

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 1184 OF 2015.

IN THE MATTER OF:

An application under Section 115 (4) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Md. Lal Mia.

.... Defendant-Petitioner.

-Versus-

Md. Latif Mia and others

..... Opposite parties.

Mr. A.K.M. Shamsul Haque, Advocate

.... For the petitioner.

Mr. A.S.M. Mokter Kabir Khan, Advocate

.... For the opposite parties.

Heard and Judgment on: 04.03.2024.

On an application of the petitioner Md. Lal Mia under section 115(4) of the Code of Civil Procedure the Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the judgment and order dated 19.02.2015 passed by the learned Additional District Judge, 2nd Court, Faridpur in Civil Revision No.19 of 2010 reversing those dated 10.06.2010 passed by the Assistant Judge, Modhukhali, Faridpur in Title Suit No.118 of 2004 should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, is that the opposite party Nos.1-3 as plaintiffs instituted Title Suit No.118 of 2004 in the Court of Assistant Judge, Modhukhali, Faridpur for partition of the suit land.

The suit was contested by the defendant No.1 by filing written statements. The defendant Nos.15-17 also contested the suit by filing separate written statements and claimed their saham. The defendant Nos.35 and 36 also claimed their saham.

The learned Assistant Judge, Modhukhali upon hearing the parties and considering the evidence on record decreed the suit by its judgment and decree dated 28.02.2005.

Thereafter, the plaintiff filed an application for Advocate commission and accordingly the Court appointed the learned Advocate Mr. S.M. Al-Mamun Hossain as Advocate commission who after completing all the procedure submitted his report on 24.11.2009.

The defendant No.1 the present petitioner filed objection against the said Advocate commission report stating that the commission distributed his own portion to the plaintiffs wherein his homestate is situated in the said portion and which is very inconvenience to him.

The trial Court after consideration of the commission report as well as the objection filed by the petitioner rejected the Advocate commission report on 10.06.2010. However, opined that parties has liberty/option to file application for Advocate commission afresh.

Against the said order of the trial Court the plaintiff opposite party filed Civil Revision No.19 of 2010 before the learned District Judge under Section 115(2) of the Code of Civil procedure.

The Civil Revision was heard and disposed of by the Additional District Judge, 2nd Court, Faridpur. The learned Additional District Judge after hearing the parties and considering the facts and circumstance of the case allowed the said revisional application and also accepted the Advocate commission report dated 24.11.2009 by its judgment and order dated 19.02.2015.

Being aggrieved by and dissatisfied with the impugned judgment and order of the revisional Court the defendant No.1 as petitioner filed this revisional application under Section 115 (4) of the Code of Civil Procedure accordingly the leave was granted and the Rule was issued.

Mr. A.S.M Mokter Kabir Khan, the learned Advocate enter appeared on behalf of the plaintiff-opposite parties through vokalatanama to oppose the Rule.

Mr. A.K.M. Shamsul Haque, the learned Advocate appearing on behalf of the petitioner submits that the revisional Court without considering the material facts of the case erroneously passed the impugned judgment. He further submits that the balance of the convenience and inconvenience of the parties should not be considered by the Advocate commissioner since defendant No.1 is in possession of the plot which was given in favour of the plaintiffs and given saham to

the petitioner in another place in such circumstance of the case the said order of the revisional Court without considering the material facts of the case. He further submits that the trial Court while rejecting the Advocate commission report specifically mentioned that the parties has right to file application for commission afresh whereas the revisional Court did not consider the same.

Mr. A.S.M. Mokter Kabir Khan, the learned Advocate appearing on behalf of the opposite parties submits that the revisional Court after consideration of the Advocate commission report rightly passed the impugned order and the revisional Court specifically mentioned that the defendant No.1 did not claim any specific place or suitable place or portion of the land instead of the saham as prepared by the Advocate commission.

However, both the learned Advocate agreed that for the betterment of the parties and since this is a partition suit this Court may pass necessary order for accepting the Advocate commission report or directing the parties to file an application for appointed of Advocate commission afresh.

I have heard the learned Advocates of both the sides, perused the impugned judgment of the Court below and the papers and documents as available on the records.

It appears that the opposite party Nos.1-3 as plaintiff institute partition suit and accordingly the preliminary decree was passed and on

the prayer of the parties Advocate commission was appointed. But against the report of the Advocate commission the parties raised objection on after another and finally Mr. S.M. Al-Mamun Hossain the present Advocate commissioner was appointed and he filed his commission report on 24.11.2009. Against which the present petitioner filed objection on the ground that the Advocate commission did not consider the balance of convenience and inconvenience of the defendant No.1 and gave him saham in another place without giving his saham the portion wherein he is in possession.

The trial Court after considering the submission of the parties rejected the said Advocate commission report. However, the learned Assistant Judge made opinion that parties has option to file application for appointment of a fresh Advocate commissioner.

Against the said order the plaintiff opposite party filed civil revision. The revisional Court setting-aside the judgment of the trial Court only taking view that the petitioner did not claim any specific portion of land for his saham and thus accepted the commission report.

The trial Court considering the Advocate commission report and the objection filed by the petitioner did not accepted the report and also opined that the parties may file fresh application if requires. But the revisional Court considering the objection opined to the effect:

“Having gone through the commission report, it appears that Learned Advocate Commissioner did not go beyond

the decree in affecting the partition and that Learned Advocate Commissioner altered practical possession in some plots and that such an allotment necessitated to meet the balance of convenience and inconvenience and to facilitate the contending parties to enjoy the fruits of their own decree and allotment.”

But it appears that the defendant No.1 specifically stated that the commission distributed the saham without considering his possession even distributed the portion to the plaintiffs wherein the petitioner is in possession and he has homestate. But no denial by the plaintiffs that the possessed land of the petitioner has not been given the saham to the plaintiff.

Thus it is my view that the trial Court rightly passed the order not accepting the Advocate commission report considering the convenience and inconvenience of the parties.

Since the trial Court took view that the parties has option to file application for appointment of Advocate commission afresh, in such a case it is my view that which is a proper order and as such the order passed by the revisional Court should be interfered with.

However, the parties has liberty to file application for appointment of the Advocate commission afresh.

Since this is a long pending case the trial Court should dispose of the matter expeditiously as early as possible preferably within 06 (six)

months from the date of receipt of this order in accordance with law and the discussions as made above.

Considering the aforesaid facts and circumstance of the case, I find merit in the Rule.

In the result, the Rule is made absolute. The impugned judgment and order dated 19.02.2015 passed by the learned Additional District Judge, 2nd Court, Faridpur in Civil Revision No.19 of 2010 reversing those dated 10.06.2010 passed by the Assistant Judge, Modhukhali, Faridpur in Title Suit No.118 of 2004 is hereby set-aside. Accordingly the revisional application is allowed.

Since this is a long pending case the trial Court should dispose of the matter expeditiously as early as possible preferably within 06 (six) months from the date of receipt of this order in accordance with law and the discussions as made above.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Communicate the order at once.