

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1339 OF 2002

In the matter of:

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

And

Nurul Hoque and others

.... Petitioners

-Versus-

Md. Abu Siddique and others

.... Opposite parties

Mr. Surojit Bhattacharjee with

Ms. Farhana Siraj Ronnie, Advocates

....For the petitioners.

Mr. Md. Asadur Rahman, Advocate

... For the opposite party Nos.1-7.

Heard and Judgment on 05.02.2025.

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 09.02.2002 passed by the learned Joint District Judge, 2nd Court, Cox's Bazar in Other Appeal No.154 of 1998 allowing the appeal and setting aside the judgment and decree dated 26.11.1998 passed by the learned Senior Assistant Judge, Cox's Bazar in Other Suit No.83 of 1996 partly decreeing the suit 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 above suit for a decree of perpetual injunction for 2.60 acres land alleging that above land belonged to Nur Uddin and in his name R.S. Khatian No.1421 was correctly recorded. Above Nuruddin died leaving five sons namely Hossain Ali, Nasarat Ali, Amir Ali, Rahmat Ali, Ramzan Ali and one wife Tajannessa and plaintiff is the son of above Nasarat Ali and defendants are heirs of Amir Ali. Above plaintiff instituted Title Suit No.134 of 1962 for partition of above land and defendant No.1 of this suit was defendant No.10 in above partition suit which was decreed on compromise and plaintiff obtained a saham for 2.60 acres land. Plaintiff also acquired 1.34 acres land by auction purchase and purchase from other co-sharers by registered kabala deeds. Above land was rightly recorded in the name of the plaintiff in B.S. Khatian Nos.928 and 929. Defendants threatened the plaintiffs with dispossession.

Defendant Nos.1-8 contested above suit by filing a joint written statement alleging that above Nur Uddin also had two daughters namely Rahatjan and Alekjan. But the plaintiff has suppressed their names and denied their legitimate saham. It was further alleged that the judgment and decree of Title Suit No.134 of 1962 was obtained by fraud and against above judgment and decree this defendant has preferred Title Appeal No.72 of 1992 which is pending for hearing.

Defendants have purchased the shares of above two daughters namely Rahatjan and Alekjan by registered kabala deed and they are in possession of above land. Above mentioned registered kabala deeds of plaintiffs were without any consideration and ineffective deeds and the plaintiffs did not acquired any title by above kabala deeds.

At trial plaintiffs examined 3 witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-11. On the other hand defendants examined 5 witnesses and documents of the defendants were marked as Exhibit Nos.1(Ka) -.1(Ga).

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed the suit in part for 2.53 acres land.

Being aggrieved by above judgment and decree of the trial Court above defendants preferred Other Appeal No.154 of 1998 to the learned District Judge, Cox's Bazar which was heard by the learned Joint District Judge, 2nd Court who allowed above appeal and set aside the judgment and decree of the trial Court and dismissed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondents as petitioners

moved to this Court with this petition under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Ms. Farhana Siraj Ronni, learned Advocate for the petitioners submits that the petitioners as plaintiffs filed above suit for a decree of perpetual injunction for 2.60 acres land and they provided all relevant documents in support of their title in above land which was recorded in relevant B.S. Khatian in the name of the plaintiffs. The plaintiffs are in possession in above land by paying rent to the Government and plaintiffs examined 4 competent witnesses who gave consistent evidence in support of plaintiff's possession in above land. On consideration of above facts and circumstances of the case and evidence on record the learned Senior Assistant Judge rightly decreed the suit in part. But the learned Judge of the Court of Appeal below most illegally allowed the appeal and set aside the lawful 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 Rule although the Rule appeared in the list for hearing on several dates.

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

It is admitted that above property belonged to Nur Uddin and in his name R.S. Khatian No.1421 was rightly prepared. There is a dispute as to the heirs and successors of above Nur Uddin. Plaintiffs claim that Nur Uddin died leaving five sons namely Hossain Ali, Nasarat Ali, Amir Ali, Rahmat Ali and Ramzan Ali and one wife Tajannessa but defendants claim that Nur Uddin also had two daughters namely Rahatjan and Alekjan. It is admitted that the plaintiffs are successive heirs of above Nasarat Ali and defendants are successive heirs of Amir Ali. Defendants claim that Rahatjan and Alekjan transferred their share in above land to the above defendants. Plaintiffs did not specifically deny the existence of above two daughters of Nuruddin, Rahatjan and Alekjan but included their share in the disputed land.

Plaintiffs claimed to have acquired a separate saham for 88 decimal land pursuant to compromise decree of Partition Suit No.134 of 1962. Learned Advocate for the petitioners has frankly concedes that challenging the legality and propriety of above compromise decree of Partition Suit No.134 of 1962 defendant No.1 has filed Title Appeal No.72 of 1992 and the same is pending for hearing.

It turns out from the schedule of the plaint that the plaintiff filed this suit on 20.07.1996 for 2.60 acres land and provided a boundary specifying the location of above land. The learned Senior

Assistant Judge of the trial Court held that the plaintiffs succeeded to prove their possession in 2.53 acres land not in 2.60 acres and accordingly decreed the suit in part for 2.53 acres land. The plaintiffs did not challenge the legality and propriety of above judgment of the trial Court rather they accepted above part decree of this suit. But the plaintiffs did not provide any specification of above 2.53 acres land in the plaint. As such the learned Judge of the trial Court committed serious illegality in passing a decree for permanent injunction for 2.53 acres unspecified land.

It is admitted that the plaintiffs and defendants are co-sharers both being successive heirs of Nur Uddin and plaintiffs claim of getting a saham for $88\frac{1}{2}$ decimal land has no basis since the decree of above partition suit did not reach finality and an appeal is pending for hearing. It is well settled that in order to get a decree for perpetual injunction against the co-sharers for a part of the ejmali property the plaintiff must prove his prima facie title and exclusive possession in the land. As mentioned above the trial Court held that the plaintiffs could not prove their prima facie title and possession in above 2.60 acres land and the plaintiff did not challenge the legality of above judgment and decree of the trial Court.

In above view of the facts and circumstance of the case and materials on record I am unable to find any illegality or infirmity in

the impugned judgment and decree passed by the learned Joint District Judge nor I find any substance in this petition 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 hereby discharged. The order of stay granted at the time of issuance of the Rule is vacated.

However, there will be no order as to cost.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER