

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.233 of 2002.

In the matter of:

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

And

Most. Nahida Akter and another
...Petitioners

-Versus-

Jahera Khatun and others

...opposite parties

Mr. Md. Zakaria, Advocate

...For the petitioners

No one appears

...For the opposite parties

Heard & Judgment on 24.10.2024.

This Rule was issued calling upon the opposite party Nos.1-2 to show cause as to why the impugned judgment and decree of reversal dated 30.09.2001 passed by the learned District Judge, Brahmanbaria in Family Court Appeal No.7 of 2001 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted Family Suit No.63 of 2000 for recovery of dower of plaintiff No.1 and dower and maintenance for both the plaintiffs No.1-2 alleging that now deceased Elem Kha married

plaintiff No.1 in 1999 for a dower of Tk.1,00,001/-. Above marriage was not registered due to existence of first wife of Elem Kha. In the above wedlock of plaintiff No.1 and Elem Kha plaintiff No.2 was born. Above Elem Kha died on 13.04.2000 and the plaintiffs demanded their dower and maintenance to the defendants, the heirs of above Elem Kha who refused to pay the same.

Defendant Nos.1-3 contested the suit by filing a joint written statement alleging that the name of the husband of defendant no.2 and son of defendant No.1 was Elem Mia and not Elem Kha who died due to old age infirmities on 13.04.2000 and he did not marry plaintiff No.1 nor plaintiff No.2 was his biological daughter. This false suit of the plaintiff is liable to be dismissed.

At trial plaintiff and defendnat examined three witnesses each but no document was produced and proved by any of the parties.

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

Being aggrieved by above judgment and decree of the trial court defendants preferred Family

Court Appeal No.07 of 2001 to the learned District Judge, Brahmanbaria who allowed the appeal and set aside the judgment and decree of the trial court and dismissed the suit.

Being aggrieved by above judgment and decree of the court of appeal below respondents as petitioners moved to this court and obtained this rule.

Mr. Md. Zakaria learned Advocate for the petitioner submits that plaintiff No.1 herself gave evidence in this suit and in her evidence she reiterated her claims as set out in the plaint. She stated that Elem Kha predecessor of the defendant married her in 1990 and out of above wedlock plaintiff No.2 was born. She was not paid dower nor they paid their maintenance. Above evidence of P.W.1 was corroborated by other two plaintiff witnesses who were present at the time of marriage of the plaintiff with Elem Kha. All three plaintiffs witnesses were subjected to cross examination by the defendant but their evidence as to the marriage of the plaintiff No.1 with Elem Kha remained consistence, mutually supportive and credence inspiring.

On consideration of above evidence on record the learned Judge of the Family Court rightly

decreed the suit but the learned District Judge failed to appreciate above materials on record properly and most illegally allowed the appeal and set aside the judgment and decree of the trial court which is not tenable in law.

No one appears on behalf of the opposite parties at the time of hearing of this revision.

I have considered the submissions of the learned Advocate for the petitioners and carefully examined all materials on record.

It is admitted that Elem Kha or Elem Mia has died on 13.04.2000 and this suit for recovery of dower and maintenance claiming that deceased Elem Kha married plaintiff No.1 in 1990 was filed on 26.04.2000.

In the plaint the plaintiff could not mention the exact date of her marriage and undisputedly above marriage was nor registered. It is also not disputed that the plaintiffs did not live with above Elem Kha in his dwelling house nor they visited his house at any point of time.

While giving evidence as P.W.1 plaintiff No.1 admitted that the plaintiffs did not attend the funeral of deceased Elem Khan nor raised their claim for dower and maintenance on above occasion.

Defendant Nos.2-4 the heirs of deceased Elem Kha have denied the existence of marriage of the plaintiff with above Elem Kha. They have clearly stated that Elem Kha never married plaintiff No.1 nor he was the biological father of plaintiff No.2.

In view of above facts and circumstances of the case and evidence on record the marriage of plaintiff No.1 with Elem Kha was a disputed question of fact and above marriage was required to be established by a competent court of law.

The plaintiff filed this suit in the Family Court. Now the question is whether the Family Court established under the Family Court Ordinance 1985 has the jurisdiction to entertain a suit involving jacitation of marriage, where one party alleges the existence of marriage while the other party denies the same. Section 5 of the Family Court Ordinance 1985 provides for jurisdiction of the Family Court which is reproduced below:

"(5) Subject to the provisions of the Muslim Family Laws Ordinance, 1961 (VII of 1961), a Family Court shall have exclusive jurisdiction to entertain, try and dispose of any suit

relating to, or arising out of, all or any of the following matters, namely:-

- (a) dissolution of marriage;
- (b) restitution of conjugal rights;
- (c) dower;
- (d) maintenance;
- (e) guardianship and custody of children.

It is clear from above provision that the Family Court does not have the jurisdiction to entertain a suit involving jacitation of marriage, where one party alleges the existence of marriage while the other party denies its existence.

Since the plaintiffs marriage was not admitted she should have approached a competent civil court for a decree that she was the legally married wife of now deceased Elem Kha and after obtaining a decree in above suit she could file a suit for recovery of dower and maintenance. But instead of approaching a civil court for establishing her marriage with Elem Kha plaintiff No.1 has erroneously filed above suit in the Family Court which is not tenable in law.

Above mentioned deficiency in the instant suit or inability to approach an appropriate

court was caused due to lack of legal skill of the appointed Advocate of the plaintiffs and the plaintiffs who are poor and illiterate village women should not make to suffer for the same. As such the plaintiffs be at liberty to approach an appropriate civil court for a decree for establishment of marriage of plaintiff NO.1 with Elem Kha.

In above view of the facts and circumstances of the case and materials on record I hold that the learned Judge of the court of appeal below on correct appreciation of materials on record rightly allowed the appeal and set aside the judgment and decree of the trial court which suffers from no legal infirmity.

I am unable to find any substance in this revision and the rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged without any order as to costs.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.