

Present:

Mr. Justice Sheikh Abdul Awal

Civil Revision No. 269 of 2014

Chunnu Sheikh and others

..... Plaintiff-petitioners.

Versus

Tofazzol Hossain and others

.....Defendant-opposite Parties.

Mr. Porob Naser Siddique with
Mr. George Chowdhury, Advocates.

....For the plaintiff-petitioners.

Mr. S.M.A. Sabur, Advocate

....For the Defendant-opposite-parties.

Heard on 27.08.2024, 05.09.2024 and

Judgment on 05.09.2024

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 25.07.2013 (decree signed on 31.07.2013) passed by the learned Joint District Judge, 1st Court, Gopalganj in Title Appeal No. 48 of 2012 dismissing the appeal modifying the judgment and decree dated 29.11.2011 (decree signed on 04.01.2012) passed by the learned Assistant Judge, Muksudpur, Gopalganj in Title Suit No. 8 of 2010 should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Material facts of the case, briefly, are that the opposite parties as plaintiffs instituted Title Suit No. 8 of 2010 in the Court of the learned Assistant Judge, Muksudpur, Gopalganj for partitioning the property as described in the schedule of the plaint.

Defendant Nos. 1-3 contested the suit by filing written statements denying all the material averments made in the plaint and defendant No.3 claimed separate saham stating that he purchased total 20 decimals land and that he is entitled to get saham of the said 20 decimals of land in accordance with law.

At the trial the plaintiff side examined 3 witnesses and the defendant side examined 7 witnesses and both the parties exhibited some documents to prove their respective cases.

The learned Assistant Judge, Muksudpur, Gopalganj after hearing the parties and on considering the evidence and materials on record by his judgment and decree dated 29.11.2011 decreed the suit in-part.

On appeal, being Title Appeal No. 48 of 2012 the learned Joint District Judge, 1st Court, Gopalganj by the impugned judgment and decree dated 25.07.2013 dismissed the appeal and affirmed the judgment and decree of the trial Court dated 29.11.2011.

Aggrieved plaintiffs then preferred this revision application and obtained the present rule.

Mr. Porob Naser Siddique with Mr. George Chowdhury, the learned Advocates appearing on behalf of the Plaintiff-petitioners at the very outset takes me through the pleadings of the parties and other materials on record including the judgments of both the Courts below and then submits that in the facts and circumstances of the case the plaintiffs are entitled to get saham of 48.86

decimals of land although the appellate Court below gave only $18\frac{23}{24}$ decimals of land.

Mr. S.M.A. Sabur, the learned Advocate appearing for the defendant-opposite parties, on the other hand, supports the judgments of 2 Courts below except the finding of lower appellate court that ফলে ১নং বিবাদীর অংশ সাব্যস্ত করা হইলেও ১ নং বিবাদীল জন্য পৃথক ভাবে ছাহাম বরাদ্দ করা আইন সংগত হইবে না. He next points out that the defendant No.1 admittedly transferred 20 decimals of land to defendant No.3 and that the defendant No. 3 is entitled to get saham of the said 20 decimals land and in this way the defendant No.1 is entitled $23\frac{1}{24}$ decimals but the Court of appeal below did not give him the said saham stating that defendant No.1 did not claim any separate saham in paying court fees in accordance with law.

I have gone through the judgments pronounced by the Courts below. It is seen that the Court of appeal below on technical ground did not give saham in favour of the defendant No. 1.

On a query from the Court the learned Advocate for the plaintiff petitioners finds him difficult to repeal the contention raised by Mr. Sabur, the learned Advocate for the defendant opposite parties.

Now, to cut short the matter, I like to quote hereunder a portion from the impugned judgment, which reads as follows:

১নং বিবাদী খরিদা ও ওয়ারিশ সূত্রে মোট $৪৩ \frac{১}{২৪}$ শতাংশ এবং বাদীগণ ওয়ারিশ সূত্রে $১৮ \frac{২৩}{২৪}$ শতাংশ জমিতে স্বত্ত্ব অর্জন করেন। ১ নং বিবাদীর স্বীকৃত মতে ১নং বিবাদী ৩ নং বিবাদীর নিকট ২০ শতাংশ জমি হস্তান্তর করিয়াছে। ফলে ১নং বিবাদীর অংশ হইতে ২০ শতাংশ জমি বাদ যাইবে এবং উক্ত জমি বাবদ ৩ নং বিবাদী ছাহাম পাইতে হকদার। নথি পর্যালোচনায় দেখা যায় যে, ১ নং বিবাদী পৃথক ছাহাম চাহিয়া নিম্ন আদালতে কোন আবেদন করে নাই এবং আপীল আদালতেও কোন আবেদন করিয়া কোর্ট ফি জমা দেয় নাই। ফলে ১নং বিবাদীর অংশ সাব্যস্ত করা হইলেও ১ নং বিবাদীল জন্য পৃথক ভাবে ছাহাম বরাদ্দ করা আইন সংগত হইবে না।

From the above, it appears that the Court of appeal below did not give any saham to defendant No. 1 on technical ground.

Mr. Sabur, the learned Advocate for the defendant-opposite parties submits that his party being defendant No.1 is willing to pay proper court fees for his saham at the time of execution process.

The learned Advocate for the plaintiff-petitioners, however, does not oppose the contention raised by Mr. Sabur, the learned Advocate for the defendant-opposite parties.

Mere on technical ground a party cannot be debarred from his proper saham, if he wants to pay appropriate Court fees at the time of execution process. The execution court shall consider to grant remaining $23 \frac{1}{24}$ decimals of land in favour of the defendant No. 1 Tofazzal, if he prays his saham on payment of proper court fees.

In a suit of this nature the finding of the lower appellate court being ফলে ১নং বিবাদীর অংশ সাব্যস্ত করা হইলেও ১ নং বিবাদীর জন্য পৃথক

ভাবে ছাহাম বরাদ্দ করা আইন সংগত হইবে না of the court of appeal below does not deserve to be sustained.

Accordingly, the Rule is disposed of with modification in the above manner. The finding portion being ১ নং বিবাদীর জন্য পৃথক ভাবে ছাহাম বরাদ্দ করা আইন সংগত হইবে না। from the impugned judgment dated 25.07.2013 is set-aside. The order of stay and status-quo granted earlier by this Court stands vacated.

Let a copy of this judgment along with lower Courts' record be sent down at once.