

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

**Civil Revision No. 1377 of 1999**

**IN THE MATTER OF**

Sayedra Khairer Nessa and others

.....Defendants-Appellants-Petitioners

Abeda Khatun and others

.....Plaintiffs-Respondents-Opposite parties

No one appears

.....For the petitioners

Mr. Md. Mubarak Hossain, Advocate

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

**Heard on 04.01.23, 10.01.23 and**

**judgment passed on 17.01.2023**

*Present:*

*Mr. Justice Kazi Md. Ejarul Haque Akondo*

**Kazi Md. Ejarul Haque Akondo, J.**

This Rule, under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following terms-

*“Let the records be called for and let a Rule be issued calling upon opposite party Nos. 1-17 to show cause as to why the judgment and decree dated 23.09.1998 passed by the learned Subordinate Judge, Artha Rin Adalat, Noakhali in Title Appeal No. 81 of 1995 affirming those dated 27.02.1995 passed by the*

*learned Assistant Judge, Noakhali in Title Suit No. 268 of 1981 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”*

The present opposite party Nos. 1 to 17 as the plaintiffs filed Title Suit No. 268 of 1981 before the learned Assistant Judge, 2<sup>nd</sup> Additional Court, Sadar, Noakhali against the predecessor of the present petitioners and others as the defendants for a decree of declaration of title over the suit land and confirmation of its possession with partition.

The case of the plaintiffs, in short, is that 9.72 acres of land were recorded in Peti Survey Khatian No. 549 of Mouja Char Jubilee in the name of Esahaque Miah who sold 5.92 acres to Haris Mia, and he sold the rest of 3.80 acres of land to Ali Akbar. Thereafter, Ali Akbar sold .80 acres of land to plaintiff No. 1 and Monohar Ali, the predecessor of plaintiff Nos.3-11. Ali Akbar also sold 1.70 acres to Shamsul Haque, Moqbul Ahmed, Sayed Ahmed, and Tajul Islam. Said Moqbul and Tajul sold their shares to the predecessor of plaintiff Nos.3 to 11 and plaintiff No. 1. Defendant No. 28 became the owner and possessor of the lands of Shamsul Huq. Syed Ahmed sold his purchased land to Shafique Ullah who sold the same to defendant No. 24. The

predecessor of plaintiff Nos. 3 to 11 sold 40 decimals of land to defendant No. 24 while the predecessors of the plaintiffs sold 2 decimals of land to defendant No. 25. Thus, plaintiff No. 1 became the owner of .40 decimals of land, plaintiff No. 2 to the extent of 40 decimals and the predecessor of plaintiff Nos. 3-11 to the extent of 38 decimals, and in total 1.18 acres of land by Kabalas. Although the Kabalas contained plot Nos. 15537, 13540, 13541, 13544, and 13546 but plaintiff Nos. 1, 2 and the predecessor of plaintiff Nos. 3 to 11 were given possession in the land of Peti Khatian plot No. 13537 which was recorded in Diara Khatian No. 287/86 of Paschim Char Jubilee as plot Nos. 1363/1364/1365/1366/1367/1368. The homestead of the plaintiffs was recorded in Diara plot No. 1368, tank in plot No. 1367 and the existing path of the homestead has been recorded in plot No. 1363 of the Diara Survey. Defendant No. 24 does not possess any land in plot No. 1369. The Khatian recording in the name of defendant No. 24 is wrong but defendant No. 25 in collusion with the local Chairman and Member created a false document taking advantage of such wrong recording and managed to obtain Khatian No. 257 and holding No. 258 and thus, defendant Nos. 24 and 25 have been claiming excess land than that of their shares. The suit land has not yet been partitioned

among the co-sharers. The plaintiffs claimed an amicable partition, to which some of the defendants agreed, but defendant Nos. 24 and 25 refused to do hence the suit.

Defendant No.24 by filing a written statement denied the averments made in the plaint contending, inter alia, that this defendant is the owner-in-possession in plot Nos. 1367 and 1364 but instead of that plot No. 1363 has wrongly been recorded in his name. The alleged exchange deed between defendant No. 25 and this defendant is illegal and inoperative. This defendant is entitled to get a saham in respect of 9.13 decimals in Khatian No. 4, 37 decimals in plot No. 1367, and 11 decimals in plot No. 1364 of Khatian No. 222.

Defendant No. 25 filed a written statement stating that Shamsul Huq sold  $42\frac{1}{2}$  decimals of land to defendant No. 3 by Kabala dated 23.08.1962 who purchased the same from Amena Khatun and others who got the same from Ali Akbar as heirs. Thereafter, Mokbul Ahmed and Tajul Islam sold 80 decimals to Monohar Ali and others. Monohar sold  $02\frac{7}{16}$  decimals of land to defendant No. 25, whose wife also purchased 03 decimals of land from Tajul Islam by kabala dated 20.11.1975. This defendant also purchased 03 decimals of land from

Ali Akbor. There is an exchange deed between defendant No. 24 and this defendant and thus this defendant owns 37 decimals of land. Apart from that, this defendant purchased 2½ decimals of land from Syed Ahmed on 09.07.1981. He mutated his name in respect of the exchanged lands and got a separate khatian. The plaintiffs are not entitled to get any portion of the suit property. This defendant is entitled to get a saham in respect of .42 decimals of land.

On conclusion of the trial, the learned Assistant Judge, 2<sup>nd</sup> Additional Court, Noakhali by judgment and decree dated 27.02.1995 decreed the suit on contest against defendant Nos. 24 and 25 and ex-parte against the rest without cost and gave a saham to the plaintiffs in respect of 1.18 acres of land, 1.17 acres of land to defendant No.24, and 2 decimals of land to defendant No.25.

Being aggrieved by the said impugned judgment and decree dated 27.02.1995 defendant No. 25 as the appellant preferred an appeal before the learned District Judge, Noakhali, and the same was numbered as Title Appeal No. 81 of 1995. Thereafter, the appeal was transferred before the learned Subordinate Judge, Artha Rin Adalat, Noakhali for hearing and after hearing the same the learned Judge by his judgment and decree dated 23.09.1998 dismissed the appeal on

contest against the plaintiffs-respondents and ex-parte against the rest without cost by affirming the judgment and decree of the Trial Court.

Being aggrieved by and dissatisfied with the said impugned judgment and decree dated 23.09.1998 the heirs of defendant No. 25 as petitioners had preferred this civil revision before this Court and obtained the instant Rule which is before us for consideration.

No one appeared for the petitioners to press the Rule when the matter was taken up for hearing.

Mr. Md. Mubarak Hossain, the learned Advocate appearing for opposite party Nos. 1-7 submits that they as the plaintiffs filed the instant suit for a declaration of title, confirmation of possession with partition in respect of the suit land, and the learned Trial Judge considering the facts and circumstances of the case and the evidence on record rightly decreed the suit against which only defendant No. 25 preferred an appeal, and the learned Judge of the Appellate Court below after hearing the parties and perusal of the evidence on record rightly disallowed the appeal by affirming the judgment and decree of the Trial Court and thereby committed no illegality occasioning failure of justice but the present petitioners preferred the instant civil revision before this Court without any cogent ground.

He also submits that defendant No. 25 preferred the appeal only on the ground that he could not appear before the Trial Court and give evidence due to his certain illness as such the case was fixed for argument and on the day of the argument he appeared before the court and filed an application praying for giving him chance to give evidence but the same was not taken into consideration by which the defendant has been deprived of placing his case before the court which caused a miscarriage of justice. And, at the time of hearing of the appeal the learned Advocate for the appellant prayed for sending back the case on remand for fresh trial but the learned Judge of the Appellate Court below rightly rejected the prayer for remand and dismissed the appeal by affirming the judgment and decree of the Trial Court.

Heard the learned Advocate for the opposite parties and perused the materials on record. It appears that defendant No. 25 preferred an appeal before the learned District Judge against the impugned judgment and decree passed by the Trial Court on the ground that the original suit was fixed for further hearing on 18.02.1995 but on that date, due to illness this defendant could not attend the Court and as such, on the day fixed for the argument i.e. on 25.02.1995, the defendant appeared

before the Court and filed an application praying for allowing him to give evidence in the case but the learned Trial Judge rejected the same though he had an opportunity to accommodate the defendant before pronouncement of the judgment. However, at the time of hearing the appeal the learned Advocate for the appellant prayed for sending back the case on remand for fresh trial by allowing the appellant to place his case before the Trial Court by setting aside the judgment and decree of the Trial Court. After hearing the appeal the learned Judge of the Appellate Court below on elaborate discussions rightly held that there is nothing to be convinced that defendant No.25-appellant was attacked with alleged malaria fever as mentioned in the petition during the relevant period and was unable to appear before the court when the suit was called on for hearing as the application was not supported by any medical certificate. Therefore, the learned Judge of the Appellate Court below for cogent reason did not take into consideration the submission of the learned Advocate for the appellant regarding sending the case on remand and rightly dismissed the appeal by affirming the judgment and decree of the Trial Court and thereby committed no illegality occasioning failure of justice.



Because of the above, I do not find any substance in the Rule, rather; I find substance in the submissions so advanced by the learned Advocate for the opposite parties. Accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

Stay, if any, vacated.

The impugned judgment and decree dated 23.09.1998 passed by the learned Subordinate Judge, Artha Rin Adalat, Noakhali in Title Appeal No. 81 of 1995 dismissing the appeal by affirming those dated 27.02.1995 passed by the learned Trial Judge in Title Suit No. 268 of 1981 decreeing the suit is hereby upheld.

Let a copy of this judgment along with Lower Court Records be sent to the Court concerned at once.

(TUHIN BO)