

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 4164 of 2014

with

Civil Revision No. 4163 of 2014

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Zilla Parishad, Noakhali represented by its Chief Executive Officer

--- Plaintiff-Respondent-Petitioner.

-versus-

Md. Abul Kalam and others {O.P. No. 2 died leaving behind his legal heirs: 2(a)-2(d)}

--- Defendant-Appellant-Opposite Parties
(In C. R. No. 4164 of 2014).

Zilla Parishad, Noakhali represented by its Chief Executive Officer

--- Defendant-Appellant-Petitioner.

-versus-

Md. Abul Kalam and others {O.P. No. 2 died leaving behind his legal heirs: 2(a)-2(d)}

--- Plaintiff-Respondent-Opposite Parties
(In C. R. No. 4163 of 2014).

Mr. Mahbub Shafique with

Mr. Gazi Hossain, Advocates

--- For the petitioner
(In both cases).

Mr. Abul Kalam Chowdhury with

Mr. Iqbal Kalam Chowdhury, Advocates

--- For the opposite party Nos. 1 and 2.
(In both cases).

Mr. Md. Elyas Ali Mandal, Advocate

--- For the O. P. Nos. 3 and 6
(in the C. R. No. 4164)
--- For the O.P. Nos. 6 and 7
(in the C. R. No. 4163).

**Heard on: 08.05.2023, 09.05.2023, 10.05.2023,
11.05.2023, 16.05.2023, 18.05.2023 and
22.05.2023.**

Date of Judgment: 30.05.2023.

The above 2 (two) civil revisions were filed by and between the same parties upon similar matters of law and facts, as such, these 2 Rules have been taken up together by passing for delivery the following single judgment as the facts of both cases involved similar parties and also related to a similar law.

At the instance of the present plaintiff-respondent-petitioner, Zilla Parishad, Noakhali represented by its Chief Executive Officer, the Rule was issued upon a revisional application being Civil Revision No. 4164 of 2014 filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and decree dated 04.05.2014 passed by the learned Additional District Judge, Court No. 1, Noakhali in the Title Appeal No. 155 of 2002 allowing the appeal and reversing those dated 19.06.2002 passed by the learned Senior Assistant

Judge, Hatiya, Noakhali in the Title Suit No. 14 of 1998 decreeing the suit should not be *set aside*.

Another Rule was issued, at the instance of the present defendant-appellant-petitioner, Zilla Parishad, Noakhali represented by its Chief Executive Officer, the Rule was issued upon a revisional application being Civil Revision No. 4163 of 2014 filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and decree dated 04.05.2014 passed by the learned Additional District Judge, Court No. 1, Noakhali in the Title Appeal No. 153 of 2003 dismissing the appeal and affirming those dated 13.03.2003 passed by the learned Senior Assistant Judge, Hatiya, Noakhali in the Title Suit No. 45 of 1999 decreeing the suit should not be *set aside*.

The relevant facts for the disposal of these 2 Rules, *inter-alia*, are that the present opposite party Nos. 1 and 2 as the plaintiffs filed the Partition Suit No. 45 of 1999 in the Civil Revision No. 4163 of 2014 and the Title Suit No. 14 of 1998 in the Civil Revision No. 4164 of 2014.

Both the plaintiffs claimed that the common suit property originally belonged to one Purna Chandra who died leaving

behind 3 sons, namely, Moti Lal, Gourango Chandra and Monmohon. The plaintiff-opposite parties purchased 2.50 acres of land from the said 3 sons of Purno Chandra by executing a sale deed where there are shops buildings, a pond and a graveyard of the plaintiffs. The plaintiffs possessed the suit property measuring 2.10 acres of the suit property and the same was recorded in the names of the plaintiffs in Diara Khatian No. 49. The plaint further contains that earlier the plaintiffs filed the Title Suit No. 180 of 1981 for the rest of land measuring 40 decimals and in the said suit was decreed in their favour.

The defendant Nos. 1 and 2 earlier filed the Title Suit No. 180 of 1981 against the present petitioner and others and obtained an ex-parte decree against the present petitioner and the suit was decreed by a compromise decree against the others.

The present defendant Nos. 1 and 2 contested the suit by filing a written statement stating that the suit property originally belonged to Purno Chandra Pal who died leaving behind 3 sons, namely, Monmohon, Moti Lal and Gouranga Chandra who sold the land measuring 2.85 acres by executing 4 registered sale deeds. The plaint further contains that the Diara Record of Right

in Khatian No. 49 was wrongly recorded in the names of the plaintiffs' land measuring 2.10 acres of the suit property.

The learned Senior Assistant Judge, Hatiya, Noakhali heard both the suits filed by the present opposite party Nos. 1 and 2. After examining the documents adduced and produced by the respective parties decreed the said partition suit and passed the judgment and decree in the preliminary form. Being aggrieved the defendant-petitioner preferred 2 appeals being Title Appeal No. 153 of 2003 and the Title Appeal No. 155 of 2002 before the learned District Judge, Noakhali which were subsequently heard by the learned Additional District Judge, Court No. 1, Noakhali. The learned Additional District Judge, Court No. 1, Noakhali after hearing the respective parties allowed the Title Appeal No. 155 of 2002 and thereby reversing those dated 19.06.2002 passed by the learned trial court as well as the same court dismissing the Title Appeal No. 153 of 2003 and thereby affirming the judgment dated 13.03.2003 passed by the learned trial court.

Being aggrieved these 2 (two) revisional applications were filed by the same petitioner as the plaintiff/defendant under section 115(1) of the Code of Civil Procedure against the

judgment and decree of the appellate court below who by affirming the judgment and decree on the preliminary form of the judgment of the learned trial court and these 2 (two) Rules were issued thereupon.

Mr. Mahbub Shafique, the learned Advocate, appearing along with the learned Advocate, Mr. Gazi Hossain for the petitioner in both cases, submits that the plaintiff-respondent-opposite parties are not the owner of the suit land in question hence the preliminary decree passed in favour of the plaintiffs is illegal, as such, both the learned courts below without considering the facts and evidence on record passed the impugned judgment which resulted in an error in the decision occasioning failure of justice.

The learned Advocate also submits that the learned trial court wrongfully came to a conclusion to decree the suit in preliminary form by allocating Shaham (সাহাম) land measuring 2.50 acres without allocating any Shaham (সাহাম) to the present petitioner and other opposite parties who also claimed Shahams (সাহাম) of the opposite parties who were impleaded as parties by the present opposite party Nos. 1 and 2 and the learned appellate court below also wrongfully came to a decision and passed the

impugned judgment in favour of the present opposite party Nos. 1 and 2 without allocating any সাহামস for the other relevant parties, even though, admitting the interest and title of the other defendant-opposite parties, as such, came to a erroneous decision occasioning failure of justice, as such, the Rules should be made absolute.

Both the Rules have been opposed by the present opposite party Nos. 1, 2, 3, 6 and 7.

Mr. Abul Kalam Chowdhury, the learned Advocate, appearing along with the learned Advocate, Mr. Iqbal Kalam Chowdhury, appearing for the opposite party Nos. 1 and 2 along with the learned Advocate Mr. Md. Elyas Ali Mandal for the opposite party Nos. 3, 6 and 7, submits that the learned trial court passed a decree in a preliminary form by allocating Shaham (সাহাম) of the land measuring 2.50 acres which was affirmed by the learned appellate court below but the present petitioner obtained these 2 (two) Rules by misleading the court, as such, the Rules are liable to be discharged.

The learned Advocate also submits that both the courts below allocated the land measuring 2.50 acres on the basis of the documentary evidence presented by the PWs and DWs and the

learned appellate court below clearly mentioned that the plaintiff-opposite party Nos. 1 and 2 proved their case but the present petitioner and other opposite parties could not prove their case by providing any documents, as such, the Rules are liable to be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering both the revisional applications filed by the petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed in a preliminary form and as well as perusing the materials available in lower courts records, it appears to this court that the present opposite party Nos. 1 and 2 as the plaintiffs filed both the suits claiming the Shahams (সাহামস) upon the total land measuring $3.89 + 01 = 3.90$ acres at Mouza- Jahajmara, K. M. Khatian No. 30, M. R. R. Khatian No. 32, K. M. Dag Nos. 1006 and others, Police Station- Hatiya, District- Noakhali and the learned appellate court below decreed the partition suit by the separate judgment in the preliminary form by allocating Shahams (সাহামস) out of the said total land measuring 3.90 acres.

These 2 (two) revisional applications were filed by the Zilla Parishad, Noakhali and obtained those Rules calling upon the opposite party Nos. 1 and 2 with proforma opposite party Nos. 3-9. The learned appellate court below accepted that all the opposite parties were entitled to get Shahams (সাহামস) upon the suit land. The learned trial court found that the present petitioner and other opposite parties should have been given opportunities to submit the relevant documents in the trial court at the trial stage even by decreeing the suit in favour only opposite party Nos. 1 and 2 despite allocating Shahams for the petitioner and other relevant opposite parties in the partition suit.

I have carefully examined the judgment and decree passed by the learned trial court and found that the present petitioner and the opposite parties had some measurement of land in the following manners:

...“As it is proved that the district council has purchased 40 decimals and the union parishad has purchased 1 acre of suit properties which is also admitted by the plaintiffs and as the plaintiffs have been able to prove their case that they have title over the land measuring 2.50 acres of suit properties as per their claims. So, the plaintiffs can get Shaham as prayed for.”...

The learned appellate court below concurrently found and allocated Shaham in favour of only the present opposite party Nos. 1 and 2 without allocating any Shaham in favour of the present petitioner and other proforma-opposite parties and affirmed the judgment of the learned trial court by describing of other parties which read as follows:

...“বাদী রেসপনডেন্টগণ তাহাদের মালিকী দখলীয় উক্ত ভূমিতে দোকান ঘর, কৃষি ব্যাংক, পুকুর ও কবরস্থান করিয়া ভোগ দখলকার আছে। বিগত দিয়ারা জরিপে কে. এম. ১০০৬ ও ১০০৭ দাগের ৩.৯০ একর ভূমি দিয়ারা ১৩৩১ দাগের ১.১৮ ডিং, ১৩৩৪ দাগে .১৫ ডিং, ১৩৩৫ দাগে .৩২ ডিং, ১৩৩৬ দাগে .৪৬ ডিং, একুনে ২.১০ ডিং বাদী রেসপনডেন্টগণের নামে ৪৯ নং খতিয়ানের দিয়ারা ১৩৩৩ দাগে .৭০ ডিং, জিলা পরিষদের নামে ৪ নং খতিয়ানে ১৩৩২ দাগের ১.০৬ ডিং খেলার মাঠে ১০ নং জাহাজমারা ইউনিয়ন পরিষদের নামে এবং ১৩৩৭ দাগে .৩ ডিং ভূমি ১ নং খাস খতিয়ানে সরকারের নামে রেকর্ড হইয়াছে। দিয়ারা ১৩৩৩ দাগের সমুদয় ৭০ ডিং ভূমি বাদী মালিকীয় দখলীয় ভূমি মর্মে দেখা যায়। জেলা পরিষদের নামে দিয়ারা ভুল রেকর্ডের বিষয় জানার পর বাদীগণ ১৮০/১৯৮১ নং দেওয়ানী মামলা দায়ের করিয়া স্বত্ব ঘোষণার ডিক্রী প্রাপ্ত হয়। জেলা পরিষদ সম্পত্তির দখল নিয়া একখানা টিন শেড ঘরে দাতব্য চিকিৎসালয় স্থাপন করেন। বাদীর মালিকী দখলীয় .১৫ একর ভূমি সহ বিদ্যালয়ের দখলীয় ১.০৬ একর ভূমির রকম খেলার মাঠ লিপি করিয়া ১৩৩২ দাগের ভূমি ইউনিয়ন পরিষদের নামে ৫ নং খতিয়ানে রেকর্ড করিয়াছে এবং বাদীর দখলীয় ১৩৩১ দাগের পূর্বাংশে .১৫ ও পশ্চিমাংশের .৫৫ একর ভূমি বিদ্যালয়ের দখলীয় .৪৮ ডিং ভূমি সহ বাদীর নামে দিয়ারা ৪৯ নং খতিয়ানের ১.১৮ একর ভূমি রেকর্ড করিয়া রাখিয়াছে। বাদীগণ উক্ত ১.১৮ একর ভূমি মধ্যে ৭০ ডিং ভূমি দাবি করে। বাদ বাকী ৪৮ ডিং জাহাজমারা উচ্চ বিদ্যালয় দখল করিতেছে। বাদীপক্ষের উক্ত দাবি নিম্ন আদালতে সাক্ষ্য প্রমাণের মাধ্যমে প্রমাণ করিতে সক্ষম হইয়াছে।”...

From the above 2 concurrent findings of the learned courts below in favour of the present petitioner and other proforma-opposite parties who were added parties a| substituted persons from the opposite party No. 2 but the courts below could not allot any Shahams in favour of the petitioner and other opposite parties despite the facts the learned courts below concurrently found only in favour of the opposite party Nos. 1 and 2 not giving Shaham to the petitioner and the other proforma-opposite party No. 3, the Chairman, Jahajmara Union Parishad, proforma-opposite party No. 4, the Headmaster, Jahajmara High School and the present proforma-opposite party Nos. 6 and 7 who are the added parties in the present suit and also did not consider for allocating Shaham in favour of the present opposite party Nos. 8 and 9 which were not considered in the impugned judgment and decree in a preliminary form.

I have carefully examined the judgment and decree in a preliminary form and also the impugned judgment and decree passed by the learned appellate court below. In a partition suit the learned trial court could allocate Shahams in favour of both the plaintiffs and the defendants but the learned trial court did not consider the petitioner and other proforma- opposite parties

by considering their entitlement and possession which has been recognized by the courts below but failed to give/allocate any Shahams out of total land measuring 3.90 acres. In such an event the learned trial court and the learned appellate court below recognized the title on behalf of the other than the plaintiff-opposite party Nos. 1 and 2. The plaintiff-opposite party No. 2, namely, Meheraj Afzal Chowdhury, now deceased and substituted by the Order of this court on 01.12.2020. The present petitioner and other opposite parties should be given an opportunity to prove their entitlement for claiming Shahams upon their claiming measurement of land.

I have also carefully noticed in the impugned judgment wherein the learned appellate court below recognized the right and title of all the concerned parties impleaded in the plaint or Added/substituted but no Shahams were given in their favour which is not a complete decision in the partition suit.

I consider that all the parties as the plaintiffs and the defendants as the present petitioner and the opposite parties should have given an opportunity to adduce and produce their documents in court in order to get right and title as well as saham (সাহাম) upon the suit land.

In such a situation, I am of the view that the learned trial court must have considered the rights and titles of all the parties in order to allocate Shahams. The present petitioner should be given an opportunity to prove their title by providing all kinds of documents needed for allocating Shahams in favour of the parties. The present petitioner has given a supplementary affidavit containing their claims on the basis of some additional evidence and documents in order to claim their right and title upon the suit land which could not be filed in the trial court. I, therefore, consider that the learned trial court should hear the title suit by giving and allocating Shahams if any parties are entitled to it. As such, I am inclined to dispose of the Rules on remand and a fresh hearing of all the parties for the ends of justice.

Accordingly, the Rules should be disposed of.

In the result, the Rules are hereby disposed of on the basis of the following directions:

The parties who are claiming any Shahams in the partition suit should be given a final opportunity taking into consideration the entitlement by the learned trial court.

As such, the cases be remanded to the learned trial court for hearing afresh of the parties. In such a situation, the decree passed by the learned trial court and also by the learned appellate court below are hereby *set aside*.

The interim order was passed by this Court at the time of issuance of the Rule in the Civil Revision No. 4164 of 2014 staying the operation of the impugned judgment and decree dated 04.05.2014 which was passed by the learned Additional District Judge, Court No. 1, Noakhali in the Title Appeal No. 155 of 2002 for a period of 1 (one) year and subsequently the same was extended from time to time are hereby recalled and vacated.

The respective parties are hereby directed to maintain *status quo* until a final decision is passed by the learned Senior Assistant Judge, Hatiya, Noakhali.

The learned Senior Assistant Judge, Hatiya, Noakhali is hereby also directed to continue the hearing of the cases on the basis of the documentary evidence already submitted before the trial court by the parties and also have to accept the fresh documents if the parties want to file as to the title and possession of the suit land for the ends of justice.

The learned Senior Assistant Judge, Hatiya, Noakhali is also hereby directed to hear the partition suit in order to allocate Shahams and also conclude the partition suit after giving all opportunities of hearing the Partition Suit No. 45 of 1999 and the Partition Title Suit No. 14 of 1998 within 4 (four) months from the date of receipt of this judgment and order without allowing any unnecessary adjournment either of the parties.

The concerned section of this court is hereby directed to send down the lower courts records along with a copy of this judgment and order to the concerned court below immediately.