

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3911 OF 2009

In the matter of:

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

And

Md. Haidar Kamal and others

... Petitioners

-Versus-

Md. Fariduddin and others

... Opposite parties

Mr. Ranjit Barman, Advocate

.... For the petitioners.

Mr. Md. Salah Uddin, Advocate

.... For the opposite party Nos.1 and

2.

Heard on 12.12.2024 and Judgment on 14.01.2025.

This Rule was issued calling upon the opposite party Nos.1-2 and 5 to show cause as to why the impugned judgment and decree dated 06.07.2009 passed by the learned Joint District Judge, 2nd Court, Rajshahi Sadar, Rajshahi in Title Appeal No.313 of 2006 affirming the judgment and decree dated 12.10.2006 passed by the learned Senior Assistant Judge, Rajshahi Sadar, Rajshahi in Other Class Suit No.322 of 2005 in decreeing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that opposite parties as plaintiffs instituted above suit for partition seeking a separate saham for 0.0990 acres land out of 19.50 decimal appertaining to R.S. Khatian No.345/1 and R.S. Plot No.1632 alleging that Hasina Khatoon purchased $33\frac{1}{3}$ decimal land from Monindra Mohon Roy Chowdhury by registered kabala deed dated 02.05.1973 and she transferred 9.90 decimal land to the plaintiffs by two registered kabala deed Nos.12343 and 12342 dated 20.08.1991 and transferred possession. Above property has not been partitioned by meets and bounds and the defendants refused to effect an amicable partition.

Defendant Nos.3-6 and 8-11 contested the suit by filing joint a written statement alleging that Hasina Khatoon transferred 0.0990 acres to the plaintiffs out of disputed Plot No.1632 by two registered kabala deeds date 20.08.1991 clearly mentioning the boundary and pathway and delivered possession and plaintiffs are in possession in above land by constructing dwelling house. The plaintiff did not have any cause to institute this suit.

At trial plaintiffs examined three witnesses and defendants examined two. Documents of the plaintiffs were marked as Exhibit No.1-7 series and those of the defendants were marked as Exhibit Nos.'Ka' - 'Gha' series.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed above

suit in part and allocated a separate saham to the plaintiffs for 7.95 decimal land.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above defendants as appellants preferred Title Appeal No.313 of 2006 to the District Judge, Rajshahi which was heard by the learned Joint District Judge, 2nd Court who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this Court and obtained this Rule.

Mr. Ranjit Kumar Barman, learned Advocate for the petitioners submits that 34 decimal land of the mother of the defendants namely Hasina Khatoon was recorded in 4 plots including Plot No.1632 and after purchase of 9.90 decimal land from Hasina Khatoon by two registered kabala deed dated 20.08.1991 the plaintiffs were delivered possession from other plots as well and they are in peaceful possession in land by constructing dwelling house and they have filed this suit for partition claiming that Hasina acquired 19.50 decimals land instead of 34 decimals land and sought a separate saham for 9.90 decimal land from Plot No.1632 to deprive the defendants from their inherited property taking advantage of error in R.S. Khatian No.345/1. The learned Judges of both the Courts below have failed to appreciate above materials on record and most illegally decreed the suit in part and the

learned Judge of the Court of Appeal below most illegally dismissed the appeal and upheld the flawed judgment and decree of the trial Court which is not tenable in law.

On the other hand Mr. Md. Salah Uddin, learned Advocate for opposite party Nos.1 and 2 submits that although Hasina Khatoon purchased $33\frac{1}{3}$ decimal land by registered kabala deed dated 02.05.1973 and in her name R.S. Khatian No.345/1 was correctly recorded for 34 decimal land in Plot No.1632 but in fact in above Plot No.1632 the quantity of the land is 19.50 decimal instead of 34 decimal land and the plaintiffs claimed a separate saham for 9.90 decimal land. The learned Judge of the trial Court rightly found that since the total quantity of the land of Hasina Khatoon was reduced to 19.50 decimals plaintiffs were entitled to get separate saham for 7.95 decimals land. The learned Judge of the Court of Appeal below on correct appreciation of evidence on record has rightly dismissed the appeal and affirmed above lawful judgment and decree of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on records including the pleadings, judgments of the Courts below and evidence adduced by both the parties at trial.

It is admitted that Hasina Khatoon predecessor of both the plaintiffs and the defendants purchased $33\frac{1}{3}$ decimal land from

Monindra Mohon Roy Chowdury by a registered kabala deed dated 02.05.1973 and her name was correctly recorded in R.S. Khatian No.345/1 for 34 acres land. It is also admitted that the plaintiffs purchased 9.90 decimal land from above Hasina Khaton by two registered kabala deed dated 20.08.1991.

At trial PW1 Md. Getab Uddin has reiterated above claims that Hasina Khaton purchased $33\frac{1}{3}$ decimals land and transferred 9.90 decimal land to the plaintiff by two registered kabala deed dated 20.08.991 and produced above kabala deeds as well as certified copy of R.S. Khatian No.245/1 which were marked as Exhibit Nos.4, 6 and 7 respectively.

It is surprising to note that the learned Judges of the Courts below allocated a separate saham to the plaintiffs for 7.95 decimal land instead of 9.90 decimal and the plaintiff accepted that.

It turns out from the plaint that the plaintiffs did not bring into hotchpotch total 34 decimal land of disputed R.S. Khatian No.345/1 but the plaintiffs have brought into hotchpotch only 19.50 decimal land of above khatian. It is well settled that in a suit for partition a plaintiff must bring into hotchpotch the total land of the joma or khatian and all the co-sharers of above joma or khatian must be impleaded as defendants. If any part of the ejmali land or any co-sharer remains outside of the plaint of the partition suit that suit must fail.

The claim of the plaintiff that the quantity of land of Plot No.1632 was reduced to 19.50 decimal in the village Map is misconceived and not proved at trial. The title and quantity of land are found in the title deed and in the relevant record of right prepared by the Government. A map is a technical document which does not mention the names of the owners of the land or its quantity. On consideration of above facts and circumstances of the case and evidence on record I hold that this suit for partition must fail due to not bringing into hotpotch total 34 decimal land of Hasina Khatoon which was recorded in R.S. Khatin No.345/1.

The cause of action of a suit for partition is recurring and such a suit should not be dismissed on technical or procedural grounds rather the parties should be given an opportunity to make up the deficiencies in the pleadings and get a judgment on the merit of the suit to minimize time and money of both the parties.

In above view of the facts and circumstances of the case and evidence on record I hold that the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence.

I find substance in this revisional application under Section 115 of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 06.07.2009 passed by the learned Joint District Judge, 2nd Court, Rajshahi Sadar, Rajshahi in Title Appeal No.313 of 2006 affirming the judgment and decree dated 12.10.2006 passed by the learned Senior Assistant Judge, Rajshahi Sadar, Rajshahi in Other Class Suit No.322 of 2005 is set aside and above suit is remanded to the trial Court for retrial after giving both sides an opportunity to amend their respective pleadings and adduce further evidence. However, both the parties shall maintain status-quo in respect of possession and position of the suit land until retrial of the suit begins.

However, there will be no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER