

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

**Present:**

**Mr. Justice S M Kuddus Zaman**

**CIVIL REVISION NO.3368 of 2002.**

In the matter of:

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

And

Delowara Begum and others

**...Petitioners**

-Versus-

Golam Mohiuddin Hasam and others

**...opposite parties**

No one appears

**...For both the petitioners**

**Heard & Judgment on 25.11.2024.**

This rule was issued calling upon the opposite parties No.1-7 to show cause as to why the judgment and decree dated 21.01.2002 passed by the learned Additional District Judge, In-charge 6<sup>th</sup> Court, Chattogram in Other Appeal No.444 of 2001 partly reversing the judgment and decree dated 16.09.2001 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Chattogram in Other Suit No.114 of 1980 should not be set aside and/or pass such other order or orders as to this Court may seem fit and proper.

Facts in short are that the predecessor of the petitioner as plaintiff instituted above suit for declaration of title recovery of khas possession

and a decree for perpetual injunction for 109 decimal land appertaining to R.S. plot No.43 and R.S. khatian No.59 alleging that above property belonged to Md. Bashir who died leaving three sons defendants No.1 and 2 and predecessor of the plaintiff Garib Newaz and three daughters defendant No.3 and 5 and defendant No.6 as his heirs and by amicable family arrangement above land was in exclusive ownership and possession of Garib Newaz who mortgaged the same to National Bank and above bank sold above land in auction which was purchased by Md. Esha Haque who in his turn transferred above land to the plaintiff by registered kobla deed dated 11.12.1961. Taking advantage of plaintiff's absence in the disputed land the defendants erected a pakka wall and half pakka shade and dispossessed the plaintiff from the southern part of the above plot on 22.08.1980.

The suit was contested by defendant Nos.1 and 2 alleging that Garib Newaz was never in possession of the disputed land by virtue of an amicable partition. Above land was in possession of defendant Nos.1 and 2 who constructed dwelling huts and rented those to others. Defendant Nos. 3-6 transferred their share in the above land to defendant Nos.1-2 by gift and relevant B.S. khatian

of above land has been prepared rightly in the name of defendant Nos.1 and 2. The false case of the plaintiff is liable to dismiss out right.

At trial plaintiff and defendant examined three witness each and documents of the plaintiff were marked as Exhibit Nos.1-8 and those of the defendants were marked as Exhibit No.ka-Ja series.

On consideration of facts and circumstance of the case evidence on record the learned joint district judge decreed the suit.

Being aggrieved by above judgment and decree defendants as appellants prepared Other Appeal No.444 of 2001 to the District Judge, Chittagong which was heard by the learned Additional District Judge, 6<sup>th</sup> court who allowed the appeal in part and modified the judgment and decree of the trial court and decreed the suit in part for 22 decimal land.

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

This matter appeared for hearing in the list for several consecutive days but none appears either for the petitioner or for the opposite party for hearing of the revision.

I have carefully examined the judgments of both the courts below, evidence and other materials on records.

It is admitted that disputed 109 decimal land belonged to Md. Bashir who died leaving three sons defendant Nos.1-2 and Garib Newaz who is the predecessor of the plaintiff and three daughters defendant Nos.3-5 and wife of defendant No.6 as his heirs. Plaintiff as the heirs of Garib Newaz, one son of Md. Bashir, claims title in total 109 decimal land on the basis of amicable partition.

It has been alleged that the defendants have dispossessed the plaintiffs from the land of the southern part land of the disputed plot on 22.08.1980. This suit for declaration of title and recovery of khas possession was filed on 05.09.1980. But no specific mention was made in the schedule to the plaint as to from which area of land the plaintiffs were dispossessed and for which land they seek a decree for recovery of khas possession. The relief of declaration of title and recovery of khas possession has been sought for total 109 decimal land of disputed plot No.43. But no such clear mention has been made either in the plaint or in the evidence of three plaintiff

witnesses that plaintiff has been dispossessed from total land of the plot.

As such this suit was liable to outright dismissal due to above deficiency in the plaint and evidence of the plaintiff witnesses as to specification of the disputed land and relief sought by the plaintiff.

Plaintiffs claimed title in total 109 decimal land on the basis of amicable partition among the heirs of Md. Bashir but it is well settled that amicable partition does not transfer title and co-shares are merely possess of above land but the title of the other non possessor co-shares remain unaffected.

As such the claim of title in total 109 decimal land by Garib Newaz by amicable partition does not have any leg to stand. Since Garib Newaz was not the rightful owner of 109 decimal land he had no legal capacity to mortgage the same to the National Bank and by auction purchase from above Bank Md. Esha Haque acquired title only to the extent of share of Garib Newaz in above 109 decimal land and by purchase of the share of above Md. Eshahaque by registered kobla deed dated 11.12.1961 the plaintiff acquired title not in total 109 decimal land but only 22 decimal land which was the

rightful share of Garib Newaz in above ejmali property. It is an admitted fact that the B.S. khatian of the disputed property was prepared in the name of defendant Nos.1 and 2.

It is admitted that the plaintiffs and defendants are all co-sharers since they are successive heirs of Md. Bashir and they claimed title by way of the inheritance. It is well settled that a suit for declaration of title and recovery of khas possession by one co-sharer against the others for the undivided joint property is not tenable in law. Any party who feels aggrieved either in getting possession of the ejmali property or if he feels that his title has been denied by any co-sharer he can institute a suit for partition, so that the question of title and possession among the co-shares are determined once and for all.

The plaintiffs could not prove their lawful title in disputed 109 decimal land and they failed to prove their alleged dispossession from above land or any part of above land on 22.08.1980 by legal evidence.

Nowhere in the plaint nor in his evidence the plaintiff claimed that he has been dispossessed from 22 decimal land of the disputed plot. But the

learned judge of court of appeal below has made out a third case and decreed the suit in part for 22 decimal land against others co-shares which is not tenable in law.

In above view of the facts and circumstance of the case I find merit in this civil revision under section 115(1) of the Code of Civil Procedure and the rule issued in this connection deserves to be made absolute.

In the result, the rule is made absolute.

The impugned judgment and decree passed by the learned additional district judge in title appeal No.444 of 2001 on 21.01.2002 modifying the judgment and decree passed by the learned Joint District Judge Other Suit.114 of 1980 on 16.09.2001 is set aside and above suit is dismissed on contest without any cost.

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