife Hajera Khatun and thereafter, Hajera Khatun on 18.12.1985 gifted the said property to her granddaughter Salma Khatun (daughter's daughter) vide registered deed of gift No. 4994. Salam Khatun transferred .4 decimals of land on 06.11.1989 and thereafter .3 decimals of land on 15.09.1990 to the plaintiff No. 1. The Hanif Sheikh, son of R.S. recorded tenant Esharat Sheikh got a daughter through his first wife named, Laily Khatun and a son through the second wife named, Harun Sheikh. After the death of his second wife, Hanif Sheikh got marriage to one Halima Begum and during their wedlock he got another son named, Faruk Sheikh. Hanif Sheikh died intestate leaving behind

aforesaid 2(two) sons namely, Harun and Faruk, one daughter, Laily Khatun and one wife, Halima Begum. Harun and Faruk, both the sons combindly inherited $\frac{14}{20}$ of .19 decimals of land and Laily Khatun inherited $\frac{7}{40}$ of .19 decimals of land and rest $\frac{1}{8}$ of .19 decimals has been inherited by his wife Halima Begum. Son Faruk and his mother Halima Khatun sold out $9\frac{1}{4}$ decimals of land to plaintiff No. 2 vide registered deed No. 75 dated 05.01.1997 and handed over the possession to the plaintiff No. 2. In the said way, the plaintiffs became owners of $16\frac{1}{4}$ decimals out of land out of .38 decimals of the latest khatian. In the recent survey, the plaintiffs' right has been wrongly recorded in respect of $.4\frac{1}{4}$ decimals of land instead of $.16\frac{1}{4}$ decimals. Taking the said advantage the defendants on 14.04.1997 denied the plaintiffs' title. Hence the suit.

Defendant Nos. 3 and 4 contested the suit by filing written statement denying all the material averments of the plaint contending, inter-alia that the Hanif Sheikh, son of Esharath Sheikh had no third wife named, Halima Khatun and he had no son named, Faruk Sheikh. The only surviving heirs of deceased Hanif Sheikh are son Harun Sheikh and daughter Laily Khatun and accordingly, they inherited the entire .19 decimals of land left

by Hanif Sheikh and thus, the plaintiff No. 2 did not acquire any right, title through the deed No.75 dated 05.01.1997.

On conclusion of hearing learned Senior Assistant Judge, Muksudpur, Gopalganj by his judgment and decree dated 31.01.2000 decreed the suit, declaring title of the plaintiffs as sought for; against which defendant No. 3 filed Title Appeal No. 11 of 2000 before the District Judge, Gopalganj and learned Judge of the appellate Court by his judgment and decree dated 19.02.2002 allowed the appeal setting aside the judgment and decree of the trial Court and thereby sent back the suit on remand to the trial Court. Having being aggrieved by the judgment and order of the appellant Court, the defendant No. 3 moved this Court in Civil Revision No. 5850 of 2002 and ultimately after hearing this Court by its judgment and order dated 07.08.2011 sent back the case to the appellate Court with a direction to hear and dispose of the appeal within 3(three) months and to find out whether there was any third marriage of deceased Hanif Sheikh upon examining the necessary witnesses and cause to examine necessary oral and documentary evidences.

Upon receipt of the said order of the High Court Division learned Judge of the appellate Court recalled the P.W. 3, Md. Faruk Sheikh at the instantee of plaintiffs and D.W. 1, Aleya

Begum was also recalled in order to produce respective documentary evidences. Apart from that Md.Zafar concerned Nika Register was examined in the witness box and concerned Nikah Register Volume was exhibited as Exhibit-‘X’. Upon examination of all the evidences available on record, the appellate Court below found that there was a valid marriage between the Hanif Sheikh and Halima Begum and as a result of the aforesaid wedlock, Hanif Sheikh got a second son named, Md. Faruk Sheikh and as such, Faruk Sheikh and his mother, Halima Khatun are legal heirs of deceased Hanif Sheikh. Accordingly it was held that they had a transferable interest regarding $.9\frac{1}{40}$ decimals of land out of .19 decimals left by the deceased Hanif Sheikh and thus, the plaintiff No. 2 acquired right, title regarding $.9\frac{1}{40}$ decimals of land through registered deed No. 75 of 05.01.1997 and plaintiff No. 1 acquired his right and title regarding .7 decimals of land from Salma Khatun, granddaughter of Hajera Khatun.

It is to be mentioned here that plaintiff No. 1 is the only son of Basharat Sheikh, one of the R.S. recorded tenants.

Furthermore, although the appellate Court below found title of the plaintiffs regarding $.16\frac{1}{40}$ decimals of land, but dismissed the suit on the ground that the suit land is unspecified and vague.

On being aggrieved by and dissatisfied with the judgment and decree dated 19.09.2012 passed by the Joint District Judge, First Court, Gopalganj, the plaintiffs preferred this revisional application and obtained the Rule.

For an effective disposal of the Rule, it is not at all necessary to discuss the entire evidences or facts of the present revisional application as well as the suit, save and except the facts that both the Courts below concurrently found that the plaintiffs have been able to prove their right and title into the suit property; the only difference between the trial Court and appellate Court is that the trial Court found title of the plaintiffs regarding $.16\frac{1}{4}$ decimals of land. On the other hand, the appellate Court below although found right and title of the plaintiffs but regarding quantum of land it differs from the finding of the trial Court, holding that the plaintiffs have been able to prove title upon $.16\frac{1}{40}$ decimals of land. The trial Court found that the plaintiffs are in possession of the suit land. The appellate Court in its judgment found that plaintiffs failed to prove their title and possession upon $.16\frac{1}{4}$ decimals of land. On going through the judgment of the appellate Court, this Court finds that in arriving at the aforesaid finding so far it relates to possession, the appellant Court even did

not discuss a single sentence regarding possession of the plaintiff assigning any reason in arriving at the aforesaid findings. Moreover, it failed to controvert the positive finding of the trial Court regarding possession of the plaintiffs. For better understanding, the finding of the appellant Court is reproduced herein below:

“পূর্বের আলোচনায় দেখিয়াছি যে, বাদী-রেসপনডেন্টপক্ষ $১৬\frac{১}{৪}$ শতাংশ জমিতে স্বত্ত্ব দাবী করিলেও $১৬\frac{১}{৪০}$ শতাংশ সম্পত্তিতে স্বত্ত্ব প্রমাণে সমর্থ হইয়াছে। এমতাবস্থায় এইরূপ উপসংহারে আসা যায় যে, বাদী-রেসপনডেন্টপক্ষ নালিশী $১৬\frac{১}{৪}$ শতাংশ সম্পত্তিতে তাহাদের পরিস্কার স্বত্ত্ব দখল প্রমাণ করিতে ব্যর্থ হইয়াছে।”

From the aforesaid finding, it appears to this Court that the appellate Court below was tried to express that the plaintiffs have not been able to establish their right, title and possession regarding $.16\frac{1}{4}$ decimals of land, but they have proved the right and title regarding $.16\frac{1}{40}$ decimals of land only.

The finding of fact arrived at by the appellate Court below, being final Court of fact shall stand and as such, it appears to this Court that the plaintiffs have been successfully able to prove their title and possession regarding $.16\frac{1}{40}$ decimals of land only.

Now, the next point regarding the findings of the appellate Court denying to declare the plaintiffs' title holding that the schedule of the plaint is unspecified and vague.

In this regard, learned Advocate for the plaintiffs-petitioners submits that the plaintiffs' suit is for declaration of title simplicitor, plaintiffs did not seek any further relief by way of recovery of possession. Thus, the finding of the appellate Court below denying to pass a decree in favour of the plaintiffs as sought for, is not tenable in law, because their right and title relates to the property can be very much identifiable by the quantum of the land of the corresponding khatian. In support of the submission, he referred the case of Bangladesh Vs. Dewan Obaidur Reza Chowdhury and others, reported in 43 DLR 551.

Wherefrom, it appears that his Lordship in the said judgment categorically held that "the instant suit was a suit for declaration of title only and infact for correction of the alleged wrong record of right in the khatian and there was neither any prayer for confirmation of his possession nor recovery of possession of the suit land. From that point of view also it appears that the point of alleged vagueness was not so material for the adjudication of the present suit."

Considering the facts and circumstances of the present suit as well as the cited one, this Court finds merit in the submission of learned Advocate for the petitioners.

Accordingly, the Rule is made absolute.

The judgment and decree of the Joint District Judge, First Court, Gopalganj in Title Appeal No. 11 of 2000 dated 19.09.2012, so far it relates to the maintainability of the suit is hereby set aside and the suit stands decreed so far it relates to $.16\frac{1}{40}$ decimals of land corresponding to latest khatian No. 525 (Exhibit- '1-Ka').

No order as to cost.

Send down the lower Courts' record.

Communicate the judgment and order at once.