Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 907 of 2016
with
Civil Revision No. 908 of 2016

Abdul Ali Khan and others
..... Petitioners
-Versus-
Achia Khatun being dead her legal heirs; 1(a) Md. Abu Bakkar Chowdhury and others
.... Opposite Parties

Mr. Md. Anwarul Azim Khair Manna, Senior Advocate with
Mr. Md. Masud Alam, Advocate
..... For the Petitioners

Mr. M. Masud Alam Chowdhury, Advocate with
Mr. Nurul Alam, Advocate and
Mrs. Ainun Nur Chowdhury, Advocate
.... For the Opposite Parties

Judgment on 20.11.2025

These two Rules have arisen from same judgment and decree of the appellate court and taken up for joint consideration and disposal by a single judgment, given that these pertains to the same parties and involve common facts and issues of law.

In these 2 (two) applications under section 115(1) of the Code of Civil Procedure, Rules were issued at the instance of the petitioners calling upon the opposite party No. 1 to show cause as to why the

impugned judgment and decree dated 29.02.20216 (decree signed on 06.03.2016) passed by the learned Additional District Judge, 2nd Court, Chattogram in Other Appeal Nos. 235 of 2011 allowing the appeal in modified form affirming the judgment and decree dated 26.04.2011 (decree signed on 28.04.2011) passed by the learned Joint District Judge, 1st Court, Chattogram in Partition Suit No. 297 of 2006 decreeing the suit should not be set aside or pass such other or further order or orders as to this court may seem fit and proper.

Facts relevant for disposal of these Rules, in short, are that opposite party No. 1, as plaintiff, filed Partition Suit No. 297 of 2006 on 14.11.2006 in the Court of Joint District Judge, 1st Court, Chattogram impleading the petitioners as defendant Nos. 1-3 and opposite party Nos. 2-5 as defendant Nos. 4-7 and prayed for a decree for partition, stating that the land of R.S. Khatian No. 2755 originally belonged to Piari Shundori Nath who died leaving behind Shoki Bala Debi who died leaving behind Anath Bondhu Nath and Shuresh Chandra Nath. P.S. Khatian and B.S. Khatian stood recorded in their names. Said Anath Bondhu Nath vide deed No. 4307 dated 04.04.1978 sold 20 sataks of suit land to the plaintiff who got possession of the said land. The deed writer

wrongly written in the purchase deed that plaintiff was given possession in R.S. Plot No. 2150 corresponding to B.S. Plot No. 7977 and the rest land of Anath Bondhu i.e. 24 sataks sold to defendant Nos. 1-3 on different dates. The plaintiff has been possessing the suit land peacefully, but the defendant Nos. 1-3 started disturbing in his peaceful possession, consequently, the plaintiff demanded partition of the property amicably but on 05.11.2006 the defendants refused to do so, hence, the present suit for partition.

The petitioners, as defendant Nos. 1-3, contested the said suit by filing a joint written statement denying all the material allegations made in the plaint contending, *inter alia*, that the disputed land of R.S. Plot Nos. 2146, 2150 and 2160 under R.S. Khatian No. 2755 stood recorded in the name of Piari Shundori Nath who died leaving behind one daughter Shakhi Bala Nath. Upon her demise her son Anath Bondhu Nath possessing the land measuring 99 sataks under P.S. Plot Nos. 1775, 1787 and 1773. P.S. Khatian No. 637/808 and B.S. Khatian No. 34 stood recorded in his name. On 04.04.1978 vide registered deed No. 4307 Anath Bondhu Nath sold 20 sataks of land from R.S. Plot No. 2150 to the plaintiff. Thereafter, sold 14 sataks of land to defendant No. 2 vide deed

No. 1191 dated 25.09.1989 and deed No. 1329 dated 18.09.1991 respectively and 10 sataks of land to defendant No. 1 vide deed No. 1192 dated 25.09.1989 and sold 8 sataks of land to defendant No. 3 vide deed No. 1041 dated 27.06.1990 and deed No. 1294 dated 12.09.1990 under B.S. Plot No. 7975. Since purchase they have been possessing the said land by mutating their names and paying all government taxes. Son of Anath Bondhu a necessary party has not been impleaded in the suit and prayed for dismissing the suit.

The trial court framed six issues for determination of the dispute. In course of hearing both the parties adduced witnesses as P.Ws. and D.Ws, submitted documents in support of their respective claim which were duly marked as exhibits. The trial court after hearing by judgment and decree dated 26.04.2011 decreed the suit against the present petitioners giving saham to the plaintiff for 20 sataks (18 sataks from Plot No. 7977 and 2 sataks from Plot No. 7975) corresponding to B.S. Khatian No. 34 observing that the contesting defendants will be entitled to get 26 decimals of land without mentioning any plot.

Against the judgment and decree dated 26.04.2006 passed by the trial court in Partition Suit No. 297 of 2006, the plaintiff filed Other

Appeal No. 235 of 2011 before the Court of learned District Judge, Chattogram, which on transfer was heard by the learned Additional District Judge, 2nd Court, Chattogram who upon hearing by his judgment and decree dated 29.02.2016 allowed the appeal in modified form and affirmed the judgment and decree dated 26.04.2006 passed in Partition Suit No. 297 of 2006. At this juncture, the petitioners moved this Court by filing this application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay and status quo.

Mr. Md. Anwarul Azim Khair Manna, learned Senior Advocate with Mr. Md. Masud Alam, learned Advocate appearing for the petitioners in both the rules at the very outset submit that there is no dispute that the plaintiff purchased 20 sataks of land by registered deed No. 4307 dated 04.04.1978 from Anath Bandhu Nath and deed of the plaintiff specifically mentioned that he was delivered possession in R.S. Plot No. 2150 corresponding to B.S. Plot No. 7977 measuring 20 sataks. The remaining land owned and possessed by Anath Bandhu Nath measuring 24 sataks sold to defendant Nos. 1-3 vide deed No. 1192 dated 25.09.1989 for 10 sataks, vide deed No. 1191 dated 25.09.1989 and deed No. 1329 dated 18.09.1991 for 14 sataks, deed No. 1041 dated 27.06.1990

and deed No. 1294 dated 12.09.1990 for 8 sataks and delivered possession in B.S. Plot No. 7975. The defendant after purchase got their names mutated in the khatian and have been possessing the same on payment of rents to the government. The trial court as well as the appellate court decreed the suit and modified the judgment keeping saham of the plaintiff as 20 sataks, but in giving such saham the trial court allotted 2 sataks of land to the plaintiff without mentioning any plot number or possession of the land. The appellate court while modifying the judgment of the trial court unfortunately modified the judgment allotting saham to the plaintiff for 9 sataks from B.S. Plot No. 7977 and 11 sataks from B.S. Khatian No. 34 without mentioning any plot or possession of land which created confusion among the parties from which plots actually the plaintiff has been given saham.

Mr. M. Masud Alam Chowdhury with Mr. Nurul Alam and Mrs. Ainun Nur Chowdhury, learned Advocates appearing for the opposite parties candidly submit that the plaintiff claimed only saham for 20 sataks as per her purchase from Anath Bandhu Nath. He submits that at the time of writing sale deed, deed writer wrongly mentioned that the plaintiff was delivered possession in B.S. Plot No. 7977, but physically Plot No. 7977

contain only 18 sataks land, therefore, the plaintiff is entitled to get 02 sataks land from Plot No. 7975, accordingly, the trial court allotted saham of the same.

He submits that the deed of the plaintiff is earlier one and the vendor is also common person, as such, the deed of the plaintiff shall prevail over the deed of the defendants. The plaintiff's deed mentioned Plot Nos. 7975 and 7977 consequently, the plaintiffs is entitled to get her saham from both the plots though in the deed mentioned possession of the plaintiff only in Plot No. 7977.

He submits that the trial court rightly allotted saham to the plaintiff decreeing the suit for 20 sataks, but failed to mention from which plot 2 sataks of land has been allotted to the plaintiff, that's why, the plaintiff preferred appeal against the judgment and decree passed by the trial court. The appellate court rightly allotted saham to the plaintiff for 9 sataks from Plot No. 7977 and 11 sataks from other plots under B.S. Khatian No. 34, as such, the appellate court committed no error in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application in both the revisions under section 115(1) of the

Code of Civil Procedure, plaint in suit, written statement, evidences both oral and documentary adduced by both the parties available in lower court records and impugned judgment and decree of both the courts below.

Both the parties admitted that the suit property covered by B.S. Plot Nos. 7975 and 7977 under B.S. Khatian No. 34 corresponding to R.S. Plot Nos. 2146 and 2150 and P.S. Plot Nos. 1773 and 1775 owned and possessed by two brothers Anath Bandhu Nath and Suresh Bandhu Nath equally. Anath Bandhu Nath out of his 8 annas share, sold 20 sataks of land to the plaintiff by a registered sale deed No. 4307 dated 04.04.1978.

From perusal of said deed, it appears that though Anath Bandhu Nath transferred the property from two plots, but specifically delivered possession in Plot No. 7977. Before filing of the suit the plaintiff did not raise any objection against Anath Bandhu Nath or the defendants who subsequently purchased the rest portion of land from Anath Bandhu Nath and have been possessing the same for long time.

The plaintiffs claimed that the plot in which possession was delivered contain only 18 sataks of land, but by purchase she is entitled to get 20 sataks of land, out of which 2 sataks of land under possession of the defendants. She also claimed that though the sale deed mentioned

possession of the plaintiff in one plot, but they are entitled to get saham from two plots. From perusal of plaint, it is difficult to find except from Plot No. 7977 from which plot and on which portion the plaintiff is in possession and claims her saham. Similarly, both the courts below did not mention in their judgment how and on which portion the plaintiff is in possession and will be entitled to get saham as per decree. Both the courts below without ascertaining quantum of land in Plot No. 7977 and Plot No. 7975 allotted saham to the plaintiff and defendants. In allotting saham the court ought to have ascertained the quantum of land physically. If Plot No. 7977 contains 20 sataks or more or less, the plaintiff will be entitled to get saham from that plot as delivered to them by her vendor.

In the event of finding less quantum of land, then the plaintiff will be entitled to get any shortfall from contiguous plot touching the property under possession of the plaintiff, but total findings and observations to that effect is absent in both the judgments. It is true that since the vendor of both the parties are same, deed of the plaintiff shall prevail and will get priority over the deed of the defendants, but in determining saham and possession of the parties, quantum of land actually covered by Plot No. 7977 has not been ascertained which has given rise to another dispute

between the parties regarding quantum and possession of the land as mentioned in the khatian as well as in the sale deed. R.S. Plot No. 2150 contain 22 sataks of land as per record and P.S. Plot No. 1775 contain 20 sataks of land and B.S. Plot No. 7977 as per record contain 18 sataks of land. Had the R.S. Plot No. 2150, P.S. Plot No. 1775 and B.S. Plot No. 7977 found 20 sataks of land, the plaintiff has no cause of action for filing this suit, unless she possessed less than 20 sataks covered by Plot No. 7977. Both the courts below instead of resolving the dispute between the parties have created further dispute giving saham to the plaintiff partly from Plot No. 7977 and partly from Khatian No. 34 without giving any direction that the plaintiff will be entitled to get property from any specific plot number as per her possession. Because of this situation, I find that both the courts below failed to determine quantum of land in Plot No. 7977 and possession of the parties in the suit property calling for further hearing of the matter. As such, I think that justice will be met and purpose of the parties will be served if the appeal is sent back on remand to the appellate court for fresh hearing after determination of quantum of land in Plot No. 7977 and quantum of land in Plot No. 7975.

In view of the above, I find merit in both the rules and in the submissions of the learned Advocate for the petitioners.

In the result, both the Rules are made absolute, however, without any order as to costs.

Judgment and decree of the appellate court are hereby set aside and the suit is sent back on remand to the appellate court for fresh hearing after ascertaining quantum of land actually contain in Plot No. 7977 and 7975. In the event of finding 20 sataks or more quantum of land in Plot No. 7977 the plaintiff will be entitled to get saham from Plot No. 7977 and in the event of finding any less quantum of land then the plaintiff will be entitled to get remaining land from contiguous plot No. 7975 touching the side of Plot No. 7977. Since, this is a long pending matters, the appellate court is hereby directed to dispose of the appeal, in the light of the observations made above within a shortest possible time giving top most priority.

The order of status quo granted at the time of issuance of the Rule shall continue till disposal of the appeal.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.