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

Present:
Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 2515 OF 2017
Laily Akhter and another
....Petitioners
Versus-
Md. Abul Hashem Moral and another
...Opposite parties

With
CIVIL REVISION NO.10 OF 2007
Ms. Jahanara Khatun
...Petitioner
-Versus-
Md. Abul Hashem Moral and others
... Opposite parties
And
Civil Rule No.484(Con)(R)(Review) of 2021
Laily Akhter and another
...Petitioners
-Versus-
Md. Abul Hashem Moral and others
...Opposite parties

Mr. Md. Asaduzzaman with
Mr. Md. Ahsan Ullah, Advocates
... For the petitioners.
Mr. J.K. Paul with
Mr. Nazmul Hossain Rakib, Advocates
... For the opposite parties.

Heard and Judgment on 17.07.2023

On an application under Section 115(4) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to

show cause as to why the judgment and order dated 16.04.2017 passed by learned District Judge, Gazipur in Civil Revision No.8 of 2016 rejecting the revision and affirming those dated 25.02.2016 passed by the learned Senior Assistant Judge, 2nd Court, Gazipur in Title Suit No.55 of 2003 should not be set aside and or such other or further order or orders as to this Court may seem fit and proper.

Short facts are that the opposite parties as plaintiffs instituted Title Suit No.55 of 2003 for declaration of title for 52 decimal land appertaining to Plot No. $\frac{22}{405}$ and partition. The petitioner who was defendant No.6 contested the suit by filing a written statement claiming 5 decimal land. The petitioner alleged that above 5 decimal land belonged to the Government who gave settlement to her as landless woman and she is in possession in above land by constructing a dwelling house.

Above suit was decreed on contested and plaintiffs were given separate saham for 52 decimals land but defendant No.6 was not given any saham.

Being aggrieved by above judgment and decree defendant No.6 preferred Title Appeal No.101 of 2006 to the District Judge, Gazipur who dismissed the appeal and affirmed the judgment and decree of the Trial Court.

Being aggrieved by above judgment and decree of the Court of appeal below appellants as petitioners moved to this Court and preferred Civil Revision No.10 of 2007. Above Rule was discharged by the judgment and order passed by this Court on 02.11.2009 but in above judgment this Court stated that the petitioner (defendant No.6) is entitled to get 5 decimals land out of 16 decimal land of the Government of Bangladesh out of Plot No. $\frac{22}{405}$ without affecting 52 decimal land of the plaintiffs. On an application submitted by the plaintiffslearned Senior Assistant Judge appointed an Advocate Commissioner for identification, measurement and allocation of the share who submitted a report on 24.08.2011. Defendant No.6 submitted a petition on 27.10.2010 before the above Court alleging that she was allocated 5 decimal land by this Court but the learned Advocate Commissioner did not grant her any saham.

The learned Senior Assistant Judge accepted the report of the Advocate Commissioner and accordingly passed a final decree on 19.02.2014.

On 18.08.2014 the petitioner filed a petition under Section 151 of the Code of Civil Procedure for setting aside above decree and allocation of a separate saham for 5 decimal which was rejected by the learned Senior Assistant Judge.

Being aggrieved by above judgment and order above defendant as petitioner preferred Civil Revision No.8 of 2016 to the District Judge, Gazipur which was also rejected vide impugned judgment and order dated 16.04.2017.

Being aggrieved by above judgment and order of the learned District Judge above petitioner as petitioner moved to this Court and obtained this Rule.

Mr. Md. Asaduzzaman, learned Advocate for the petitioner submits that the title and possession of the petitioner has been finally determined by this Court in Civil Revision No.10 of 2017 for 5 decimals land out of 16 decimals land of the Government of Bangladesh in Plot No. $\frac{22}{405}$. Above plot comprises 91 decimal and plaintiffs title and possession has been affirmed by the High Court Division for 52 decimal land. The petitioner does not have any claim over above land of the opposite party. The petitioner submitted a petition before the learned Senior Assistant Judge on 27.10.2010 for allocation of separate saham for 5 decimal land as has been determined by the High Court Division. But the learned Senior Assistant Judge neither rejected above petition nor sent the same to the Advocate Commissioner. So, the Advocate Commissioner in his report did not allocate any saham for defendant No.6. As such the petitioner submitted a petition for setting aside above

final decree and for appointment of a new Advocate Commissioner for getting final decree for 5 decimals land. But the learned Judges of both the Courts below have failed to appreciate above facts and circumstances of the case and materials on record properly and most illegally rejected above petition which is not tenable in law.

On the other hand Mr. J.K. Pal, learned Advocate for opposite party Nos.1 and 2 frankly conceds that the opposite party does not claim 5 decimal land of the petitioner as has been determined by the High Court Division and they have no objection if a final decree is passed for above land of the petitioner. The opposite parties are legally entitled to a separate saham for 52 decimals land and the petitioner does not have any objection against that. For the ends of justice the final decree passed by the learned Senior Assistant Judge on the basis of the Advocate Commissioner report dated 24.08.2011 may be set aside and an Advocate Commissioner may be appointed for preparation of a report taking into consideration the petition of the defendant for separate saham.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

As mentioned above in Civil Revision No.10 of 2007 this Court has clearly determined that the plaintiffs are entitled to get a separate

saham for 52 decimals land and defendant No.6 is entitled to get 5 decimal land out of 16 decimals land of the Government of Bangladesh in disputed Plot No. $\frac{22}{405}$. Petitioner does not claim 52 decimals land which has been allocated in the saham of the opposite party Nos.1 and 2. Similarly opposite party Nos.1 and 2 do not have any claim over 5 decimals land which the petitioner has acquired by way of settlement from the Government of Bangladesh. As such the dispute between above two parties can be finally settled by paving the way for getting separate saham for both the parties for mentioned quantities of land from the disputed Plot by necessary identification and measurement by a survey knowing Advocate Commissioner. The defendant No.6 filed a petition for separate saham for her 5 decimals land on 27.10.2010. But the learned Senior Assistant Judge ignored above petition for non payment of any court fee and above petition is still lying with the case record. The learned Judge may give the petitioner an opportunity to submit necessary Court fees and then forward the same to the learned Advocate Commissioner.

In above view of the facts and circumstances of the case and materials on record I hold that the ends of justice will be met if the impugned judgment and decree is set aside and the learned Senior Assistant Judge is directed to proceed with appointing of the Advocate

Commissioner after giving defendant No.6 opportunity to submit Court fees on her petition for seeking separate saham and then on receipt of the commissioner's report dispose of the suitexpeditiously in accordance with law within a period of 6(six) months.

The learned Advocate for the petitioner submits that he has instruction from his client not to press the Civil Rule No.484(Con)(R)(Review) of 2021. Accordingly, Civil Rule No.484(Con)(R)(Review) of 2021 may be discharged as being not pressed and the application for review arising out of Civil Revision No.10 of 2007 is rejected as being not pressed.

In result, the Rule is hereby made absolute. The impugned judgment and order dated 16.04.2017 passed by learned District Judge, Gazipur in Civil Revision No.8 of 2016 is hereby set aside. The final decree passed in Title Suit No.55 of 2003 is set aside.

The learned Senior Assistant Judge, Second Court, Gazipur is directed to appoint an Advocate Commissioner for partition of the land and after receipt of the Advocate Commissioner report draw a final decree within a period of 6(six) months from the date of receipt of the copy of this judgment.

However, there is not order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER