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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION No. 2937 of 1992

Golam Taher Mridha and others
---------- Petitioners.
-Versus-
Golam Quddus Mridha and others
---------- Opposite parties.

Mr. Nitai Roy Chowdhury with
Mrs. Jusna Maher Chowdhury, Advocates
---------- For the petitioners.
Mr. Imam Khaled Rahim, Advocate
---------- For the Opposite Parties.

Hard on and **Judgment on: 04.12.2016**

At the instance of the present defendant-respondent-petitioners, Md. Golam Taher Mridha, this Rule was issued calling upon the opposite party Nos. 1-4 to show case as to why the impugned Judgment and decree dated 21.07.1992 passed by the Subordinate Judge, Magura in Title Appeal No. 21 of 1990 reversing the judgment and decree dated 30.11.1989 passed by the Assistant Judge, Mohammadpur in Title Suit No. 184 of 1987 should not be set aside.

The relevant facts for disposal of this Rule, inter-alia, are that the present opposite party Nos. 1-4 as the plaintiffs filed the Title Suit No. 184 of 1987 for a declaration of title, and confirmation of possession upon the suit land described as schedule ‘Ka’ land and partition for schedule ‘Kha’ land of the plaint. The plaintiffs case is that the land originally belonged to one Moksed Mridha, who died leaving behind 4 sons 6 daughters and 2 wives as legal heirs. One of wives Moksed Mridha sold of portion of land

to the defendant No. 4 on 16.06.1980 and Moksed daughter Rasheda Begum sold her share on 08.04.1982 to the present plaintiff opposite party Nos. 1-8 and similarly other daughter also sold to the plaintiff opposite party Nos. 1 and 3 on 18.05.1982 thereby plaintiffs filed the suit for decree for title and possession upon the land measuring $79\frac{3}{4}$ decimals of land out of total land measuring 2.18 acres described as schedule 'Ka' in the plaint.

The suit was contested by the present defendant petitioners by filling the written statement contending that the suit land original belong to one Moshammat Hossne Ara Khatoon and thereafter, upon to her son Golam Moksed Mridha who died leaving behind 4 sons (defendant Nos.1-4), 6 daughters and 2 wives. The plaintiffs fail to mention about the succession of land under the Mohammadan law therefore, the claim of the plaintiff should fail.

After hearing the parties the learned Assistant Judge, Mohammadpur Magura, decree the suit in part on 30.11.1989 declaring 50 decimals of land. Being aggrieved the present plaintiffs as the appellant filed the Title Suit No. 21 of 1990 in the court of learned District Judge, Magura, which was heard by the then subordinate Judge, who allowed the appeal by his judgment and decree dated 21.07.1992 decreeing for the land measuring $79\frac{3}{4}$ decimals. This revisional application has been filed challenging the said judgment and decree and the Rule was issued thereupon.

Mr. Netai Roy Chowdhury, the learned Advocate appearing for the present petitioners submits that the learned Appellate Court failed to consider the defendants specific case that the plaintiff included more land in the kabala than that of the share and the learned Appellate Court without

adverting the same, allowed the appeal, as such, committed an error of law resulting in an error in the decision occasioning failure of justice.

The learned Advocate also submits that the learned appellate court without discussing the respective kabala deed dated 12.06.1980, 08.04.1982 and 18.05.1982 allowed the appeal of the plaintiffs for $79\frac{3}{4}$ decimals of land which is wrong and thus the learned Appellate Court committed an error of law resulting in an error in the decision occasioning failure of justice. The present petitioners are the sons and daughters of Moksed Mridha and on 25.05.1967 their father sold 50 decimals from Dagh No. 483 in favour of one Badrudozza, as such, the present plaintiff opposite parties have only inherited 50 decimals.

The Rule has been opposed by the present opposite parties.

Mr. Imam Khaled Rahim, the learned Advocate submits that after considering the evidence both in oral and documentary forms both the courts below concurrently found ownership of land as stated in the plaint by the plaintiff opposite parties.

However, the learned trial court committed an error of law as to the deed dated 25.05.1967, therefore, erroneously reduced the measurement of land from $79\frac{3}{4}$ decimals to 50 decimals which is an utter mistake of reading of the facts as it appears from the judgment of the learned appellate court below noticed the above mistake and thereby came to a right conclusion as to the measurement of land and corrected the total land claimed by the present plaintiff opposite parties, as such, the Rule is liable to be discharged.

The learned Advocate also submits that the present plaintiff opposite parties filed the title suit describing schedule ‘Ka’ land for declaring title and confirmation of possession upon $79\frac{3}{4}$ decimals out of 0.84 decimal and in the schedule ‘Kha’ share partition of total land measuring 2.18. The learned appellate court below properly considered the documents adduce and produce by the parties and hotchpots and calculating for the partition of the land declared the suit land measuring $79\frac{3}{4}$ decimals as such there is no legality in the judgment and decree, thus the Rule should be discharged.

Considering the above submission made by the learned Advocates and also considered the application filed under section 151(1) of the Code of Civil Procedure along with its annexure, in particular, the impugned judgment and decree passed by the appellate court below and also considered the lower court records, it appears to me that the present opposite parties as the plaintiff filing the title suit claiming title, confirmation of possession and also for partition of the suit land from the schedule ‘ka’ of the plaint.

It also appears that the admitted position is that one Moksed Mridha was the original owner of the suit land and who died leaving behind 4 sons 6 daughters and 2 wives as his legal heirs. However, there are disputes between the parties about the succession of land and transfer of land among the heirs of the said Moksed Mridha.

The above mentioned disputed matters should be resolved first. In this regard I have carefully examined the sale deed executed by Moksed Mridha on 25.05.1967 in favour of one Badruzzaman from Dag No. 483, where, as the present plaintiff opposite parties, Claimed that one heir of the

said Moksed Mridha sold a portion of land by the deed dated 16.06.1980 and Moksed daughter Rashida Khatoon sold her portion of land by the deed dated 08.04.1982 and other daughters of Moksed Mridha also sale land in favour of plaintiff-opposite parties No. 1-3 by the deed dated 18.05.1982, as such, the plaintiff-opposite parties became owners and possessor of the suit land measuring $79\frac{3}{4}$ decimals.

I have considered the judgment passed by the learned trial court who reduce the land from $79\frac{3}{4}$ decimals to 50 decimals by wrongly mentioning that by the deed dated 25.05.1967 Moksed Mridha executed deed in favour of the plaintiff-opposite parties, whereas the admitted position of the both the parties is that the deed was executed in favour of one Badroduzza regarding the land measuring 50 decimals.

There is a misreading on the part of the learned trial court as to the said document and the factual aspects of the case. The above given wrong finding has been noticed by the learned appellate court below, who lawfully examined the said document and rightly found that the suit judgment and decree passed by the learned trial court made a mistake as to the deed dated 25.05.1967 and stated that the document has given entitlement to one Badroduzza. The learned appellate court below correctly found that the present plaintiff opposite parties claim the above $79\frac{3}{4}$ decimals measurement of land is established pursuant to the deeds dated 12.06.1980 (16.06.1980) dated 08.04.1982 and 18.051982. In the above circumstances, it is clearly that the plaintiff-opposite parties have succeed to prove their entitlement upon the land pursuant to the said deed and also

could prove the possession upon the land measuring $79\frac{3}{4}$ decimals of land. As such there is no illegality in the impugned judgment.

The learned trial court came to finding on the basis of mistake, non considering and misreading the factual aspects of this case, however, he preliminary decreed the suit in favour of the present plaintiff-opposite parties. The learned trial court came to a conclusion on the basis of the following findings:

> "এখন দেখা যাক উভয় পক্ষ তাহাদের মোকদ্দমার দাবী প্রমাণে কতটুকু সক্ষম হয়েছেন। বাদী পক্ষে ৩জন এবং বিবাদী পক্ষে ৩জন সাক্ষী সাক্ষ্য প্রদান করেছেন। বাদীর দলিল পর্যালোচনা করে দেখা যায় যে, তার দলিল ইং ২৫/০৫/১৯৬৭ তারিখের এবং উক্ত দলিলের পর বাদীর নামে এস, এ রেকর্ড দেখা যায় এবং ২৫/০৫/১৯৬৭ তারিখের দলিলে ০.৫০ শতক জমি দেখা যায় । সুতরাং বাদী উক্ত অংশের বাবদই ডিক্রী পাইতে অধিকারী হইতেছে। বিবাদী পক্ষের দলিল গুলি পরবর্তীতে হইয়াছে বিধায় এবং তাহারা না: জমিতে শরিক বিধায় তাহাদের হিস্যা অনুযায়ী অংশ পাইতে অধিকারী হইতেছে।"

The learned appellate court below came to the concurrent finding in favour of the present plaintiff-opposite parties by modifying the decree of the trial court on the basis of the following findings:

> "বিবাদী-রেসপনডেন্ট পক্ষের ২৫-০৫-১৯৬৭ইং তারিখের রেজিস্ট্রি কবলা দলিল মুলে নালিশী ৪৮৩ দাগের ০.৫০ শতাংশ জমিতে বদিউজ্জামানের স্বত্বের উদ্ভব হইয়াছে। অনুরূপভাবে মোকছেদ মৃধার ওয়ারিশদের দেওয়া ১২-০৬-১৯৮০, ০৮-০৪-১৯৮২ ও ১৮-০৫-১৯৮২ ইং তারিখের ৩ খানা রেজিস্ট্রি কবলা দলিল মুলে নালিশী 'খ' তপশীলের জমিতে বাদীপক্ষের স্বত্বের উদ্ভব হইয়াছে। এই ক্ষেত্রে বিজ্ঞ নিম্ন অদালত নালিশী 'ক' তপশীলের সম্পত্তি বাবদ বাদীপক্ষের অনুকুলে যে রায় ও ডিক্রী প্রদান করিয়াছেন তাহা আইনের পরিপন্থি। বিজ্ঞ নিম্ন অদালত তাহার প্রদত্ত রায়ে বাদী এবং বিবাদীর মোকদ্দমার বর্নণা সম্পূর্ণ ভূলভাবে বর্নিত করিয়াছেন। সুতরাং, পরিশেষে বলা যায় যে, 'খ' তপশীলের $79\frac{3}{4}$ শতাংশ জমিতে বাদীপক্ষের অনুকুলে বাটোয়ারার প্রাথমিক ডিক্রী হয়। প্রদত্ত কোর্ট ফি সঠিক।"

After carefully examining the above two judgments concurrent found in favour of the present-plaintiff-petitioner as to the ownership, title and possession and after considering carefully the evidence, both oral and documentary of the respective parties, I am not inclined to interfere into the

judgment and the preliminary decree passed by the learned appellate court below.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is discharged.

The judgment and decree passed by the learned appellate court below is hereby upheld.

The interim order of stay granted at the time of issuance of the rule upon the proceeding and the operation of the impugned judgment and decree dated 21.07.1992 and 27.07.1992 respectively passed by the Subordinate Judge, Magura in Title Appeal No. 21 of 1990 is hereby recalled and vacated,

The Office is directed to take communicate this Judgment and order to the concerned court immediately and office is directed to send down the Lower Court Records at once.