

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

Civil Revision No. 508 of 2000

IN THE MATTER OF

Shajahan Talukder being dead his legal heir-
1(a) Md. Kibria Talukder and others

..... Defendants-Appellants-Petitioners

-Versus-

Helena Parvin and others

..... Plaintiffs-Respondents-Opposite parties

Mr. Tapash Kumar Biswas, Advocate

.....For the petitioners

Mr. Md. Shahidul Islam, Advocate

.....For opposite party Nos. 1-3

**Heard on 06.08.23, 11.01.24, 24.01.24
and judgment passed on 29.02.2024**

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, on an application under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following terms-

“Let the records of the case be called for and a Rule be issued calling upon opposite party Nos. 1-25 to show cause as to why the impugned judgment and decree dated 09.06.1999 passed by the learned Additional District Judge, Jhalakati in Title Appeal No. 13 of 1994 affirming those dated 02.01.1994 passed by the learned Sub-ordinate Judge, Jhalakati in Title Suit No. 50 of 1988 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of the Rule, the parties were directed to maintain status-quo in respect of the suit property.

The present opposite party Nos. 1-25 as the plaintiff filed Title Suit No. 50 of 1988 in the Court of learned Sub-ordinate Judge, Jhalakati for a simple declaration of title, which was decreed on 02.01.1994 on the contest against defendant Nos. 1 and 30, and ex-parte against the rest without cost, against which defendant Nos. 1 and 30 filed an appeal before the learned District Judge, Jhalakati and the same was numbered as Title Appeal No. 50 of 1988. After hearing the same the learned Additional District Judge, Jhalakati by his judgment and decree dated 09.06.1999 disallowed the appeal on the contest without cost by affirming those of the Trial Court. Against which defendant Nos. 1 and 30 as the petitioners had preferred the instant civil revision before this Court and obtained the present Rule.

Anyway, Mr. Tapash Kumar Biswas, the learned Advocate appearing for the defendants-petitioners categorically submits that the suit land is unspecified in which a decree cannot be passed legally. Admittedly, the suit land is an ejmali property and all own the same jointly, so without prayer for partition, the suit is not maintainable in its present form. He also submits that the defendants' document being of the year 1908 is a very old one, based on which the subsequent record has been prepared in their names and nobody challenged the same, and the defendants have

in possession. He lastly submits that the suit is bad for the defect of the party but the Appellate Court below without considering all the above aspects of the case passed the impugned judgment and decree and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

Per contra, Mr. Md. Shahidul Islam, the learned Advocate appearing for plaintiffs opposite party Nos. 1-3 by filing an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 prayed for amendment of the plaint for the reasons stated therein and submitted that at the time of hearing of the instant civil revision, some defects were found in the plaint, and on the other hand, it appeared from the statements of the P.Ws that the plaintiffs are possessing the suit land and the record of right was wrongly prepared in the names of the defendants, and in the premises, without amendment of the plaint in the following manner, which will not change the nature and character of the suit, the plaintiffs will suffer irreparable loss and injury. The plaint would be amended as-

“আরজীর ৬ দফার শেষে ৭ দফার পূর্বে ৬(ক) আরজীর ‘ক’ তফসিলে বর্ণিত সম্পত্তি ৩.০৭ একরের মধ্যে ১নং তফসিলের ২.৪৮ একর এবং ২নং তফসিলের ৬১ শতক সম্পত্তির ৮ আনা হিস্যায় ৩০.৫ শতক সম্পত্তি সহ মোট ২.৭৮৫ একর সম্পত্তির বন্টন পূর্বক পৃথক সাহাম পাইবার আবেদন।” সংযুক্ত হইবে।

আরজীর প্রতিকারে ৩নং প্রতিকারের পরে

“৪-আরজীর ‘ক’ তফসিল বর্ণিত সম্পত্তির আর.এস এবং এস.এ রেকর্ড ভ্রমাত্মক ঘোষণার প্রার্থনা ও ‘ক’ তফসিল বর্ণিত সম্পত্তির ৩.০৯ একর সম্পত্তির মধ্যে ১নং তফসিলের

২.৪৮ একর এবং ২য় তফসিলের ৩০.৫ শতক সহ ২.৭৮৫ একর সম্পত্তির পৃথক সাহাম সহ প্রাথমিক ডিক্রী দিবার সংযুক্ত হইবে।”

He lastly submits that the plaintiffs' predecessor Kaloncha Bibi was the C.S. recorded owner of the suit land. The plaintiffs are the successive heirs of said Kaloncha Bibi, and they possess the suit land but the same was wrongly recorded in the names of the defendants without any legal basis, which the plaintiffs stated in paragraph Nos.5 and 6 of the plaint but at the time of drafting the plaint the learned Advocate did not seek proper relief, which is a bonafide mistake of the learned Advocate for which the client should not suffer, and prayed for sending back the case on remand for fresh trial for the ends of justice.

Heard the learned Advocates of the contending parties and perused the materials on record. I find substance in the submissions so made by the learned Advocate for the defendants-petitioners. On the other hand, it appears that the learned Advocate appearing for plaintiffs opposite party Nos.1-3 by admitting the attending facts of the case and that of the submissions so made by the learned Advocate for the petitioners prayed for amendment of the plaint.

Given the above, it appears to us that justice will better be served if the case is sent back on remand to the Trial Court below for holding a fresh trial by giving the parties equal opportunity concerning the proposed amendment of the plaint as given by the learned Advocate for the plaintiffs opposite parties, otherwise; the parties will suffer irreparable loss and injury.

Accordingly, the Rule is disposed of without cost.

The judgment and decree dated 09.06.1999 passed by the learned Additional District Judge, Jhalakati in Title Appeal No. 13 of 1994 disallowing the appeal by affirming the judgment and decree dated 02.01.1994 passed by the learned Sub-ordinate Judge, Jhalakati in Title Suit No. 50 of 1988 decreeing the suit is hereby set-aside.

The order of status-quo so passed in the instant civil revision at the time of issuance of the Rule on 27.01.2000 in respect of the suit property is hereby affirmed, and the parties are hereby directed to maintain the status-quo in the respect of the suit property till the conclusion of the trial of the suit.

Accordingly, the case is sent back on remand to the Trial Court below for holding a fresh trial in view of the proposed amendment of the plaint by giving the parties equal opportunity.

However, the learned Judge of the Trial Court below is hereby directed to conclude the trial of the suit as early as possible.

Let a copy of this judgment along with Lower Court Records be sent to the Trial Court below at once.