

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2940 of 2013

In the matter of:

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

And

Md. Ataur Rahman Prodhan

... Petitioner

-Versus-

Most. Monira Begum and others

... Opposite parties

None appears

... For the petitioner.

Mr. S. M. Bazlur Rashid, Advocate

... For the opposite party.

Heard on 11.12.2024 and Judgment on 12.12.2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 10.03.2013 passed by the learned District Judge, Panchagar in Family Appeal No.16 of 2012 rejecting the appeal and upholding the judgment and decree dated 31.07.2012 passed by the learned Senior Assistant Judge and Family Judge, Panchagar, in Family Suit No.30 of 2011 decreeing the suit should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs instituted above Family Suit for recovery of their maintenance.

It was alleged that the defendant married plaintiff No.1 on 30.08.1996 and out of above wedlock plaintiff Nos.2 and 3 were born. Plaintiff No.2 is a mentally retracted boy and plaintiff No.3 is suffering from rare blood related disease which requires expensive medical treatment. The defendant drove away the plaintiffs from his home on 28.05.2009 and married one Hasina Banu on 17.04.1998. Plaintiffs claimed maintenance for plaintiff No.1 at the rate of Taka 3,000/- per month and for plaintiff Nos.2 and 3 at the rate of Taka 2,500/- per month for each.

Defendant No.1 contested the suit by filing a written statement alleging that the plaintiff is a Government employee. The defendant transferred his $1.04\frac{1}{2}$ acres land to plaintiff No.1 by a deed of Heba-bil-ewaz and purchased another 50 decimal land for the plaintiff No.1 and from above land plaintiffs are earning Taka 80, 000/- per year and plaintiff No.1 has sold 76 trees of the defendant for Taka 15,20,000/-. Above money was sufficient for maintenance of the plaintiffs.

At trial plaintiffs examined 1 witness and defendant examined 2. Document of the plaintiff was marked as Exhibit No.1 those of the defendants were marked as exhibit Nos.'Ka' and 'Kha'.

On consideration of facts and circumstances of the case and evidence on record the learned Judge of the Family Court decreed the suit.

Being aggrieved by above judgment and decree of the Family Court above defendant as appellant preferred Family Appeal No.16 of 2012 to the learned District Judge, Panchagar who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court and obtained this Rule.

No one appears on behalf of the petitioner at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

Mr. S. M. Bazlur Rashid, learned Advocate for the opposite party submits that the defendant married the plaintiff on 30.08.1996 and out of above wedlock plaintiff Nos.2 and 3 were born. Admittedly plaintiffs are living separately in the house of the father of the plaintiff. Plaintiffs claimed maintenance at the rate of Taka 5,000/- for plaintiff No.1 and Taka 3,000/ for plaintiff Nos.2-3 and demanded past maintenance from 28.05.2009. But the learned Judge of the Family Court awarded maintenance to the plaintiffs only from the date of filing of the suit and

at the rate of Taka 3,000/- per month for plaintiff No.1 and Taka 2,500/- for plaintiff Nos.2 and 3. The defendant is an Assistant Headmaster of a Government Primary School and he has sufficient financial capacity to pay above maintenance. On consideration of above materials on record the learned District Judge rightly dismissed the appeal and affirmed the judgment and decree of the Family Court which calls for no interference.

I have considered the submissions of the learned Advocate for the opposite parties and carefully examined all materials including the judgments of the Courts below and evidence on record.

It is admitted that defendant married the plaintiff on 30.08.1996 and out of above wedlock plaintiff Nos.2 and 3 were born and plaintiff No.2 is a mentally retracted boy and plaintiff No.3 is suffering from rare blood related disease which requires expensive medical treatment. It is also admitted that since 28.05.2009 plaintiffs are living separately in the house of the father of plaintiff Nos.1.

Defendant has claimed to have transferred by registered deed of gift (Exhibit No.'Kha') $1.04\frac{1}{2}$ acres land to plaintiff No.1 and he has also purchased 15 decimal land with his money for plaintiff No.1 and plaintiffs are enjoying the usufructs of above land amounting to Taka 80,000/- per year. Plaintiff No.1 has sold trees from the land of the

defendant for Taka 15,20,000/- and above money was utilized for the maintenance of the plaintiffs.

A gift by a husband to his wife of valuable property is considered as an expression of love and in the absence of a written contract no such gift or enjoyment of any other property of the husband by the wife can be treated as payment of maintenance. No gift of the husband made to the wife can be treated as a substitute for payment of maintenance for the wife and her children. As far as purchase of 50 decimal land allegedly by the defendant for the plaintiff is concerned above sale deed stands in the name of the plaintiff No.1 who is not a housewife but a working woman.

In above view of the materials on record I am unable to find any illegality or infirmity in the impugned judgment and decree passed by the learned District Judge nor I find any substance in this 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, the Rule is discharged.

However, there is no order as to costs.

Send down the lower Courts record immediately.