

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

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Civil Revision No. 1843 of 2005

In the matter of:

An application under Section 115(4) of the Code of
Civil Procedure, 1908

And

In the matter of:

Shuvash Chandra Ghosh and others.

--- Plaintiffs-petitioners.

-Versus-

Dulal Chandra Ghosh and others

--- Defendants-opposite parties.

None appears

--- For the petitioners.

Not represented

--- For the opposite parties.

Heard on 12.08.2024

Judgment on: 13.08.2024

Md. Bashir Ullah, J

At the instance of the plaintiffs in Title Suit No. 10 of 2000, this Rule was issued calling upon the opposite party nos. 1-2 to show cause as to why the judgment and order dated 17.04.2005 passed by the learned District Judge, Satkhira in Civil Revision No. 12 of 2005 dismissed the said revision and affirming the order dated 06.02.2005 passed by learned Joint District Judge, First Court, Satkhira, in the said suit rejecting an application for stay should not be set aside and/or such

other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court stayed all further proceedings of Title Suit No. 10 of 2000 and 34 of 2001 pending in the Court of learned Joint District Judge, First Court, Satkhira for a period of 06(six) months, which was subsequently extended time to time and it was lastly extended till disposal of the Rule on 06.02.2006.

Facts, relevant for the disposal of the Rule, are:

Opposite-party nos. 1, 2 and 7 as plaintiffs filed Title Suit No. 36 of 1999 in the Court of the Assistant Judge, Tala, Satkhira impleading the Government of Bangladesh, represented by the Deputy Commissioner, Satkhira and 5 others for declaration of title of 0.48 acres of land under District-Satkhira, Police Station-Tala, Mouza-Mirjapur, Khatian no. 436, Plot nos. 756, 1227 and 1209. The petitioners were not impleaded in the said suit and the suit was decreed on 27.04.2000 in favour of the opposite party nos. 1, 2 and 7 of the instant revision.

Feeling aggrieved by the judgment and decree dated 27.04.2000, the petitioners as plaintiffs filed Title Suit No. 10 of 2000 before the learned Subordinate Judge, First Court, Satkhira impleading the opposite parties as the defendants praying for declaration of title over 'kha' scheduled land described in the plaint and further declaration that, the judgment and decree dated 27.04.2000 passed in Title Suit no. 36 of 1999 is illegal, void, fraudulent and not binding upon the plaintiffs. In the plaint, the plaintiffs claimed that, the defendants obtained the decree by showing deed no. 2602 dated 02.03.1961 which is forged one. It is

stated that, the predecessor of the plaintiffs Raju Bala acquired the suit land through settlement from the Government by Settlement Case No. 01 of 62-63. Subsequently, the plaintiffs inherited the suit land after the death of Raju Bala. The plaintiffs have been maintaining ownership and possession in the suit land for over 12 years.

Challenging the judgment and decree passed in Title Suit No. 36 of 1999, the Government-opposite party Nos. 3-4 also filed Title Appeal No. 121 of 2000 before the learned District Judge, Satkhira. Upon hearing the parties, the learned District Judge, Satkhira dismissed the appeal. Against the judgment, the Government preferred Civil Revision No. 55 of 2004 before the High Court Division in which Rule was issued and records of the lower courts were called for.

The opposite party Nos. 1-2 as plaintiffs filed another Title Suit No. 46 of 2000 in the Court of Assistant Judge, Tala, Satkhira for declaration of title with a further declaration that, the inclusion of the suit land as vested property is illegal and fraudulent and not binding upon the plaintiffs. The suit was transferred to the Court of the Joint District Judge, First Court, Satkhira, wherein the suit was registered as Title Suit No. 34 of 2001. The plaintiffs in Title Suit No. 34 of 2001 claimed that they purchased 0.96 acres of land by registered deed no. 2602 dated 02.03.1961 and have been possessing the land.

The plaintiffs prayed for analogous hearing of Title Suit No. 10 of 2000 with Title Suit No. 34 of 2001, claiming that the suit land in both the suits are same. Upon hearing, the trial court allowed the application

for analogous trial of Title Suit No. 10 of 2000 with Title Suit No. 34 of 2001.

During the trial on 04.01.2004, the petitioners filed an application for stay of the further proceedings of Title Suit No. 10 of 2000 and Title Suit No. 34 of 2001 till disposal of the Civil Revision No. 55 of 2004 since the High Court Division has called for the lower court's record. The trial court rejected the prayer for stay by order dated 06.02.2005. Challenging the aforesaid order dated 06.02.2005, the petitioner filed Civil Revision no. 12 of 2005 before the Court of the District Judge, Satkhira. Upon hearing, the learned District Judge dismissed (নামঞ্জুর) the Civil Revision on 17.04.2005.

Being aggrieved by and dissatisfied with the judgment and order dated 17.04.2005 passed by the District Judge, Satkhira in Civil Revision No. 12 of 2005 the petitioner preferred the instant Civil Revision and obtained this Rule and order of stay.

It is stated that, the petitioner filed the suit for declaration of title and for further declaration that, the judgment and decree passed in Title Suit No. 36 of 1999 is illegal, void, fraudulent and not binding upon the parties. The said case record has been called for by the High Court Division in Civil Revision No. 55 of 2004. The record of Title Suit No. 36 of 1999 is necessary for the disposal of the suit but the same will not be available until Civil Revision No. 55 of 2004 is disposed of. As such the further proceedings of Title Suit No. 10 of 2000 and 34 of 2001 are required to be stayed and hence, the courts below committed an error of law resulting in an error in the decision occasioning failure of justice.

The instant revision was sent to this Court by the Honourable Chief Justice for disposal, but none appeared to support or oppose the rule though the matter has been appearing in the list for several days with the name of the learned counsel.

We have perused the Civil Revision, impugned judgment and order and other materials on record.

The record shows that, the opposite party Nos. 1-2 instituted Title Suit No. 36 of 1999 before the Assistant Judge, Tala Court, Satkhira and obtained judgment and decree on 27.04.2004. Challenging the judgment and decree dated 27.04.2004, the Government-the opposite party Nos. 3-4 filed Title Appeal No. 121 of 2000. Upon hearing, the learned District Judge, Satkhira dismissed the appeal. Feeling aggrieved, the Government preferred Civil Revision No. 55 of 2004 before the High Court Division and obtained rule, which is still pending.

During trial, the petitioners-plaintiffs in Title Suit No. 10 of 2000 filed an application for stay of the proceedings of Title Suit No. 10 of 2000 and 34 of 2001. Upon hearing, the learned Joint District Judge, First Court, Satkhira rejected the application on 31.05.2004 vide order No. 62. Thereafter, the plaintiffs again filed another application on 04.02.2004 on the identical issue. Upon hearing, the learned Joint District Judge, First Court, Satkhira rejected the application on 06.02.2005 vide order No. 69, holding that the self-same matter was disposed of on 31.05.2004. Challenging the order dated 06.02.2005, the petitioners-plaintiffs filed Civil Revision No. 12 of 2005 before the learned District Judge, Satkhira. Upon hearing, the learned District

Judge, Satkhira rejected the civil revision on 17.04.2005 affirming the order dated 06.02.2005, passed by the Joint District Judge, First Court, Satkhira holding that প্রত্যেক মামলা তার নিজস্ব গুণাগুণ বিচারে নিষ্পত্তি হইবে। জনৈক দুলালের মামলার প্রেক্ষিতে মহামান্য হাইকোর্টে সিভিল রিভিশন ৫৫/২০০৫ বিচারাধীন থাকায় অন্য দুইটি মামলা স্থগিতের কোন অবকাশ নাই। আর যদি দুলালের মামলায় রিভিশনকারীরা পক্ষ হইয়া থাকে তবে মহামান্য হাইকোর্ট হইতেই তাহাদের স্থগিত আদেশ আনিতে হইবে।

It also appears that the petitioners were not party in Title Suit No. 36 of 1999. The suit was filed against the Government and the Government filed an appeal and when the appeal was dismissed, the Government preferred Civil Revision No. 55 of 2004 before this Court. Moreover, earlier the petitioners did not file any appeal or revision before the appropriate Court against order no. 62 dated 31.05.2004 passed by the learned Joint District Judge, First Court, Satkhira.

It appears from order no. 69 dated 06.02.2005, passed by the Joint District Judge, First Court, Satkhira that the plaintiff-petitioner failed to submit the order of stay passed by the High Court Division and in that regard he prayed for exempting him from submitting the order of stay. Moreover, if the plaintiffs-petitioners are aggrieved by the judgment and decree dated 27.04.2000, passed in Title Suit No. 36 of 1999, in that case they can try to be added as party in Civil Revision No. 55 of 2004, pending before the High Court Division showing their interest in the suit land and obtain order of stay if they have merit in their application.

Regard being had to the above facts and circumstances, we do not find any substance in the Civil Revision and the same is not sustainable in the eye of law.

We find that the lower revisional Court committed no error of an important question of law, resulting in an erroneous decision occasioning failure of justice in rejecting the civil revision and affirming the order dated 06.02.2005 passed by the Joint District Judge, First Court, Satkhira in Title Suit No. 10 of 2000.

Accordingly, the rule is discharged, however without any order as to cost.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

The learned Joint District Judge, First Court, Satkhira is hereby directed to proceed with Title Suit Nos. 10 of 2000 and 34 of 2001 and dispose of the same as expeditiously as possible, preferably within 06(six) months from the date of receipt of the copy of this judgment.

Let a copy of this judgment be communicated to the court concerned forthwith.

Md. Mozibur Rahman Miah, J.

I agree.

Md. Ariful Islam Khan
Bench Officer