

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

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 1271 OF 2015**

**IN THE MATTER OF:**

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

(Against Order)

-And-

**IN THE MATTER OF:**

Rustom Ali alias Rustom and others

--- Plaintiff-Respondent-Petitioners.

-Versus-

Md. Osman Ali and others {O. P. No. 4 died  
leaving behind his legal heirs: 4(a)-4(d)}.

---Opposite Parties.

No one appears

---For the Petitioners.

**Mr. Nitai Roy Chowdhury** with

**Mr. Md. Badsha Alamgir**, Advocates

---For the Opposite Parties.

**Heard on: 20.11.2023, 26.11.2023,**  
**28.11.2023 and 07.12.2023.**  
**Judgment on: 07.12.2023.**

At the instance of the present plaintiff-respondent-petitioners, Rustom Ali alias Rustom and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1-4{O. P. No. 4 now deceased, leaving behind his legal heirs: 4(a)-4(d)} to show cause as to why the impugned judgment and

decree dated 30.11.2014 passed by the learned Additional District Judge, Kurigram in the Other Appeal No. 29 of 2002 allowing the appeal in part and thereby modifying the judgment and decree dated 20.02.2002 passed by the learned Senior Assistant Judge, Sadar, Kurigram in the Other Suit No. 118 of 1994 should not be *set aside*.

The relevant facts for the disposal of this Rule, *inter-alia*, are that the present petitioners as the plaintiffs filed the Title/Other Suit No. 118 of 1994 in the court of the learned Senior Assistant Judge, Sadar, Kurigram praying for declaration of title and partition of the suit land described in the schedules “Ka” and “Kha” to the plaintiff.

The plaintiffs' case is that the suit land originally belonged to Dhanai Sheikh and others appertaining to C. S. Khatian No. 170/173/175/177/187. In the course of the succession of C. S. recorded owners got measuring 6 anna (আনা), 13 gonda (গন্ডা), 1 kora (কড়া), and 1 kranti (ক্রান্তি) in the suit land described in the schedules “Ka” and “Kha” of the plaintiff. Accordingly, the total land measuring  $4.20\frac{1}{2}$  acres. After hearing the parties the learned trial court decreed the suit, and a preliminary decree was passed in favour of the present plaintiff-petitioners. The plaintiff further

contains that the suit land was never sold on auction for arrears of rent and the same was never auction purchased or possession thereof was taken over by the ex-landlord.

The defendant Nos. 6/15 and 9/31 filed two separate written statements but the contents of these two written statements are the same and similar. Contesting defendants claimed that Dhanai Sheikh, Kanai Sheikh, Monai Sheikh alias Mona and Poatu Sheikh were the C. S. recorded tenants in suit C. S. Khatian Nos. 175 and 177 under the landlord Charubala and Hari Charon and after the death Poatu Sheikh his share devolved upon a daughter, namely, Nabijan, and three sons, namely, Dhanai Sheikh, Kanai Sheikh @ Kanai and Monai Sheikh @ Mona. Charu Bala and Hari Charon instituted Rent Suit No. 2391 of 1932 and Rent Suit No. 2076 of 1931 before the Munsif, Court No. 2, Kurigram and obtained decrees therein and took delivery of the auction land through court of the C. S. Khatian No. 175 and 177, thus, tenancy right of C. S. Khatian No. 175 and 177 extinguished upon the auction purchasers. The contesting defendants denied the plaintiffs' right, title, and interest in the land of the suit. Boen Ullah constructed a dwelling hut in a portion of the suit land and started residing therein and

cultivating the remaining nal (নাল) land. After the death of Hari Charan his four sons instituted Rent Suit No. 995 of 1959 for arrear rent against Keramot, Boen Ullah, and others including Mofiz Uddin, and the said rent suit was dismissed on compromise. Thereafter, Keramot Sheikh sold 2.07 acres of land on 02.12.1957 to Niamot Shaikh, Joshmot Sheikh and Shakomot Sheikh. Accordingly, the said land stood recorded in R. S. Khatian No. 149 in their names, thus, the contesting defendants denied the plaintiffs' right, title and interest.

Being aggrieved the defendant-appellant-opposite parties preferred the Title/Other Appeal No. 29 of 2002 in the court of the learned District Judge, Kurigram which was subsequently transferred for hearing before the learned Additional District Judge, Kurigram who after reexamining the evidence presented by the parties modified the judgment and preliminary decree of the learned trial court and allocating saham (সাহাম) measuring 1.4896 acres in favour of the plaintiff-petitioners by the impugned judgment and decree dated 30.11.2014. Being aggrieved the present plaintiff-respondent-petitioners filed this Revisional application and obtained the present Rule thereupon.

This matter has been appearing in the daily cause list for a long period of time but no one appears to support the Rule. However, the present petitioners' have taken the ground that the impugned judgment and decree passed on 30.11.2014 in the Other Appeal No. 29 of 2002 by the learned Additional District Judge, Kurigram partly allowing the appeal and partly affirming with modification the judgment and decree dated 20.02.2002 passed by the learned Senior Assistant Judge, Sadar, Kurigram in the Other Suit No. 118 of 1994 which is not proper judgment and decree as the same is not based on proper scrutiny and appreciation of evidence on record in their true perspective, as such, the impugned judgment and decree passed by the learned appellate court below is liable to be *set aside*.

The plaintiff-petitioners have taken another ground that the learned appellate court below, in fact, misdirected itself in its total approach to the matter in controversy and thereby committed an error in law resulting in an error in the decision occasioning failure of justice.

The Rule has been opposed by the present defendant-opposite party Nos. 1-17.

Mr. Nitai Roy Chowdhury, the learned Advocate, appearing along with the learned Advocate, Mr. Md. Badsha Alamgir for the defendant-opposite party Nos. 1-17, submits that the learned trial court allocated sahams (সাহামস) of the present plaintiff-petitioners' land measuring 4.201/2 acres but the learned appellate court below reduced the sahams (সাহামস) measurement of land measuring 1.4896 acres after examining the documents filed by the parties by modifying the judgment of the learned trial court, as such, the learned appellate court below committed no error of law and facts by modifying the judgment of the learned trial court, as such, the present Rule issued by impugning the judgment passed by the learned appellate court does not need to interfere by this court.

The learned Advocate further submits that both the courts below examined the documents those were exhibited and also examined the depositions by the PWs and DWs the learned appellate court below came to a lawful conclusion and decision to pass the decree by modifying the judgment and decree passed by the learned trial court, as such, the learned appellate court came to a decision and passed the preliminary decree by

modifying the judgment of the learned trial court, as such, the Rule is liable to be discharged.

Considering the above submissions made by the learned Advocates for the opposite parties and also considering the revisional application filed by the plaintiff-petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned preliminary judgment and decree as well as perusing the needed documents available in the lower courts record with depositions made by the PWs and DWs, it appears to this court that the present plaintiff-petitioners filed a suit for title and partition of land described in the schedule of the plaint. After examining the documents the learned trial court preliminarily decreed the suit by allocating saham  $4.20\frac{1}{2}$  acres of land in favour of the present petitioners.

However, the learned appellate court below modified the said preliminary judgment and decree, thereby, allocating sahams (সাহামস) for the plaintiff-petitioners' land measuring 1.4896 acres. It also appears to me that the learned trial court passed the preliminary judgment and decree by allocating sahams (সাহামস) on the basis of the following findings:

...“উভয় পক্ষের সাক্ষ্য প্রমাণ পর্যালোচনায় আদালতের নিকট প্রতীয়মান হয় যে, বাদীপক্ষ ‘ক’ তপশীলে ওয়ারিশ মূলে ৩.২২ একর ‘খ’ তপশীলে ওয়ারিশ মূলে .৫৪ একর এবং ক্রয়সূত্রে .৮১ একর সম্পত্তি প্রাপ্ত হয়। তন্মধ্যে বাদীপক্ষের বিক্রিত  $৩৬\frac{1}{2}$  একর বাদ অবশিষ্ট  $৪.২০\frac{1}{2}$  একর সম্পত্তিতে বাদীগণ স্বত্বান ও এজমালে দখলকার রহিয়াছেন। বিবাদীপক্ষের দাবীকৃত নিলাম দ্বয় আদালতের নিকট যোগসাজসিক ও অকার্যকর বিবেচিত হওয়ায় আদালত মনে করেন যে, বাদীপক্ষ তাহাদের প্রার্থীত অংশের সম্পত্তি বাবদ স্বত্ব প্রচারপূর্বক বাটোয়ারার প্রাথমিক ডিক্রি পাইতে হকদার।”...

However, the learned appellate court below reexamined the documents for allocating saham (সাহামস) for validly and lawfully modified the judgment of the learned trial court on the basis of the following findings:

...“বাদী-রেসপনডেন্টপক্ষ দাবী করে যে, তাহারা ২৮/০৭/১৯৭৬ ইং তারিখে ৭৫৮৩ নং দলিল মূলে  $৬০\frac{1}{2}$  শতক এবং ১০/০৮/১৯৯২ ইং তারিখে ৩৯৫০ নং দলিল মূলে  $২০\frac{1}{2}$  শতক একুনে ৮১ শতক জমি ক্রয় করিয়াছে এবং ২৭/০৯/৭৩ ইং তারিখের ৯৮৮২ নং দলিলে ১৬ শতক এবং ২৩/০২/১৯৭৯ ইং তারিখের ৩৮৬৭ নং দলিলের ২০ শতক একুনে ৩৬ শতক জমি বিক্রয় করিয়াছে। ২৮/০৭/১৯৭৬ ইং তারিখের ৭৫৮৩ নং দলিল প্রদর্শনী- ‘৩’, ১০/০৮/৯২ ইং তারিখের ৩৯৫০ নং দলিল প্রদর্শনী- ‘৩(গ)’, ২৭/০৯/৭৩ ইং তারিখের ৯৮৮২ নং দলিল প্রদর্শনী- ‘৩(ক)’ এবং ২৩/০২/১৯৭৯ ইং তারিখের ৩৮৬৭ নং দলিল প্রদর্শনী- ‘৩(খ)’ হিসাবে প্রমাণ চিহ্নিত আছে। ফলে বিক্রয় বাদে ক্রয় মূলে বাদী-রেসপনডেন্টপক্ষ ৪৫ শতক জমিতে স্বত্ব অর্জন করিয়াছে মর্মে প্রমাণিত হইয়াছে। উপরোক্তভাবে দেখা যায় যে, বাদী-রেসপনডেন্টপক্ষ আরজির ‘ক’ ও ‘খ’ তফশীল বর্ণিত জমির মধ্যে সর্বমোট ১.৪৮৯৬ একর জমিতে স্বত্ব প্রমাণে সক্ষম হইয়াছে।”...

In view of the above discussions, I have carefully examined the documents adduced and produced by the parties and I also found that the learned trial court allocated saham in



favour of the plaintiff-petitioners which was reexamined by the learned appellate court below on the basis of the other litigations between the parties, in particular, the judgment and findings was given earlier by this court regarding sahams (সাহামস) to reallocate by the learned lower appellate court being in the Civil Revision No. 4901 of 2005 and therefore modified the measurement of the land by the lower appellate court which should have not challenged by the present plaintiff-petitioners. Even though the learned appellate court below found that the plaintiff-petitioners are entitled to get sahams (সাহামস) after reexamining the documents filed by the present petitioners and opposite parties and I am, therefore, not inclined to interfere upon the judgment of the learned appellate court below, as such, this Rule does not have merit for any further consideration.

Accordingly, the Rule issued earlier by this court does not have any merit for interference.

In the result, the Rule is hereby discharged.

The interim order of direction passed by this court at the time of issuance of the Rule to maintain *status quo* by the respective parties in respect of the possession and position of the suit land and subsequently the same was extended from time to

time and lastly the same was extended till disposal of the Rule are hereby recalled and vacated.

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