

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1861 of 2002.

In the matter of:

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

And

Achia Khatun and others

...Petitioners

-Versus-

Khalilur Rahman and others

...opposite parties

Mr. Mohammad Ali, Advocate

...For the petitioners

No one appears

...For the opposite parties

Heard & Judgment on: 26.11.2024.

This rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and decree dated 12.01.2002 passed by the learned Acting Additional District Judge, 6th Court, Chattogram in Other Appeal No.93 of 1990 allowing the appeal modifying the judgment and decree dated 02.01.1990 passed by the learned Assistant Judge, Banskhali Upazilla, Chattogram in Other Suit No.90 of 1984 should not be set aside and/or pass such other order or orders as to this Court may seem fit and proper.

Facts and short are that the petitioner as plaintiffs instituted above suit for declaration of title in 56 decimals land as described in the schedule to the plaint and for further declaration that order passed by the Revenue Officer on 07.11.1983 in M.L. Case No.184 of 1982-83 is unlawful and not binding upon the plaintiffs.

It was alleged that above property belonged to Surazzaman who mortgaged the same to Mohammad Ali by registered deed of mortgage dated 06.07.1968 with condition that above mortgage be redeemed within next 6 years and above Mohammad Ali executed an ekrarnama containing above conditions to Surazzaman. Above Surazzaman died leaving three sons Khalil, Mustafiz and plaintiffs predecessor namely Abdur Rahman.

Above Surazzaman transferred by oral gift above 56 decimal land to Abdur Rahman who subsequently purchased above land from Mohammad Ali by registered kobla deed on 02.02.1976 and got possession and died leaving the plaintiffs. Above Khalil filed above M.L. Case No.184 of 1982-83 the to upazila revenue officer for redemption for above land from Mohammad Ali without impleading the plaintiffs and obtained an order of redemption on

07.12.1983 and thereafter threatened the plaintiffs with dispossession from above land.

Defendants No.1 and 2 contested the suit by filling a written statement alleging that Surazzaman never transferred above land by oral gift to Abdur Rahman and Mohammad Ali was a mortgagor not the owner of above land and by alleged purchase from Mohammad Ali, Abdur Rahman did not get any title and possession of the disputed land. Khalil a son of Surazzaman redeemed above mortgaged property by order dated 07.11.1983 of the revenue officer passed in M.L. Case No.184 of 1982-83 and defendants are in possession in above land.

At trial plaintiff and defendants examined 2 witnesses each and the documents of by the plaintiffs were marked Exhibit Nos.1-4 and those of the defendants were marked as Exhibit No.A-B.

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

Being aggrieved by above judgment and decree of the trial court defendants as appellants preferred Other Appeal No.93 of 1990 to the District Judge Chittagong which was heard by the learned Additional District Judge, 6th Court who allowed the

appeal set aside the judgment and decree of the trial court and decreed the suit in part.

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

Mr. Mohammad Ali learned Advocate for the petitioner submits that the learned Judge of the court of appeal below committed serious illegality in decreeing the suit for all heirs of Surazzaman on the basis of the order passed by the revenue officer in M.L. Case No.184 of 1982-83 which is beyond pleadings and impractical and liable to be set aside.

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

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

It is admitted that disputed 56 decimals land belonged to Surazzaman who died leaving three sons Khalil, Mustafizur and Abdur Rahman as his heirs and Khalil and Mustafiz are predecessors of the

defendants and Abdur Rahman is the predecessor of the plaintiffs.

It is also admitted that above Surazzaman mortgaged about 56 decimal land to Mohammad Ali by registered deed of mortgage dated 06.07.1968 with condition to redeem above mortgage within 6 years and in above terms above Mohammad Ali executed and registered an ekrarnama to Surazzaman.

The registered deed of mortgage dated 06.07.1968 executed by Suruzaman and the registered deed of ekrarnama of the same date executed by Mohammad Ali together have constituted and usufractory mortgage as defined in section 95A of State Acquisition and Tenancy Act, 1950.

Admittedly above Mohammad Ali was not a rightful owner of above 56 decimals land. As such Abdur Rahman predecessor of the plaintiffs did not acquire any valid title for above land by way of purchase of the same from Mohammad Ali by registered kobla deed dated 02.02.1976.

It is an admitted fact Khalil a son of Surazzaman filed M.L. Case No.184 of 1982-83 to the Upazilla Revenue Office for redemption of above mortgage of the disputed land and by order dated 07.12.1983 the revenue officer rightly redeemed above mortgage.

The learned Judges of both the courts below on analysis of evidence on record concurrently held that plaintiffs could not prove by legal evidence that Surazzaman made an oral gift of disputed land to Abdur Rahman predecessor of the plaintiffs.

In the plaint the plaintiffs could not mention the exact date, venue or the persons before whom above oral gift was made. Admittedly the disputed land was in possession of Mohammad Ali until the death of Surazzaman. As such it is not understandable as to how and when Surazzaman delivered possession of the disputed land to Abdur Rahman pursuant to above oral gift.

On consideration of above facts and circumstances of the case and evidence on record I hold that after redemption of above mortgage from Mohammad Ali disputed 56 decimal land was inherited by three sons of Surazzaman namely Khalil, Mustafiz and Abdur Rahman in equal shares. But this is not a suit for partition. This is a suit for declaration of title and plaintiffs have claimed total 56 decimal land which comprises in several khatians and plots.

As such the learned Additional District Judge committed serious illegality in passing an unspecific and vogue decree without specification

of the land in respect of which above declaratory decree was passed.

The plaintiffs and defendants are co-shares for above 56 decimals land and they are at liberty to partition above land amicably or file an appropriate suit for partition in a competent civil court to get above joint property partitioned by meets and bounds.

I find substance in this civil revision under section 115(1) of the Code of Civil Procedure and the rule is issued in this connection deserve to be absolute.

In the rule, the rule is made absolute.

The judgment and decree dated 12.01.2002 passed by the learned Acting Additional District Judge, 6th Court, Chattogram in Other Appeal No.93 of 1990 is set aside and above suit is dismissed on contest without cost.

Let the lower courts' records be transmitted down at once.