

*Present:*

*Mr. Justice A.K.M. Asaduzzaman*

*Civil Revision No.472 of 2014*

*Abdus Shukur Sarkar.*

*.....Petitioner.*

*-Versus-*

*Mamtaz Mahal alias Bulbul and others*

*.....Opposite parties.*

*Mr. Md. Enamul Haque, Advocate.*

*.....For the petitioner.*

*Mr. Mansur Habib, Adv. With*

*Ms. Shimul Sultana, Adv.*

*.....For the Opposite party no.1.*

*Heard and Judgment on 10.01.2024.*

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 23.10.2013 passed by the District Judge, Rajshahi in Title Appeal No. 07 of 2013 affirming those dated 18.11.2012 passed by the Joint District Judge, 2<sup>nd</sup> Court, Rajshahi in Title Suit No. 13 of 2003 decreeing the suit should not be set aside.

Facts relevant for disposal of the rule are that opposite party no. 1 Goljan Bewa as plaintiff initially instituted Other Class Suit No. 411 of 1979 before the Court of the then Sub-Ordinate Judge,

Rajshahi against the defendants and the pro-forma opposite parties for partition.

Plaint Case in short inter-alia is that the suit property originally belongs to C.S. tenant Mathur Ullah Sarkar and Juman Sarkar in equal share and they possessed the same in ejmali. Thereafter Jamun Sarkar died leaving behind two sons namely Abdur Rahman and Noor Moahmmad and one daughter Most. Goljam Bewa. Afterwards Noor Mahammad died leaving behind only one son Abdul Jalil, who made a deed of heba bil-ewaz of his share in the suit property in favour of the defendant no. 1 Abdus Shukur Sarkar (present petitioner). Another C.S. tenant Mathur Ullah Sarkar died leaving behind tow wives Diljan Bewa and Sabunjan Bewa and three sons namely Halimuddin, Abdus Sobhan and Abdul Hamid. Thereafter Diljan Bewa died leaving behind sons Halim Uddin. The said Abdul Hamid died leaving behind his mother Saburjan Bewa and full brother Abdus Sobhan. Suburjan Bewa died leaving behind her son Abdur Rahman, who died leaving behind his wife Sakimar Bewa and one son Abdus Shukur and one daughter Purno Bibi. Thus the plaintiff-respondent-opposite party by way of inheritance got 1 anna 12 gondas share in the suit property and she has been possessing the same is ejmali. While possessing the property, the plaintiff sold

her share in the suit property to the defendant no. 1 appellant-petitioner by way of a registered deed of sale. Afterwards the respondent –plaintiff- opposite party purchased 8.81 ½ acres of land in the suit property from the defendant no. 1 by three registered sale deeds being nos. 16992 dated 13.11.1956, 17037 dated 14.11.1996 and 17117 dated 14.11.1956 and the plaintiff has been possessing the same in ejmali with other co-sharers. Thereafter the plaintiff sold 3.13 ½ acres of land to the said Abdur Rahman by way of a registered sale deed on 22.07.1961. Thereafter the plaintiff again purchased .28 decimals of land's of the suit property from Abdur Rahman by way of a registered sale deed dated 31.07.1961. Thus the plaintiff became the owner of 4 annas 8 gondas 3 kara share which comes to 5.96 acres of land and possessing the same in ejmali and the plaintiff paid rent through defendant no. 1 the suit property never partitioned by mets and bounds and for convenience of payment of rent and possession the plaintiff requested defendant no. 1 and others to partition of the suit land but they refused the same on 14.06.1997 thus the plaintiff is constrained to file the suit.

Defendant-petitioner contested the suit by filing written statement denying the plaint case alleging, inter-alia, that suit property originally belongs to Mathur Ullah Sarkar and Juman

Sarkar in equal share. Juman Sarkar died leaving behind his two sons Noor Mohammad Sarkar and Abdur Rahman and one daughter, the plaintiff and as such each of the sons got 03 annas 4 gondas share and the plaintiff got 1 anna 12 gondas share in the suit property. The plaintiff sold her share to Abdur Rahman, the predecessor in interest of these defendants by way of a registered sale deed. Thereafter Mathur Ullah Sarkar died leaving behind two wives Deljan Bewa and Saburjan Bewa and 3 sons and as such wives got 1 annas share in all each having got 10 gondas and each of the son got 2 annas 6 gondas 2 kara's 2 kanantis share. Thereafter Diljan Bewa died leaving behind only son. The said Abdul Hamid died leaving behind mother Saburjan and one son and afterwards Saburjan died leaving behind Abdus Sobhan Sarkar. Thereafter Noor Mohammad died leaving behind only son Abdul Jalil, who sold 3 annas 9 gondas share in the suit property the Abdus Shukur Sarkar (present petitioner) by way of a registered sale deed. Abdur Rahman died leaving behind only son Abdus Shukur Sarkar, wife Sukhina Bewa and one daughter Purno Bewa as his heirs, thus the plaintiff got only 1 annas 12 gondas share in the suit property but she with an ill motive inflated her share alleging to have purchased some land. The plaintiff would never get 8.96 acres of land in the suit property and she would get 2.16 acres of land in 1 annas 12 gondas share. She sold 3.12 ½

acres of land in different sale deeds to Abdur Rahmnan. The plaintiff created stories with ulterior motive of grabbing the property. Thus the suit is liable to be dismissed.

During pendency of the suit on 17.07.1991 Mamtaz Mahal as being legal assignee of the Goljan Bewa added into the suit as plaintiff no. 2 and filed a fresh plaint stating the similar fact on 20.03.2002 and then the suit was re-numbered as Partition suit being no. 08 of 1996 and subsequently re-numbered as Other Class Suit No. 13 of 2003 after being transferred to the Court of Sub-Ordinate Judge, Artha Rin Adalat, Rajshahi.

Learned Joint District Judge by the judgment and decree dated 18.11.2012 decreed the suit on contest.

Challenging the said judgment and decree, defendant-petitioner preferred Title Appeal No. 07 of 2013 before the Court of District Judge, Rajshahi, who by the impugned judgment and decree dated 23.10.2013 dismissed the appeal and affirmed the judgment of the trial court.

Being aggrieved there against defendant-petitioner obtained the instant rule.

Mr. Md. Enamul Haque, the learned advocate appearing for the petitioner drawing my attention to the judgment of the court

below submits that plaintiff Mamtaz Mahal claimed the suit property by way of registered deed of gift no. 21768 dated 25.07.1980 obtained from her grandmother Goljan Bewa but the defendant objected the said deed saying that no such transfer was made, which was forged and concocted deed. Although the deed was not legally been proved in court but upon presumption court below concurrently found the same as a valid transfer and decreed the suit in favour of the plaintiff illegally.

Learned advocate further submits that plaintiff Goljan Bewa inflated her share and actually she was entitled to get only 2.16 acres of land but she claimed total 5.96 acres of land, which she was not entitled to get and accordingly decree passed by the court below has got no legal basis. The impugned judgment is thus not sustainable in law, which is liable to be set aside.

Mr. Mansur Habib, the learned advocates appearing for the opposite party on the other hand submits that although judgment of the court below was not passed in accordance with law without having any proper discussion of their respective cases of the parties in the suit and having no proper discussion of the evidence on record but when there is no denial about the successive heirs of the plaintiff and their legal share of the property, the decree passed

by the court below contains no illegality, he finally prays that rule may be discharged.

Heard the learned Advocate of both the sides and perused the impugned judgment and the L.C. Records.

This is a suit for partition. Upon perusal of the judgment of the court below it will appear that both the court below concurrently found that upon admission it is found that Goljan Bewa is the admitted owner of the suit property. Upon going through the written statement it will further appear that defendant did not raise any objection about the status of the plaintiff Goljan Bewa. In the written statement it has been said by admitting that the plaintiff will get only 01 annas 12 gondas share in the suit property but she with ill motive inflated her share alleging to have purchase some land. Genealogy of the plaintiff has not been challenged but her share has been challenged by saying that she will inherit 01 anna 12 gondas share in the suit property, and would not get 5.96 acres of land in the suit property. Although defendant claimed to have dismissal of the suit but upon the aforesaid admission it can be said that suit for partition is not maintainable. The court below have concurrently found the same correctly. Regarding the inflated share as it has been contended in

the written statement now let us see what D.W.1 has said. D.W.1 Sukur Mohammad Sarkar at one stage of deposition has said that

‘আমি ১নং বিবাদী। বাদী আমার আপন ফুফু। বাদী আমার ফুফুর নাতনি। নালিশী সম্পত্তি আমার ও বাদীর মৌরশীয় সম্পত্তি। বাদী নালিশী সম্পত্তির ওয়ারিশ। তার অংশ আমি স্বীকার করছি। জবাবের ১৩ নং দফায় ও তা স্বীকৃত আছে। ফুফু বেচে থাকতে নালিশী সম্পত্তি বেচেছেন। আমি নালিশী সম্পত্তির ফুফুর অংশ ১ দলিলে খরিদ করেছি। ফুফু গোলজান ০৩ দলিল মূলে নালিশী সম্পত্তি আমার কাছ থেকে খরিদ করেছেন। পরিমান মনে নেই।’

By saying the above statement, the plaintiff’s contention is found to be proved by admission as well as the defendant’s contention that the share of the plaintiff has been inflated not been proved by the own testimonies of the defendants. Noticing the above stated deposition of D.W.1, court below concurrently found that plaintiff is entitled to get her share as claimed by her.

Now the only question remains here that whether Mamtaz Mahal (the present plaintiff) is entitled to get the said property of her grandmother by way of registered Heba Bill Ewaz deed dated 25.07.1980. Defendants claimed that the said document was not been proved legally in court and as such Mamtaz Mahal is not entitled to get the property. In the nowhere in the plaint this



statement is there. Not even in the original plaint or in the subsequent fresh plaint. While deposing in court as P.W.1. Mamtaz Mahal has narrated this story. When the original plaintiff Goljan Bewa and her share in the suit property is found to be correct, then she is entitled to get her share as claimed by the plaintiff. Only she or her successive heirs can raise any objection on the registered deed of gift as claimed to have been possessed by the Mamtaz Mahal can raise this question about the said transfer. Since in the suit no one has come forward through Goljan Bewa about the genuinity of this document or it's existence, the point raised here by defendant has no legal right to raise against the said deed. Since this story was not is there in the four corner of the pleadings of the plaintiff and in the written statements it has not been objected, it needs not require to be proved. So the submission as made by the petitioner before this court contains no merit to consider here.

Regard being had to the above law, facts and circumstances of the case, I do not find any grounds to interfere in this rule. Accordingly the rule devoids any merits for consideration.

In the result, the rule is discharged without any order as to costs and the judgment and decree passed by the Court below is hereby affirmed.

Let the order of stay granted earlier by this court is hereby recalled and vacated.

Send down the L.C.R. and communicate the judgment to the court below at once.