

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No.1636 of 2004

IN THE MATTER OF :

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

-And-

In the Matter of:

Bikhari Sarder and others

.....Petitioners

-Versus-

Nendra Sarderni and others

.....Opposite parties

None appears

Judgment on: 04.11.2018

Rule was issued calling upon the opposite party No. 1 to show cause as to why the judgment and decree dated 09.03.2004 (decree signed on 10.03.2004) passed by the joint District Judge, 1st Court, Chapai Nowabgonj, in Title Appeal No. 102 of 2002 dismissing the appeal and affirming the judgment and decree dated 15.04.2002 passed by the learned Assistant Judge, Gomostapur, Chapai Nowabgonj in Other Class Suit No. 71 of 1984 should not be set aside.

During issuance of the Rule an order of stay operation of the impugned Judgment and decree was passed for a period of 3(three) months which was extended time to time.

The short facts for disposal of this Rule is that the opposite party No.1 as plaintiff filed Other Class Suit No. 71 of 1984 against the petitioners and opposite party Nos. 2 to 15 as defendants before the Assistant Judge, Gomostapur for declaration of title of her life interest in the suit land and also for partition of the same stating inter alia, that Akalu Sarder, Budhu Sarder and Mongla Sarder were the owners and possessors of 12.12 acres of land of plot No.1 and Akalu Sarder was owner and possessor of 1.2 acres of land of plot No.2 of the scheduled land. That

Akalu Sarder died leaving behind 4 sons namely Nanku Sarder, Durga Sarder, Eta Sarder and Bhikari Sarder (defendant No.1) as his heirs. Budhu Sarder died leaving defendant No. 8 and 9 and Nanku Sarder died leaving behind defendant Nos. 10 to 13. Subsequently, Nanku Sarder died leaving 3 sons namely defendant Nos. 2-4. Durga Sarder died leaving behind 3 sons namely defendant No. 5 to 7 and Eta Sarder died leaving behind only daughter the plaintiff as his only heir. Thus the plaintiff got 1.31/1/4 acres of land by inheritance. The plaintiff thus becomes the owner of the suit land and is possessing the same though S.A. record was not prepared in her name or in her father's name. The plaintiff demanded partition of the suit land which was denied by the defendant No. 1 for which a local arbitration (salish) was held and defendant No.1 claimed that since the S.A. record was not prepared in her name or her father's name she was not entitled to get partition. Then the plaintiff came to know about the wrong S.A. record and filed the instant suit for title of her life interest and also for partition of the suit land.

Defendant Nos. 1,3,4 and 5 having entered appearance in the suit filed a joint written statement denying all the material allegations made in the plaint contending inter alia, that Akalu, Budhu and Mongla were the owners and possessors of the suit land of plot No.1 and Akalu was the owner and possessor of the plot No.2 of the scheduled land. That Akalu Sarder died leaving behind 3 sons namely Nanku, Durga and Bhikhari. Akalu had no son named Eta Sarder. The plaintiff is not the daughter of Eta Sarder or heir of Akalu Sarder. The plaintiff has no right, title and possession over the suit land. That the proforma defendant No. 9 had dispute with the defendant No.2, on whose instigation the plaintiff filed the instant suit which is liable to be dismissed with costs.

During trial the plaintiff adduced 4 witnesses including herself while defendants adduced 3 witnesses including defendant No.1 and both the parties produced some documents which were marked and exhibited accordingly. After hearing both the parties, the learned Assistant Judge was pleased to decree the suit by his judgment and decree dated 15.4.2002.

Against the said judgment and decree the defendant petitioners filed Title Appeal No. 102 of 2002 before the learned District Judge which was ultimately heard by the Joint District Judge for disposal, who after hearing both the parties by his impugned judgment and decree dated 09.03.2004 was pleased to dismiss the appeal and thereby affirmed the judgment and decree passed by the learned Assistant Judge.

Being aggrieved by and dissatisfied with the said judgment and decree passed by the courts below the defendant-appellants filed the instant Civil Revision and obtained the rule and order of stay as stated at the very outset.

No one appears to support or oppose the rule.

It appears from the case record that Mr. Shahidul Islam and Mr. Md. Ekramul Islam, learned advocates accepted the Vokalotnama and appeared on behalf of the petitioners while Mr. Md. Mozammel Haque, learned advocate appeared on behalf of the opposite party No.1. Since it is an old Civil Revision of the year 2004 and the original Title Suit is of the year 1984 hence I am inclined to pass the judgment though no one appears to support or oppose the rule. I have perused the revisional application, both the judgments and decrees passed by the courts below and also examined the Lower Court Record, the depositions and exhibited documents.

The defendant –petitioners stated in their revisional application that, admittedly the defendant-petitioners are in possession of the suit land for more than 40 years and S.A. and R.S records are correctly prepared in their names. The plaintiff has totally failed to prove her joint possession. Moreover, the plaintiff did not claim that she has been possessing the suit land through defendants but both the courts below not considering that aspect of the case arbitrarily decreed the suit finding possession in favour of the plaintiff and both the courts below failed to consider that the suit was barred by limitation as such the suit is liable to be dismissed.

The petitioners' further case is that, for the sake of argument even if the defendants admit that Akalu Sarder had 4 sons including Eta Sarder but as per deposition of P.W-1 she was 38 years of age at the time of recording her deposition. While P.Ws-2 and 3 claimed that Eta Sarder died 40 years

ago which shows that the plaintiff was not the daughter of Eta Sarder and both the courts below failed to consider the depositions of P.Ws-1,2 and 3 on this aspect and thus committed error of law resulting an error in decision occasioning failure of justice. The petitioners' final point is that both the courts below without proper appreciation of the evidences on record regarding title and possession of the plaintiff and thereby committed error of law resulting in an error occasioning failure of justice.

The Trial Court considered 6 issues: whether the suit was maintainable in its present form; whether the suit was barred for defect of parties; whether the suit was barred by limitation; whether Eta Sarder was the son of Akalu Sarder and whether the plaintiff was the daughter of Eta Sarder; whether the plaintiff has title and possession over the suit land and whether the plaintiff is entitle to get her title over the suit land and for partition.

In their depositions P.Ws-1, 2, 3 and 4 have stated that Akalu Sarder had 4 sons; Eta was one of them. P.W-2 Shyamlal Sarder who is the cousin (Khalato Bhai) of defendant No.1' clearly stated that Akalu Sarder had 4 sons namely Nanku Sarder, Durga Sarder, Eta Sarder and Bhikari Sarder. P.W-3 who is the proforma defendant No.9 stated that he is the cousin (Chachato Bhai) of the defendant No.1. He also stated that Akalu Sarder died leaving behind 4 sons namely Nanku Sarder, Durga Sarder, Eta Sarder and Bhikari Sarder. P.W-4 who is also a cousin (Chachato Bhai) of the defendant No.1 stated in his deposition that Akalu died leaving behind 4 sons namely Nanku Sarder, Durga Sarder, Eta Sarder and Bhikari Sarder.

On the other hand, defendant No.1 as D.W-1 denied that Akalu had any son named Eta Sarder and in support of him D.W-2, who claimed himself as village head and lives in another village namely Shalkhot, stated that the village head of Siddigram has not come before the court to give evidence.

After assessing the evidences trial court believed the witnesses of the plaintiff and disbelieved the defendant witnesses and found that the plaintiff is the daughter of Eta Sarder and Eta Sarder was the son of C.S. recorded tenant Akalu Sarder. It further appears from the evidences of the

P.Ws that they univocally stated that the plaintiff is the daughter of Eta Sarder and Eta Sarder died 40 years back which means before the S.A. and R.S. record and as such there is no scope to prepare S.A. record in the name of Eta Sarder and accordingly this P.Ws says that at that time the plaintiff was at the age of 2 years. It is very natural that S.A. record will not be prepared in her name as she was 2 years old unless anybody takes steps. During R.S. record since the plaintiff was living in another village, her name was not mentioned. It further appears from the evidences of D.W-1 that he is 60 years of age while the plaintiff is also 60 years of age. Though it appears from the witness sheet that the age of the plaintiff was mentioned as 38 but from dissection of the evidences of both the sides it appears that the plaintiff is much more aged person than stated in witness sheet. It further appears from the deposition of the D.W-1 that he denied the share of the plaintiff as her name was not recorded in the S.A. and R.S. record. He admitted that if her name was in the record he would give her portion. In such assertion it is clear that D.W-1 admitted that plaintiff has title over the suit land. But since her name was not recorded in the R.S. record she was not given her portion. It appears from the deposition of the P.Ws. that they have claimed that the plaintiff possessed the suit land through defendant No.1, Vhikari Sarder and she got crops during harvesting season for about 50-60 years.

It is well settled that possession of a co-sharer is a possession of other sharers. Since it is established by the evidences on record that the plaintiff is co-owner of the schedule land though she is not in exclusive possession but the possessions of the other owners is to be treated as her possession also.

It appears that the case in hand is under Hindu law and the plaintiff as daughter of Eta Sarder is entitled share of the portion of Eta Sarder during her life-time and considering all this aspect the learned trial court decreed the suit declaring the title (life interest) of the plaintiff over the suit land and the appellate court rightly considering all those aspects dismissed the appeal. In such reasons discussed above, I find no reasons to interfere

with the concurrent findings and judgments and decrees passed by both the courts below and also find no merit in the instant Rule.

In the result, the Rule is discharged. The judgment and decree dated 9.3.2004 passed by the learned Joint District Judge, 1st Court, Chapai Nawabgonj is hereby affirmed.

The order of stay granted earlier by this court at the time of issuance of Rule is hereby re-called and vacated.

Send down the L.C.R. along with a copy of this judgment at once.