

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.1019 OF 2023**

In the matter of:

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

And

Nasima Begum

... Petitioner

-Versus-

Most. Anowara Begum and others

.... Opposite parties

Mr. Md. Sharafatullah, Advocate

.... For the petitioner.

Mr. Md. Akramul Haque Baki, Advocate

.... For the opposite party

Nos.1-7.

**Heard on 16.01.2025.**

**Judgment on 11.02.2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-7 to show cause as to why the impugned judgment and decree dated 20.11.2022 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Cumilla in Title Appeal No.165 of 2021 reversing those dated 28.02.2021 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Cumilla in Title Suit No.23 of 2011 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 the petitioner as plaintiff instituted above suit for partition of land appertaining to Plot No.2672 of C. S. Khatian No.227 corresponding to R. S. Khatian No.314 seeking saham for 7 decimal land alleging that above property belonged to Sujat Ali who acquired the same from C. S. recorded tenant Kudrot Ullah and while Sujat Ali was in possession in above land he transferred the same to the plaintiff by a registered kabla deed dated 28.06.2007. Above land has not been partitioned by meets and bounds and the defendants refused to effect an amicable partition.

The suit was contested by defendant Nos.14-17 by filling a joint written statement alleging that Kudurt Ullah and Ahmed Ullah were the owners of possessors of land of C. S. Khatia No.227 in different shares and Ahmed Ullah died leaving only wife Mahmuda who died leaving four daughters of her husband only brother Kudrat Ullah namely Alfo, Alekjan, Arafat and Halemannesa who transferred 1.21 acres land including above 11 decimal to Ashraf Ali and Sayed Ali by registered kabla deed dated 21.02.1933 and delivered possession. Defendants are successive heirs of Sayed Ali and Ashraf Ali and they transferred four decimal land to Delowar and Shah Alam.

At trial plaintiff and defendants examined three witnesses each and documents of the plaintiff were marked Exhibit Nos.1-4 and those of the defendants were marked Exhibit Nos."Ka" - "K/23".

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

Being aggrieved by above judgment and decree of the trial Court above defendants No.14-17 as respondent preferred Title appeal No.165 of 2021 to the District Judge, Cumilla which was heard by the learned Additional District Judge, 2<sup>nd</sup> Court who allowed the appeal, set aside the judgment and decree of the trial Court and dismissed the suit.

Being aggrieved by above judgment and decree of the Court of Appeal below above plaintiff as petitioner moved to this Court with this Civil Revisional application under section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Md. Sharafatullah, learned Advocated for the petitioner submits that admittedly 3.89 acres land appertaining to C. S. Khatian No.227 belonged to Kudrat Ullah and Ahmed Ullah in different shares and defendant No.1 Sujat Ali is the predeceased son of only son of above Kudrat Ullah namely Zia Gazi. It is also admitted that in the comment column of C. S. Khatian No.227 possession of Ahmed Ullah was recorded against disputed Plot No.2672.

At the very outset although plaintiffs claim title of Sujat Ali in disputed plot No.2672 by registered deed of gift dated 21.12.1929 they did not dispute the correctness of C. S. Khatian No.227 and the comment made in above khatian as to possession of Plot No.2672.

Plaintiff is a subsequent purchaser of 7 decimal land out of Plot No.2672 from defendant No.2 Sujat Ali who gave evidence in this suit as PW2. In cross examination PW2 Sujat stated that the dwelling house of Sayed Ali and Ashraf Ali was situated on the eastern side of the

disputed plot. He further stated that six storied dwelling house of Malek Sarkar is situated in the middle of the disputed land. He did not know if Malek Sarker purchased above land from Shahjahan and Delowar. He further stated that he has executed and registered a nadabi document being No.456 dated 14.09.2006 and above document is correct and effective document. Defendants produced and proved a certified copy of above Nadavipatra which was marked as Exhibit No.Ka/5. In above Nadabipatra DW2 admitted the title and possession of Delowar and Shah Alam in 4 decimal land of Plot No.2672 and further stated that B. S. khatian No.7546 has been rightly prepared in their names.

Husband of the plaintiff while giving evidence of PW1 stated in cross examination that the disputed land was partitioned before the C.S. survey and in the comment column of the C. S. Khatian the same has been recorded. In the comment column of above khatian possession of Ahmed has been recorded for disputed plot No.2672. The plaintiff has sought separate saham for 7 decimal land of plot No.2672.

On the other hand Mr. Md. Akramul Haque Baki, learned Advocate for the opposite party Nos.1-7 submits that admittedly 7 decimal land of C. S. Plot No.2672 was in exclusive possession of Ahmed Ullah and the same was rightly recorded in above C. S. khatian and defendants claim title and possession in above land on the basis of purchase from the successive heirs of Ahmed Ullah. Defendant No.2 Sujat while giving evidence as PW2 has admitted title and possession of

Delowar and Shahjahan in 4 decimal land of above plot and further admitted that above land has been recorded finally in B. S. Khatian in the name of above Delowar and Shahjahan but the plaintiff did not implead above Shahjalal and Delowar as defendants in this suit. Nor the plaintiff has incorporated the latest record of right or B. S. Khatian and plot Numbers in the scheduled of the plaint. On the basis of above oral and documentary evidence the learned Judge of the Court of Appeal below rightly allowed the appeal and dismissed the suit which calls for no interference.

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

It is admitted that 3.89 acres land belonged to Kudrat Ullah and Ahmed Ullah in different shares and the same was correctly recorded in C. S. Khatian No.227 and in the comment column of above khatian Plot No.2672 was mentioned to be in the possession of Ahmed Ullah. It is also admitted that Kudrat Ullah transferred 1.96 acres land including 11 decimal land of disputed plot No.2672 by a registered deed gift dated 21.12.1929 to defendant No.1 Sujat Ali. On the other hand defendants claim that Ahmed Ullah died leaving wife Mahmuda who died issueless leaving her brother Kudrat Ullah's wife and 4 daughters as heirs who transferred 11 decimal land of Plot No.2672 to the predecessors of the defendants namely Ashraf Ali and Sayed Ali and by successive purchase from above defendants Malek, Delowar and Shajalal acquired land from Plot No.2672.

At the very outset the plaintiff has designated the suit as a suit for partition but it turns out from a plain reading of the plaint that she has sought saham for 7 decimal land of Plot No.2672. The plaintiff is a purchaser from defendant No.1 Sujat Ali by registered kabla deed dated 28.06.2007. While giving evidence as PW1 the husband of the plaintiff has stated in cross examination that he cannot recollect the date when defendant No.1 delivered possession of 7 decimal land to his wife. He further stated that disputed land was partitioned by metes and bounds before C. S. survey and in the comment column of the C. S. Khatian same has been recorded. In the comment column of C. S. Khatian Plot No.2672 has been mentioned to be in the possession of Ahmed Ullah. While giving evidence as PW2 defendant No.2 Sujat Ali who transferred 7 decimal land to the plaintiff stated that the house of Sayed Ali and Ashraf Ali was situated on the eastern side of the disputed land and six storied dwelling building of Malek was situated in the middle of the land. He admitted that he executed and registered Nadabi deed No.4563 on 14.09.2006 and above document is a correct and effective document. Above registered Nadabi deed was produced and proved at trial by the defendant and the same was marked as Exhibit Nos. "Ka" - "Uma". It turns out from above nadabi deed that defendant No.2 has admitted possession of Delowar Hossain and Shahjalal in 4 decimal land of Plot No.2672.

It turns out from the plaint that above Delwoar and Shajalal have not been made parties to this suit for partition. It is admitted that above

Malek Sarker, Shajahan or Delowar did not purchase land of plot No.2672 from defendant No.1 Sujat Ali. As such there is no reason to disbelieve the claim of the opposite party that above possessors of disputed plot No.2672 in fact purchased above land from Sayed Ali and Ashraf Ali.

On consideration of above documentary and oral evidence on record I hold that the learned Judge of the Court of Appeal below rightly held that 11 decimal land of Plot No.2675 was exclusively in possession of Ahmed Ullah and the same has been possessing by the defendants continuously and peacefully and Sujat Ali did not have any possession in above land and the Sujat Ali could not deliver possession of land of above plot to the plaintiff.

It is true that plaintiff has purchased 7 decimal land out of RS Khatian No.314 from defendant No.1 Sujat Ali and above purchase has been endorsed by Sujat Ali while giving evidence as PW2 as such plaintiff is entitled to get 7 decimal land either by filling an appropriate suit against defendant No.1 Sujat Ali but the plaintiff cannot get possession or title of any land from Plot No.2672.

The plaintiff be at liberty as mentioned above to file an appropriate suit in order to get 7 decimal land she purchased from defendant No.1 Sujat Ali out of the property of Sujat Ali.

The learned advocate for the petitioner submits that the plaintiff is entitled to get separate saham for 7 decimal land out of plot No.2672 and in supports of above submissions has referred to the case law

reported in 3 XP (AD) at Page No.1 and 42 DLR (AD) at Page No.1. But the facts and circumstances of above cited cases are quite distinguishable from the facts and circumstances of the case in hand and above cases laws are are not applicable in this particular case.

In above view of the facts and circumstances of the case and materials on record I am unable to find any illegality or infirmity in the impugned judgment and decree of the Court of Appeal below nor I find any substance in this Civil revisional application under Section 115(1) of the Code of Civil procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged. The order of status-quo granted at the time of issuance of the Rule is vacated.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*