

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 2069 OF 2016

WITH

CIVIL REVISION NO. 2070 OF 2016

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Modoris Ali being dead his legal heirs
1(a)-1(d).

--- Plaintiff-Petitioner(s).

-Versus-

Tara Miah and others.

--- Defendant-Opposite Parties
(In C. R. No. 2069 of 2016).

Md. Modoris Ali being dead his legal heirs
1(a)-1(d).

--- Defendant-Petitioner(s).

-Versus-

Tara Miah and others

--- Plaintiff-Opposite Parties
(In C. R. No. 2070 of 2016).

Mr. S.R.M. Lutfur Rahman Akhand, Advocate

--- For the Petitioner(s).

(In both the Civil Revisions).

Mr. Syed Khalaquzzaman, Advocate

--- For the Defendant- O. P. Nos. 1-8
(In C. R. No. 2069 of 2016).

--- For the Plaintiff- O. P. No. 1-7
(In C. R. No. 2070 of 2016).

Heard on: 23.11.2023 and 26.11.2023.

Judgment on: 30.11.2023.

These 2 (two) Rules were issued regarding the self-same property and the parties are also the same, as such, these 2 (two) Rules are taken up analogously for hearing and passing the following judgment and order together.

In the Civil Revision No. 2069 of 2016, at the instance of the present plaintiff-petitioner, Md. Modoris Ali being dead his legal heirs, Md. Arfan Ali and others, the Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1-8 to show cause as to why the impugned judgment and decree dated 03.03.2016 passed by the learned Joint District Judge, Additional Court, Sylhet in the Title Appeal No. 224 of 2011 disallowing the appeal and thereby affirming the judgment and decree dated 28.07.2011 passed by the learned Assistant Judge, Biswanath, Sylhet in the Title Suit No. 175 of 2006 decreeing the suit should not be *set aside*.

In the Civil Revision No. 2070 of 2016, at the instance of the present defendant-petitioner, Md. Modoris Ali being dead his legal heirs, Md. Arfan Ali and others, the Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1-7 to show cause as to why the impugned judgment and decree dated

03.03.2016 passed by the learned Joint District Judge, Additional Court, Sylhet in the Title Appeal No. 223 of 2011 disallowing the appeal and thereby affirming the judgment and decree dated 28.07.2011 passed by the learned Assistant Judge, Biswanath, Sylhet in the Title Suit No. 122 of 2008 decreeing the suit should not be *set aside*.

The relevant facts for disposal of the Rule in the Civil Revision No. 2069 of 2016, *inter alia*, are that the present petitioner as the plaintiff filed the Title Suit No. 307 of 2005 in the court of the learned Assistant Judge, Sadar, Sylhet for permanent injunction in respect of the suit land described in the schedule of the plaint claiming the suit property was originally belonged to Arzodullah and others by an amicable family partition who sold the land to Jobed Ullah on 09.10.1973 who died leaving behind only daughter Nehar Begum, the defendant No. 1 who has been made a party as the defendant No. 1. The said Nehar Begum proposed to sell the suit property to the present plaintiff-petitioner through her appointed attorney Bashidul Haque and the land was transferred by the attorney who executed a sale deed No. 2090 dated 29.02.1996. The plaintiff-petitioner has been in possession by mutating the name in the record of right, as such, the suit land was mutated in his name. The plaint further contains that the

defendants have been trying to dispossess the plaintiff on 07.07.2005 from the suit land.

In the Civil Revision No. 2070 of 2016, at the instance of the defendant-appellant-petitioner, Md. Modoris Ali who died leaving behind his legal heirs who have been substituted as the successors. The relevant facts for disposal of this Rule, *inter alia*, are that the predecessor- opposite party Nos. 1-7 filed the Title Suit No. 122 of 2008 in the court of the learned Assistant Judge, Biswanath, Sylhet praying for a declaration that the power of attorney dated 19.02.1996 against the present plaintiff-respondent-opposite parties praying for a declaration that the execution of a sale deed by the said attorney on 29.02.1996 claiming that the defendant Nos. 1-6 has executed a deed by creating false personification and by registering a power of attorney regarding the suit land in order to grab the land. The plaint further contains that her son Aziz Mostafi Zobed was sent to the Tahshil Office and came to know that the record of right was prepared in the name of the defendant No. 6 through a Saf-Kabala deed No. 2029 dated 29.02.1996 executed pursuant to a power of attorney dated 19.02.1996. The plaint further contains that she neither executed a power of attorney in favour of the defendant No. 1, Tara Miah and others and the attorney executed a sale deed on 29.02.1996

pursuant to the said power of attorney which has been created, forged and ineffective, as such, both the power of attorney and by which executed a sale deed for transferring the land is forged, baseless and ineffective, as such, the above 2 (two) deeds should be canceled or revoked.

From the given facts, it appears that both the Civil Revisions are related to a land measuring 1.50 acres out of total land measuring 2.99 acres situated at Mouza- Salia, J. L. No. 53, Khatian No. 73, Dag No. 1380, Police Station- Sadar, District- Sylhet.

The 2 (two) suits were filed by the 2 different plaintiffs, in the Civil Revision No. 2069 of 2016 the suit was filed seeking for permanent injunction for restraining the defendants from trying to dispossess the plaintiff from the land.

In the Civil Revision No. 2070 of 2016 was filed corresponding to the Title Suit No. 175 of 2006 by the present defendant-petitioner. On the other hand, in the Title Suit No. 122 of 2008 was filed for declaration that the scheduled power of attorney executed in favour of the present petitioner both are false and fabricated. In the above-mentioned conflicting facts, it appears that the case and counter case filed by the parties in order to get relief.

No one appeared to support the Rule when the Rules were taken up for hearing.

Nevertheless, during the hearing of those Rules that have been appearing in the daily cause list with the names of the parties as well as with the names of the learned Advocates. However, Mr. S.R.M. Lutfor Rahman Akhand, the learned Advocate who submitted 2 substitution applications and the legal heirs of the deceased petitioner Md. Modoris Ali who were substituted in both the Rules. However, the learned Advocate appears today praying for hearing him on those Rules on behalf of the petitioner(s) and this court allowed him to make his submission.

Mr. S.R.M. Lutfor Rahman Akhand, the learned Advocate appearing today on behalf of the petitioner(s) submits that both the courts below totally failed to consider that the plaintiff appointed Mr. Basidul Haque as her attorney vide deed No. 1907 dated 19.02.1996 and she transferred the suit land to the defendant No. 6 through her appointed attorney by registered deed being No. 2029 dated 29.02.1996 and handed over the possession in favour of the defendant No. 6 and since then the defendant No. 6 has been possessing the suit land by mutating his name in the record of rights and paying rents to the Government and growing paddy and

other crops without any objection from the plaintiff and also from any quarter.

These 2 (two) Rules have been opposed by the present opposite party Nos. 1-8 in the C. R. No. 2069 of 2016 and opposite party Nos. 1-7 in the C. R. No. 2070 of 2016.

Mr. Syed Khalaquzzaman, the learned Advocate, appearing on behalf of the opposite party Nos. 1-8 in the C. R. No. 2069 of 2016 and opposite party Nos. 1-7 in the C. R. No. 2070 of 2016, submits that the present petitioner as the plaintiff filed the Title Suit No. 175 of 2006 praying for the permanent injunction in respect of the above-mentioned suit land and the present opposite parties filed the Title Suit No. 122 of 2008 for cancellation of the scheduled power of attorney and sale deed executed through the power of attorney, as such, the present opposite parties could prove the entitlement by the present substituted opposite parties upon the death of the original owner Nehar Begum who is the only daughter of plaintiff and both the courts examined the evidence submitted by the respective parties and concurrently came to a conclusion to pass the judgment and decree in favour of the opposite parties by passing a concurrent judgment but the petitioner obtained these 2 Rules by misleading to the court which are liable to be discharged.

The learned Advocate further submits that the plaintiff-opposite party, Nehar Begum deposed in court that she never executed a power of attorney in favour of the petitioner, as such, the said power of attorney was created by false personification and the sale deed cannot have any validity in the eye of the law, as such, the present plaintiff-petitioner could not prove its title and possession upon the suit land, as such, the Rules are liable to be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties in both the Rules and also considering the revisional applications filed under section 115(1) of the Code of Civil Procedure against the concurrent judgment and decree passed by the learned courts below along with the annexures therein, in particular, the impugned judgment and decree passed by the lower courts below and also perusing the essential materials available in the lower courts records, it appears to this court that the petitioner filed the title suit praying for a permanent injunction upon the suit land restraining the opposite parties from dispossessing him from the suit land. It further appears that the predecessor of the substituted opposite parties filed a title suit for cancellation of the power of attorney and the

execution for transferring the suit land in favour of the present petitioner.

In the above given factual aspects, I have carefully examined the suits filed by the parties that have been examined by the courts below analogously and came to a conclusion to decree the Title Suit No. 122 of 2008 and dismissed the Title Suit No. 175 of 2006. Accordingly, the present petitioner(s) as the plaintiff(s) could not prove its own case before the learned trial court and dismissed the Title Suit No. 175 of 2006 and also the same court decreed the Title Suit No. 122 of 2008.

Being aggrieved the present petitioner preferred 2 appeals before the learned District Judge, Sylhet against the judgment and decree passed by the learned trial court and the said appeals were heard by the learned Joint District Judge, Additional Court, Sylhet. The learned Joint District Judge, Additional Court, Sylhet after hearing the parties in both the cases analogously disallowed both the appeals and affirmed the judgment and decree of the learned trial court. Being aggrieved, these 2 revisional applications have been filed and obtained these 2 Rules.

In view of the above, these 2 Rules have been taken up for hearing together by this court and found that the learned trial court committed no error of law by dismissing the title suit filed by the

present plaintiff-opposite parties and the plaintiff-petitioner regarding the permanent injunction prayed by the present plaintiff-petitioner for restraining the opposite parties to enter or dispossess the petitioner. The settled principle of law is that the plaintiff sought for a permanent injunction but the present petitioner could not prove its possession by deposition of the PWs who made some inconsistent depositions to support the cases of the present petitioner, as such, the present petitioner could not prove his possession on the suit land, as such, the present petitioner could not get a relief sought by the petitioner in the courts below, as such, both the courts below concurrently found that the present petitioner was required to prove its actual possession upon the suit land in order to get a permanent injunction. On the other hand, the predecessor of the opposite parties deposed before the court that she never executed any power of attorney in favour of the present petitioner.

The learned Advocate for the petitioner put forward an argument that the petitioner has been in possession of the suit land after purchasing through the power of attorney. In this regard, I have examined the documents including the mutation in favour of the present petitioner.

I consider that only mutation for record of right is not sufficient if a party cannot prove as to the possession by adducing and producing the documentary evidence and the PWs and DWs in support of the possession by him. I have also carefully examined the concurrent findings of the learned courts below, in particular, the judgment of the learned appellate court below. I found that the learned courts below committed no error of law by examining the documents and evidence.

Now, I am going to examine the findings of the learned courts below in order to examine the legality and propriety of the judgments and decrees of the learned courts below.

The learned trial court below did not commit any error of law by passing the judgment and decree against the present petitioner on the basis of the possession and execution of the power of attorney and a sale deed therefrom have been declared not effective upon the predecessor of the opposite parties. The learned trial court below came to a conclusion to find both cases in the following terms and dismissed the suit on the basis of the following findings which reads as follows:

....“উপরন্ত ডি.ডব্লিউ. ১ তার জবানবন্দীতে ১৫/১৬ বছর যাবৎ বিবাদী নালিশা ভূমি ভোগদখল করিম মর্মে উল্লিখ করলিও তার জেরায় বলিন যে, “নালিশা জায়গা বহু দিন যাবৎ চিনি। বুঝ হওয়ার পর থেকে

মদরিছ আলীকি দখল করিত্ত দেখি।” এক্ষেত্রে উল্লেখ্য যে, ডি.ডব্লিউ. ২ জবানবন্দীকাল তার বয়স ৪৮ বছর হিসাবি উল্লেখ করাছন। কাজিই ডি.ডব্লিউ. ২ এর জবানবন্দী ও জেরার বক্তব্য পরস্পর বিরোধী ও সাংঘর্ষিক। এছাড়া, ডি.ডব্লিউ. ২ ও ডি.ডব্লিউ. ৩ উভয়ই নালিশা ভূমি চেনিন মর্মা দাবী করলিও ডি.ডব্লিউ. ২ তার জেরায় বলিন যে, “নালিশা জায়গা একখন্ড” এবং ডি.ডব্লিউ. ৩ তার জেরায় বলিন “নালিশা জায়গা কয়টি খন্ডে বিভক্ত আমার জানা নাই। অনুমান ৬/৭ খন্ড হইবি।” অতএব দেখা যায় যে, ডি.ডব্লিউ. ২ ও ডি.ডব্লিউ. ৩ পরস্পর বিরোধী। এমতাবস্থায় অত্র আদালতের অভিমত এই যে, বাদীনী নালিশা ভূমিত্ত তার দখল প্রমাণ সক্ষম হয়ছন এবং বিবাদী নালিশা ভূমিত্ত তা দির দখল প্রমাণ ব্যর্থ হয়ছন।”....

The learned appellate court below also came to a concurrent finding regarding the title upon the suit land to affirm the judgment passed by the learned trial court below on the basis of the following findings:

....“এই আলীচনার প্রেক্ষিত্ত বাদী/রিসপনডেন্ট নেহার বেগম ১৯/০২/১৯৯৬ ইং তারিখর ১৯০৭ নং আমমোক্তারনামা উপযুক্ত মৌখিক ও দালিলীক সাক্ষ্যর মাধ্যম প্রমাণ করিত্ত সক্ষম হয়ছন বলা যায়। যেহিত্ত এই তর্কিত আমমোক্তারনামাটি জাল প্রমাণিত হয়েছে সে হিসেবে উক্ত কথিত আমমোক্তারনামা বলে নিয়োগকৃত আমমোক্তার কর্তৃক সম্পাদিত ২৯/০২/১৯৯৬ ইংরাজী তারিখর ২০২৯ নং কবলাও জাল মর্মা প্রতীয়মাণ হচ্ছে। এমতাবস্থায় উপরোক্ত আলীচনা থেক এই সিদ্ধান্ত উপনীত হওয়া যায় যে, বিজ্ঞ বিচারিক আদালত পক্ষগণের উপস্থাপিত সাক্ষ্য সঠিক ও যথার্থ ভাবি পর্যালীচনা করি সঠিকরায় প্রদান করাছন।”....

In view of the above concurrent findings by the learned appellate court below affirming the judgment of the learned trial

court to dismiss the appeals filed by the present petitioner to decree the suit filed by the predecessor of the present opposite parties. Therefore, I am of the opinion that the learned trial court carefully considered the evidence adduced and produced by the parties by way of documentary evidence and oral evidence by way of depositions, thus, the learned trial court committed no error of law to reach his conclusion. The learned appellate court below also considered and examined the evidence of the parties and came to a lawful concurrent finding in both the appeals preferred by the respective parties. I, therefore, do not find that the learned appellate court below committed any error of law by non-considering or misreading any evidence, as such, these 2 (two) Rules are not proper for interference by this court. I am, therefore, not inclined to interfere upon the judgment and decree passed by the learned courts below, therefore, these 2 Rules do not require any further consideration.

Accordingly, I do not find merit in the Rules.

In the result, the Rules issued by this court upon the Civil Revision No. 2069 of 2016 and also in the Civil Revision No. 2070 of 2016 are hereby discharged.

The concurrent judgment and decree dated 03.03.2016 passed by the learned Joint District Judge, Additional Court,

Sylhet in the Title Appeal No. 223 of 2011 (analogously heard with the Title Appeal No. 224 of 2011) disallowing the appeals and thereby affirming the judgment and decree dated 28.07.2011 passed by the learned Assistant Judge, Biswanath, Sylhet in the Title Suit No. 175 of 2006 (analogously heard with the Title Suit No. 122 of 2008) decreeing the suits be upheld.

The interim order of *status quo* passed at the time of issuance of the Rule in the Civil Revision No. 2069 of 2016 in respect of the possession and position of the suit land as well as the interim order of stay passed at the time of issuance of the Rule in the Civil Revision No. 2070 of 2016 and subsequently both are extended from time to time and lastly the same were extended till disposal of the Rules are hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower courts records along with a copy of this judgment and order to the concerned courts below immediately.