

In the Supreme Court of Bangladesh

High Court Division

(Civil Revision Jurisdiction)

Present:

Mr. Justice Jahangir Hossain

Civil Revision No. 3641 of 2008

In the matter of :

An application under section 115(4) of the
Code of Civil Procedure

And

In the matter of :

Sayed Md. Nurul Islam Miazi and others

.....for the Petitioners

-Versus-

Tajol Islam and another

.....for the opposite parties

No one appears

.....for the petitioners

Mr. Minhazul Hoque Chowdhury, Advocate

.....for the opposite party Nos. 1 and 2

Judgment on 05.11.2020

The Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 22.06.2008 of the learned Additional District Judge, Laxshampur in Civil Revision No. 29 of 2008 affirming that dated 15.05.2006 of the Senior Assistant Judge, Additional Court, Lakshampur of Title Suit No. 74 of 1990 should not be set aside or pass such other or further order or orders as to this Court may seem fit and proper.

The relevant fact for disposal of the rule in a nutshell is that the petitioners as plaintiffs filed a Title Suit vide No. 74 of 1990 before the Senior Assistant Judge, Additional Court, Lakshampur seeking permanent injunction against

defendant Nos. 1-5 in respect of 66 decimals of land in D.S Plot No. 385 and 28 decimals on the western part of D.S Plot No. 386 as well as recovery of possession on declaration of title against the said defendants in respect of 48 decimals of land on the eastern part of plot No. 386 appertaining to D.S. Khatian No. 35 of Mouza Nandanpur as shown in the schedule to the plaint.

The plaintiffs claimed in their plaint that their predecessors took settlement of the suit land along with some other land by two registered kabuliyats being Nos. 1478 dated 09.04.1892 and 1263 dated 11.04.1893. The opposite party Nos. 1 and 2 as defendant Nos. 3 and 4 in their statements denied the identity between the suit land and the land of the aforesaid kabuliyats.

During pendency of the suit the learned trial judge suo moto passed an order on 19.04.1992 for holding local investigation to ascertain as to whether the suit-land is attracted by the boundaries as mentioned in the aforesaid kabuliyats, and for this purpose a commission was issued to Mr. Makhon Lal Saha, a survey knowing Advocate-commissioner. After holding local investigation, the learned Advocate commissioner submitted report on 17.01.1993 wherein he opined that the suit-land was attracted by the kabuliyats.

Learned Judge of the trial court after considering the report and hearing the parties rejected the report by his judgment and order dated 15.05.2006 stating that the report submitted by the Advocate commissioner was not in accordance with the writ.

Being aggrieved by and dissatisfied with the said order, the plaintiffs filed Civil Revision No. 29 of 2006 in the court of District Judge, Lakshmipur. Subsequently, the said Civil Revision was heard by the learned Additional District judge, Lakshmipur who dismissed the same by his judgment and order dated 22.06.2008. Having no option in hand the plaintiff-petitioners filed an application

before this court under section 115(4) of the Code of Civil Procedure and obtained the present Rule with an order of stay for a period of 02[two] months by order dated 19.10.2008. The order of stay was further extended from time to time.

When the matter is taken up for hearing no one stands in support of the Rule. However, Mr. Minhazul Hoque Chowdhury, learned Advocate by filing counter-affidavit for and on behalf of the opposite party No. 01 contends that the trial court suo-moto passed an order for holding local investigation to know the actual boundary of the suit land. But the Advocate commissioner did not serve any notice upon the defendant-opposite parties before holding the local investigation rather he submitted an investigation report stating that the ownership of the land in question and the suit land is attracted by a single kabuliyat. Learned Advocate finally submits that both the courts below rightly rejected the commissioner's local investigation report and the plaintiff-petitioners failed to show the important question of law in the application as required under section 115(4) of the Code of Civil Procedure. So, the Rule issued by this court may kindly be discharged.

Heard the submissions of the learned Advocate for the opposite party No. 01, perused the impugned judgment and order, order of the trial court and other connected documents on records wherefrom it transpires that the plaintiff-petitioners filed Title Suit No. 74 of 1990 in the Court of Senior Assistant Judge, Lakshmipur for permanent injunction. During pendency of the suit, the learned trial judge Suo Moto passed an order on 19.04.1992 for holding local investigation to ascertain whether the suit land is attracted by the boundaries as mentioned in both the kabuliyats. In pursuant to the aforesaid order, the trial court appointed Mr. Makhon Lal Saha, learned Advocate for holding local

investigation as per writ. On perusal of the records it reveals that before holding local investigation a notice was served upon the defendant-opposite party through plaintiff but there is no scope in law to serve a notice in this manner. In the local investigation report learned Advocate commissioner made remark regarding title of the disputed land which is absolutely beyond his jurisdiction. More so, in reply of cross examination he categorically admitted that “রিতে ২টি কবুলিয়ত ভাড়ানোর নির্দেশ ছিল। প্রতিবেদনে কবুলিয়ত দুইটি পৃথক পৃথক ভাবে চিহ্নিত করিনি। যেহেতু দুটি কবুলিয়তের চৌহদ্দি একই সেহেতু আলাদা আলাদা আর প্রতিবেদনে উল্লেখ করি নাই। উভয়ই কবুলিয়তের জমি একই কি না বলতে পারি না। উভয় কবুলিয়তের মনিবের কথা প্রতিবেদনে উল্লেখ করি নাই”

However, the plaintiff-petitioner obtained the instant Rule upon filing an application under section 115(4) of the Code of Civil Procedure as second revision wherein this court can only see whether there is an error of law of an important question of law resulting in erroneous decision occasioning failure of justice involved.

Having gone through the application filed under section 115(4) of the Code of Civil Procedure, this Court does not find any ground taken by the petitioner regarding any error of law of an important question of law committed by both the courts below in passing the impugned judgment and order as well as order of the trial court. Hence, this Court finds no merit in the Rule.

Accordingly, the Rule is, hereby, discharged and the order of stay, granted earlier by this Court stands vacated.

Let a copy of this judgment and order be communicated to the concerned court below at once.

[Jahangir Hossain,J]