

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 564 of 1997

Md. Siraj Uddin Molla being dead his legal heirs Md. Nowsher Ali and others

... Petitioner

-Versus-

Md. Moslemuddin Mollah being dead his legal heirs Mst. Johiran Bewa and others

... Opposite Parties

Mr. Md. Fazle Rabby, Advocate

...for the petitioners

Ms. Hosneara Begum, Advocate

... for opposite parties

Hearing concluded on 03.09.2024

Judgment delivered on 04.09.2024

This rule at the instance of the plaintiff-appellants was issued on an application under Section 115 (1) of the Code of Civil Procedure challenging the legality of judgment and decree dated 07.10.1995 passed by the Subordinate Judge (now Joint District Judge), Second Court, Nawabganj (now Chapainawabganj) in Title Appeal Number 47 of 1993 allowing the appeal in part on setting aside those dated 04.03.1993 passed by the Assistant Judge, Second

Additional Court, Nawabganj in Other Class Suit Number 40 of 1991 (previously Other Class Suit Number 258 of 1987).

The predecessors of the petitioners as plaintiffs instituted the suit for partition on the averments, *inter alia*, that the plaintiffs' maternal grandfather Raton Mollah was the original owner of the suit land. He died before the CS operation leaving behind his widow Laxmi Bewa, and one daughter named Jahirun, mother of the plaintiffs. Thereafter, Laxmi Bewa got married for second time with Cheru Mollah. She died leaving her second husband Cheru Mollah and one daughter, said Jahirun. Cheru Mollah also died before CS operation leaving behind his three sons Jibon Mollah, Zabir Mollah and Mosir Mollah alias Nasir Uddin, predecessors of defendants number 1-15. In the subsequent CS record, the quantity of land was recorded in the name of Jahirun Bewa to the extent of only two *annas* and against the names of Jibon Mollah, Zabir Mollah and Mosir Mollah alias Nasir Uddin, all sons of late Cheru Mollah to the extent of four *annas* thirteen *gandas* and one *kara* each. Such recording with wrong share of land was collusive and not correct. However, the plaintiffs approached their co-sharers for formal partition of the suit land and being refused, instituted the suit for partition of 15.04 acres *ejmali* land as described in the schedule of the plaint.

Defendant numbers 1, 2 and 16 contested the suit by filing separate written statements. They admitted Raton Mollah to be the original owner of the suit land, but disputed the chain of his succession as claimed by the plaintiffs. Their contention was that Raton Mollah died leaving behind his widow Jahirun and one son, Cheru Mollah. Thereafter, Cheru Mollah died leaving behind three sons named Jibon Mollah, Zahir Mollah and Moshir Mollah to inherit his left-out property, while Jahirun died leaving behind the plaintiffs as her legal heirs and successors.

On the aforesaid pleadings, the trial court framed the issues, namely, (1) whether the suit was maintainable in its present form, (2) whether the suit was defective of misjoinder/nonjoinder of party, (3) whether the plaintiffs had title and possession over the suit land, and (4) whether the plaintiffs were entitled to the reliefs as prayed for.

In order to prove their respective cases, both the parties went on trial where the plaintiffs examined four witnesses including plaintiff number 3 Shamir Uddin Molla as PW 1 and three other local witnesses as PWs 2-4 while the defendants examined eight witnesses as DWs 1-8 including defendant number 1 Moslemuddin Molla as DW1. The plaintiffs adduced in evidence two CS Khatians and three SA Khatians in respect of the suit land those were marked as Exhibits-1 series. On the other hand, the defendants adduced three

CS Khatians, two SA Khatians, five RS Khatians, seven sale deeds and some other documents those were marked as Exhibit-Ka series, Kha series, Ga series and Gha series.

The trial court, on conclusion of trial, dismissed the suit by judgment and decree dated 04.03.1993 mainly on the ground that the plaintiffs failed to prove their case discussing only the oral evidences of the PWs. Being aggrieved, the plaintiffs preferred Title Appeal Number 47 of 1993 in the Court of District Judge, Nawabganj. Learned Subordinate Judge (now Joint District Judge), Second Court, Nawabganj ultimately heard the appeal and allowed the same in part giving *saham* of 2.20 acres of land to the plaintiffs and thereby decreed the suit in part. Still, the plaintiff-appellants were aggrieved and moved in this court with the present civil revisional application and obtained the rule.

Mr. Md. Fazle Rabby, leaned advocate for the plaintiff-petitioners submits that the learned appellate Judge in giving lesser *saham* to them committed an error of law in not holding that Jahirun was the only daughter of Ratan Mollah and the plaintiffs were her legal heirs and successors. They were able to prove their case by legal evidence and further proved that Cheru Mollah was not the son of Ratan Mollah. The trial court without considering the chain of succession derived from Ratan Mollah as claimed by the plaintiffs,

outright dismissed the suit and the appellate court did the same mistake in passing the impugned judgment and decree giving them lesser *saham* and thereby committed error of law resulting in an error in the judgment, which caused failure of justice as well.

Ms. Hosneara Begum, learned advocate for the defendant-opposite parties on the other hand submits that by recording oral evidence and producing documentary evidences that include all the khatians (Exhibits-Ka series) and other sale deeds, the defendants clearly disproved the plaintiffs' claim based on wrong chain of title. The lower appellate court on critical assessment of evidence arrived at a finding that was pleaded and proved by the defendants. Learned appellate Judge thus gave *saham* to the contested parties in accordance with the Muslim law of succession. There having no error of law in the impugned judgment and decree of the appellate court, the rule is liable to be discharged.

I have considered the submissions of the learned advocates of both sides and gone through the record including evidences and the judgments of the courts below. It appears that both the parties made contradictory claim regarding heirship and successorship of Ratan Mollah. Learned Judge of the appellate court being the last court of fact analytically reassessed the oral evidence of PWs, especially their statements made in cross-examinations, and considered the

documentary evidences including the CS Khatians (Exhibits Ka-Ka/2) and found that Jahirun was the widow of Ratan Mollah and Cheru Mollah was his (Ratan Mollah's) only son with his first wife. Their lawful share in the *ejmali* land according to Muslim law of succession clearly reflects in the CS Khatians, and subsequently in the SA and RS Khatians (Exhibits Ka/3-Ka/10). The appellate court has actually rectified the judgment and decree of outright dismissal of the suit passed by trial court, as the plaintiffs were admittedly the heirs of Jahirun Bewa, who was found by the appellate court to be the widow of Ratan Mollah and was entitled to two *annas* share in the left-out property of her husband. I really do not find any error of law resulting in an error in the decision occasioning failure of justice in judgment and decree of the appellate court.

The rule having no merit is discharge and the judgment and decree of the appellate court is maintained.

Send down the records.