

Present:

Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam

First Appeal No. 434 of 2014

Shahina Khatun and another.

.....Defendant-appellants.

-Versus-

Bhanu Bibi and others

.....Plaintiff-respondents.

Mr. Suvas Chandra Das, Advocate

..... For the appellants.

Mr. Bahauddin Ahmed, Advocate.

.....For the respondents.

Heard on 13.01.2025, 21.01.2025 and

Judgment on 22.01.2025.

Sheikh Abdul Awal, J:

This First Appeal at the instance of the defendant-appellant is directed against the judgment and decree dated 29.07.2012 (decree signed on 31.07.2012) passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No. 1523 of 2008 decreeing the suit.

The relevant facts for disposal of this appeal are that the respondents as plaintiffs filed Title Suit No. 1523 of 2008 in the Court of the then learned Joint District Judge, 2nd Court, Dhaka

for partition of the suit land as described in the schedule of the plaint.

At the trial plaintiff side examined in all 1 witness and both the parties exhibited some documents to prove their respective cases.

The learned Joint District Judge upon hearing the parties and on considering the materials on record by his judgment and decree dated 29.07.2012 (decree signed on 31.07.2012) decreeing the suit.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree dated 29.07.2012 (decree signed on 31.07.2012), the appellants preferred this appeal before this Court.

Mr. Suvash Chandra Das, the learned Advocate appearing for the appellants, however, supports the impugned judgment. He simply referring a portion of the impugned judgment submits that a direction may kindly be given that the Advocate Commissioner should submit his report as per possession of the parties in the suit land as well as observation of the trial Court.

Mr. Bahauddin Ahmed, the learned Advocates appearing for the respondents, on the other hand, submits that the instant First Appeal is misconceived, premature and not tenable in law, as no final decree has yet been passed. Advocate commissioner has yet been appointed and as such, the appeal is liable to be dismissed in a summary manner.

Having heard the learned Advocates for both the sides and perused the memo of appeal along with other materials on record including the impugned judgment.

In this case the learned Advocate for both the sides submits in a voice that the judgment delivered by the trial Court is well founded in law and fact. On scrutiny of the record, it appears that the sole PW-1 stated in his deposition that- “আমরা আমাদের দখল মতে বন্টন করে নিতে চাই।” It further appears that the trial Court on due consideration of the entire evidence and materials on record came to its conclusion that- “নথিতে দেখিলাম ও পর্যালোচনা করিলাম। উভয়পক্ষে স্বীকৃত যে, তফসিল বর্ণিত সম্পত্তি সমূহের মালিক ছিল সাহাবুদ্দিন। সাহাবুদ্দিন মারা গেলে বাদীপক্ষ এবং ১,২ নং বিবাদী ওয়ারিশ থাকে। বিবাদীপক্ষ উক্ত বিষয়ে স্বীকার করিয়া লইয়া আবেদন করেন যে, দখল অনুসারে ভাগ বন্টন করা হউক। উভয়পক্ষের স্বীকৃত মতে সাহাবুদ্দিন এর মৃত্যুতে মাতা ভানু বিবি ১/৬ ভাগ, স্ত্রী শাহিনা খাতুন ১/৮ ভাগ, কন্যা সামিয়া আক্তার ১/২ ভাগ এবং বক্রী সম্পত্তিতে সাহাবুদ্দিন এর ভ্রাতা ও ভগ্নি অংশ হারে সম্পত্তি পাইবে। তদানুযায়ী ১নং বাদীনি ১/৬ ভাগ, ২-৮ নং বাদী ৫/২৪ ভাগ (অংশ হারে) এবং ১,২ নং বিবাদী ১৫/২৪ ভাগ সম্পত্তি প্রাপ্ত হইবে।”

It is needless to say that the Advocate Commissioner must submit his report as per findings and observation of the trial Court. Besides, plaintiff also stated in his deposition that- “আমরা আমাদের দখল মতে বন্টন করে নিতে চাই।”

Since we have already noticed that in this case Advocate Commissioner has not yet been appointed and final decree also has not yet been drawn, this First Appeal is premature one. However, in the facts and circumstances of the case, if an Advocate Commissioner is appointed he must submit his report as per above quoted findings of the trial Court as well as evidence of PW-1.

On an analysis of the impugned judgment, we find no flaw in the reasoning of the trial Court or any ground to assail the same.

In the result, the appeal is disposed of with the aforesaid observation.

Send down the LC Records at once.

Md. Mansur Alam, J:

I agree.