

Present;

**Mr. Justice Md. Rezaul Hasan.**

**Civil Revision No. 2334 of 2011.**

Abdur Rahman Khan and others.  
.....Plaintiff-Respondent-Petitioners.

-Vs-

Government of Bangladesh.  
..Defendant-Appellant-Opposite Party.

Mr. Muhammad Jamiruddin Sircar with  
Mr. Md. Zahirul Islam with  
Mrs. Sahida Irin, Advocates.

.....For the petitioners.

Mr. Md. Giasuddin Ahammad, D.A.G.  
Mr. Md. Shahabuddin Ahmed, A.A.G. with  
Mr. Md. Shaifour Rahman Siddique, Advocate.  
...For the Opposite Party.

**Heard on 22.08.2023, 16.10.2023, 18.10.2023,**

**19.10.2023 and Judgment on 16.11.2023.**

**Md. Rezaul Hasan, J.**

This Rule has been issued calling upon the Opposite Party, to show cause as to why the impugned judgment and decree dated 03.02.2011 (decree signed on 08.02.2011), passed by the Joint District Judge, 1<sup>st</sup> Court, Rajbari, in Title Appeal No.104 of 2007, allowing the appeal and thereby reversing the judgment and decree dated 08.08.2007 (decree signed on 12.08.2007), passed by the Assistant Judge (In charge), Goalanda, Rajbari, in Title Suit No. 33 of 2006, partly decreeing the suit, should not be set-aside and/or pass such other order or orders passed as to this Court may seem fit and proper.

2. Facts, relevant for disposal of this Rule, in brief are that, one Abdur Rahman Khan and 4 others, had filed Title Suit No. 33 of 2006, before the Assistant Judge, Goalanda, Rajbari, against the Government of

Bangladesh, represented by the Deputy Commissioner, Rajbari, alleging amongst other that, the property described in schedule to the plaint belonged to one Foyjuddin Sheikh and others of R.S. Plot No. 3206 of R.S. Khatian No. 771 of Mouza Uttor Uzanchar, P.S. Goalanda, Rajbari, and has been recorded in the name Foyjuddin Sheikh as *Rayot* to the extent of 8 annas share. Thereafter, during S.A. operation, the name of Foyjuddin Sheikh has been recorded as one of the tenants for 8 annas share in the suit property described schedule No. "Ka" including the suit Plot No. 3206, vide S.A. Khatian No. 772 of Mouza Uttor Ujanchar, P.S. Goalanda, Rajbari. It has also been stated that, Abdus Satter Sheikh, son of Foyjuddin Sheikh having succeeded to his father's property he has sold 8 ¼ decimals of land to Md. Abdur Rahman Khan, vide deed No. 2021 dated 01.12.1986 (Ext. 10). He has also sold 16 ½ decimals of land to Md. Abdul Motin Miah, vide deed No. 1946 dated 22.11.1986 (Ext. 9). He next sold 14 ½ decimals of land to Abdul Mojid Sheikh and his wife Jorina Begum, vide deed No. 704 dated 28.05.1990 (Ext. 7). He also sold 5 ½ decimals of land to the plaintiff No. 4 Bisha Sikder @ Bishu Sikder and, vide deed No. 2023 dated 01.12.1986 and he also sold 1 ½ decimals of land to Bisha Sikder, vide deed No. 341 dated 15.03.2003 (Ext. 5 and 6), respectively. It has also been stated that, the purchaser Afsar Ali Mollah has sold 8 ¼ decimals of land to the plaintiff No. 5 Md. Helal Uddin Miah, vide deed No. 915 dated 27.05.1999 (Ext.8) and that total 41 decimals of land out of 1.40 acre of land of R.S. Khatian No. 771 corresponding to S.A. Khatian No. 772 of the said Mouza. It has further

been stated that, the Government has illegally recorded this R.S./S.A. Plot No. 3206 in its name in khas Khatian No. 1 during B.S. operation as B.S. Plot No. 2510 and 2511 of Mouza Goalanda Ghat. Therefore, they have prayed for declaration of title in the suit property

3. The defendant No. 1 i.e. the Government contested in the suit by filing written statements in which it has been stated that, the entire 41 decimals of land, lying at S.A. Plot No. 3206 of S.A. Khatian No. 772, was submerged into the river Padma in the natural course and subsequently reappeared in the said site. Thereafter, the said property of the S.A. Plot No. 3206 has been vested in the name of the Government as per provision of P.O. 135 of 1972 and has been recorded in the khas khatian No. 1 of the Mouza Goalanda Ghat as B.S. Plot No. 2510 and 2511. Therefore, the previous S.A. record has no existence and the Government has rightly recorded the same and the plaintiffs have no right, title in the suit property. It has prayed for dismissal of the suit.
4. The plaintiffs adduced 4 witnesses namely, P.Ws. 1-4 and produced certain documents which were marked as exhibit 1-10. On the other hand, the defendant's side adduced one witness namely, Md. Rashedul Hossen as D.W. 1, who is the employee of the concerned Union Land Office. He has produce and proved attested Photocopy of B.S. Khatian No. 1 in which B.S. Plot No. 2510 and 2511 that arises out of S.A. Plot No. 772, have been recorded in the name of the Government.

5. The trial court, after hearing the parties and having assessed the evidence on record, by its judgment and decree dated 08.08.2007 (decree signed on 12.08.2007), partly allowed the suit.
6. Against the said judgment and decree of the trial court, the Government has preferred Title Appeal No.104 of 2007, before the District Judge, Rajbari, which was heard by the Joint District Judge, 1<sup>st</sup> Court, Rajbari, who being the Appellate Court, has passed the impugned judgment and decree, allowing the appeal and thereby reversing the judgment and decree of the trial court, vide its judgment and decree dated 03.02.2011 (decree signed on 08.02.2011).
7. Being aggrieved by and dissatisfied with the judgment and decree of the Appellate Court, the plaintiffs -respondent-petitioners filed this application under section 115(1) of the Code of Civil Procedure, 1908, and obtained the present Rule.
8. Learned Advocates Mr. Muhammad Jamiruddin Sircar, Mr. Md. Zahirul Islam with Mrs. Sahida Irin appeared for the petitioners. They, having placed the petition, along with the materials on record, mainly submits that, the plaintiffs have proved their case and that the property is originally belonged to Foyzuddin Sheikh and his name has been recorded in R.S. Khatian No. 771 corresponding to S.A. Khatian No. 772 of Mouza Uttor Uzanchar, P.S. Goalanda, District-Rajbari. They also submit that, the plaintiffs having filed and proved their respective title deeds in respect of their title which were duly marked as Exhibit Nos. 5, 6, 7, 8, 9 and 10 out of which exhibit No. 9 is the *bia* deed filed in support of the title of

Md. Abdul Mozid and his wife Jorina Begum. They also submit that the plaintiffs have also filed and proved 8 sets of *Khazzna Dakhilas* in their names (Ext. 3 series) and Municipality Tax receipts exhibit 4. They further submit that, the P.W. Nos. 1, 2 and 4 have supported the case of the plaintiffs by corroborating each other whereas, the P.W. 3 Abdus Satter Sheikh, son of Foyzuddin Sheikh also supported the case of the plaintiffs. On the other hand, the D.W. 1 could not file any paper to show that the suit property was ever merged into the river Padma. Moreover, all the witnesses have supported the case of the plaintiffs that they were in possession and the D.W. 1, during his cross examination has admitted that, the river Padma was 5 / 6 K.M. far from the suit property and during tenure in the office, he has not seen any erosion for merging the suit property in the said river. Therefore, they submit, the appellate court ought to have dismissed the appeal and that the suit property belonged to the plaintiffs. But, the appellate court without at all considering the evidence on record as the last court of fact has allowed the appeal on technical ground that in schedule No. "Kha", the S.A. Khatian No. 172 is wrong. The learned Advocates further submit that, this is simply typing mistake, but they submit that the suit Plot No. 3206, lying at S.A. Khatian No. 772 (Ext. 2) has been admitted by the defendant in its written statement. The appellate court, in passing the impugned judgment and decree, has failed to appreciate the facts and law involved in this case and thereby it has committed error of law resulting in error in the decision occasioning failure of justice. Hence, the impugned judgment and decree

is liable to be set aside and, therefore, this Rule has merit and the same may kindly be made absolute by decreeing the suit.

9. On the other hand, the learned D.A.G. Mr. Md. Giasuddin Ahammad, Mr. Md. Shahabuddin Ahmed Tipu, A.A.G. and Mr. Md. Shaifour Rahman Siddique, A.A.G, have appeared on behalf of the opposite party Government of Bangladesh. The learned D.A.G. submits that, the trial court has found title in 7 decimals of land of plaintiff No. 4, however, the other plaintiffs did not file any appeal against the judgment of the trial court. Therefore, the appellate court in the absence of the other plaintiffs was not concerned and so far the plaintiff No. 4, in respect of 7 decimals of land was concerned. He next submits that, the suit property sold by Abdus Satter Sheikh son of Foyzuddin Sheikh is counted together with 38 decimals of land whereas, the plaintiffs claimed 41 decimals of land. Therefore, the plaint should have given boundary in as much as the property of the suit plot was not claimed by the plaintiffs. Therefore, the judgment and decree of the appellate court was absolutely correct and lawful and was based on evidence on record. Hence, the impugned judgment and decree passed by the appellate court may kindly be upheld and the Rule has no merit and the same may kindly be discharged.
10. I have heard the learned Advocates for the petitioners, the learned D.A.G. for the opposite party and also perused the application for revision, lower Court's record as well as the judgment of both the Courts below and other materials maintained in the lower court's record.

11. I am of the opinion that, the appellate court, as the last court of fact, ought to have assessed the evidence on record after framing the appropriate issues.
12. It is evident from the record that, in R.S. Khatian No. 771 of Mouza Uttor Uzanchar, name of Foyzuddin Sheikh has been recorded as co-sharer to the extent of 8 annas share as *Riyot* in total 1.40 acre of land and the suit Plot No. 3206 is also recorded in the S.A. Khatian No. 772. Similarly, in the said Mouza, 8 annas property has been recorded in the name of Foyzuddin Sheikh in total 1.40 decimals of land of this Khatain and that also records the suit Plot No. 3206.
13. On the other hand, in the written statement of the Government as well as the deposition of D.W. 1, has admitted that the B.S. Plot Nos. 2510 and 2511 have been recorded in B.S.. Khatian No. 1 of the said Mouza has come from S.A. Khatian No. 772.
14. This being the admitted position, the court below ought to have found that, the suit property being R.S./S.A. Plot No. 3206 belonged to Foyzuddin Sheikh, who is the predecessor of Abdus Satter Sheikh.
15. Besides, it is not disputed by any of the parties that Abdus Satter and his brother have inherited the suit property from their father, the recorded owner Foyzuddin Sheikh.
16. It is totally a different question as to whether the suit property was ever merged, or not, into the river Padam as claimed by the defendant.
17. The appellate court ought to have decided as to whether the plaintiffs have acquired good title and whether they were in possession of the suit

property with reference to the exhibited documents and the issues of their possession of the suit property and as per the documents like *Khazna Dakhalias*. But, the issue has not been framed, nor has discussed.

18. The next issue is to be framed by the appellate court whether the property has been ever merged into river Padma which has not also been decided. The appellate court only has given focus on schedule “Kha” of the plaint, where apparently S.A. Khatian has been wrongly typed. In spite of that, the plaintiffs had an opportunity to file an application in order to correct the schedule “Kha” of the plaint.
19. The last question is whether the appellate court can decide all these issues, including the issues of title and interest of the respondents, who did not prefer any appeal. The provisions of Order 41 Rule 33 of the Code of Civil Procedure are relevant to answer this, which reads as follows:-
 

Rule 33. The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.
20. **Therefore, the law is clear that, the appellate court has power to decide the case as a whole, although the appeal has been preferred only against part of the decree or by some of the parties. This power can, however, be exercised to settle the rights and title of all the parties to the suit, even though some of them had not preferred an**



**appeal or cross-objection, inspite of having scope for the same. In other words, entire decree is liable to be judicially scrutinized by the appellate court, in the light of the pleadings and the evidence led before the trial court, since an appeal is continuation of the original suit.**

21. The question as to whether giving no boundary of the schedule “Kha” was fatal in this case. The plaintiffs have claimed the entire 41 decimals of land of S.A. Plot No. 3206 of Mouza Uttor Uzanchar, P.S. Goalnanda, District- Rajbari.
22. If the plaintiffs claim 41 decimals of land of Plot No. 3206, then boundary was not necessary, but even if a small portion is left then the boundary will be required, but that can be corrected at any stage.
23. Considering all the facts and circumstance, I am of the opinion that, the title of Foyzuddin Sheikh in R.S./S.A. Plot No. 3206 has been clearly proved by the evidence on record. However, the appellate court, as the last court of fact, had power to decide the case in its entirety in view of the provisions of law discussed above and in the light of the oral and documentary evidence on record placed before the trial court. As such, I find that this is a fit case to send back to the appellate court on remand so that the parties can rectify the errors.
24. The learned Advocate for the petitioner during his submission pointed out that, they have purchased 2 decimals of land from Abdus Satter Sheikh, in the suit Plot and the plaintiffs were in possession of entire 41 decimals of the suit property, though, inadvertently omitted in the plaint.

25. In view of the foregoing discussions, I sent back the case to the appellate court to frame necessary issues and to decide as to whether Foyzuddin Sheikh was the owner of entire 41 decimals of land, recorded in S.A./R.S Plot No. 3206. The appellate court is further directed to frame issue as to whether the plaintiffs have derived any title in the suit property by virtue of the documents placed and proved before the trial court. Besides, the appellate court should also decide as to whether the suit property was ever merged into the river Padma and it should record its decision and to take additional evidence, if necessary.
26. With the observations, made above, this Rule should be disposed of.

### **ORDER**

In the result, the Rule is disposed of.

The impugned judgment and decree dated 03.02.2011 (decree signed on 08.02.2011), passed by the Joint District Judge, 1<sup>st</sup> Court, Rajbari, in Title Appeal No.104 of 2007, allowing the appeal and thereby reversing the judgment and decree dated 08.08.2007 (decree signed on 12.08.2007), passed by the Assistant Judge (In charge), Goalanda, Rajbari, in Title Suit No. 33 of 2006, is hereby set aside.

The case is sent back on remand to the appellate court to frame and decide the following issues, in the light of the observation made above, namely,

- (1) whether Foyzuddin Sheikh was the owner of entire 41 decimals of land, recorded in S.A./R.S Plot No. 3206,
- (2) whether the plaintiffs have derived title in the suit property by virtue of the documents placed and proved before the trial court,

(3) whether the suit property was ever merged into the river Padma and it should record its decision and may take additional evidence, if necessary.

The order of status-quo granted earlier by this court is hereby vacated.

No order as to cost.

Let a copy of this judgment along with the L.C.R. be sent to the concerned Court at once.

Jashim:B.O.