

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 1484 of 2006

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Nagendra Nath Roy and others

--- Plaintiff-Appellant-Petitioners.

-versus-

Monohar Roy being dead his legal heirs:
1(Ka)-1(Gha) and others

--- Defendant-Respondent-Opposite parties.

None appears.

--- for the petitioners.

Mr. Chowdhury Shamsul Arifin, Advocate

..... for the O.P. No. 04

Date of Judgment: 30.03.2023.

At the instance of the present Plaintiff-Appellant-Petitioners, Nagendra Nath Roy and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite parties to show cause as to why the impugned judgment and

decree dated 25.01.2006 passed by the learned Special District Judge, Khulna in the Title Appeal No. 71 of 2004 dismissing the appeal and affirming the judgment and decree dated 11.03.2004 passed by the learned Joint District Judge, Court No.3, Khulna in the Title Suit No. 06 of 1995 dismissing the suit should not be *set-aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioners as the plaintiffs filed the Title Suit No. 06 of 1995 in the Court of learned the then Subordinate Judge, Court No.3, Khulna, against the present opposite parties claiming that suit land measuring 3.15 acres out of 4.95 acres originally belonged to Gurucharan, who died leaving behind 03 (three) sons who amicably partitioned the total land. One of the petitioners Dhanonjoy Roy transferred .75 acres of land on 19.03.1951 and also transferred .75 acres by registered patta on 05.06.1951 to one Noderchand Basar who mutated total 1.50 acres of land in his name who subsequently transferred the suit land on 13.05.1957 to the present petitioners. But when in the S.A. record of right was published and mistakenly land measuring 1.30 acres was recorded instead of 1.50 acres. They also claimed that $1.21\frac{2}{3}$ acres land out of land measuring 3.15 acres was enlisted as vested properties illegally. The defendant

No. 04, Motilal Biswas collusively registered a power of attorney in favour of Nannu Mia, the defendant No. 05 on 31.12.1994. The defendant No. 5 created a fake deed of agreement in favour of defendant Nos. 02 and 03 and the plaintiffs came to know about listing of the property as the vested property.

The present opposite parties contested the suit by a written statement which in brief is that the land measuring 4.95 acres of khatian No. 34 of the schedule in the plaint was in possession of Gurucharan and he died leaving behind three sons who were in possessions by an amicable partition who are the plaintiffs in the present case. Dhanonjoy, one of the sons created an amicable settlement by way of patta who remained in possession of land and the defendant No. 04 Motilal Biswas who was the grandson and only reversioner of Dhanonjoy and the property of Dhanonjoy devolved upon the defendant No.04. But the plaintiffs executed a saf-kabala deed on 13.05.1957 which is illegally. During lifetime of Dhanonjoy his wife died and a daughter Kali Dasi was given marriage and Dhanonjoy used to live with the plaintiffs. The plaintiffs used to look after the property of Dhanonjoy and paid rent. Taking this advantage the plaintiffs collusively took the patta deeds from Dhanonjoy

and 1.30 acres of land was recorded without any basis instead of 1.50 acres. After the death of Dhanonjoy, a title suit being No. 258 of 1975 was filed claiming .20 acres of land of S.A. Khatian No. 93. They obtained decree since reversioner of Dhanonjoy but defendant No.4 was not made a party, therefore, he is not bound by the decree, eventually, Dhanonjoy's land was listed as vested property illegally and the defendant No. 04 denied all the subsequent transfer and he was in possession of the suit land.

After hearing both the parties and considering evidence adduced and produced by the parties, the learned Joint District Judge, Court No.3, Khulna dismissed the suit by his judgment and decree dated 11.03.2004. Being aggrieved the present petitioners preferred the Title Appeal No. 145 of 1996 before the learned District Judge, Khulna which was heard by the learned Additional District Judge, Court No.2, Khulna who send the matter on remand for fresh trial as there were some disputes as to the matter of reversioner the signatures of some documents upon a deed. As such, the matter was heard by the learned trial court afresh and dismissed the suit filed by the present petitioners. Being aggrieved the Title Appeal No. 71 of 2004 filed in the Court of learned District Judge, Khulna which

was heard by the learned Special District Judge, Khulna who also disallowed the appeal and thereby affirmed the judgment and decree passed by the learned trial court. Being aggrieved this revisional application has been filed by the present petitioners under Section 115(1) of the Code of Civil Procedure challenging the said impugned judgment and decree passed by the learned appellate court below and present Rule was obtained thereupon.

This matter has been pending in the top of the cause list for hearing for a long period of time with the names of the learned Advocates of the respective parties but no one appears to support the rule in any point of time, even, after several desires from this Bench for making submissions to support the Rule.

The rule has been opposed by the present opposite party No. 04.

Mr. Chowdhury Shamsul Arifin, the learned Advocate, appearing for the opposite party No. 04, submits that the learned trial court properly considered the evidence adduced and produced by the parties and came to a conclusion to dismiss the suit filed by the present petitioners and the learned appellate court below also after examining the documents

concurrently found the present opposite party No. 04 Motilal Biswas was a reversioner under the provision of Hindu Law, but the present petitioners obtaining the Rule by misleading the court, thus, the Rule is liable to be discharged.

Considering the submission made by the learned advocate for the opposite party No. 04 and also considering the revisional application filed by the petitioners under Section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment passed by the learned Appellate Court below and also perusing the relevant documents available in the lower courts records, it appears to this Court that the plaintiff-petitioners claiming title upon the suit land and also cancellation from the list of vested property. The plaintiffs adduced and produced some documents in support of their claims which have been exhibited as exhibits to support their case and depositions enclosed thereof.

The learned trial court dismissed the suit but upon an appeal the suit was send back on remand for fresh trial to adduce some documents, particularly, the matter was under the Hindu Law.

The suit was heard afresh by the learned trial court upon the direction of remand and after hearing the parties came to a conclusion to dismiss the suit again.

Being aggrieved the plaintiffs preferred an appeal which was also disallowed thereby affirming the judgment of the learned trial court.

On the other hand, the defendants claimed that the suit land originally belong to Gurucharan and after his death his three sons have succeeded. One of the 3 sons Dhananjoy died leaving behind his only daughter.

The ground taken by the present opposite party No.04 that under the dayvaga (দায়ভাগা) of the Hindu Law a daughter cannot succeed the land but only gets life interest. Before the enlistment of the vested property, the case land owned by the daughter's son Dhananjoy grandson and obtained the property as a reversioner of the dayvaga (দায়ভাগা) which is usual practice in Bangladesh. In such situation, the son of Kali Dashi prior to enlistment as a vested property.

In view of the above factual and legal aspects of the case, I have carefully examined the available documents adduced and produced by the parties, in particular, the principle of Dayvaga (দায়ভাগা) School, a daughter cannot succeed any

property but daughter's son has a right upon the property as a reversioner, as such, the learned courts below concurrently found the right of the present defendant opposite party No.04, namely, Motilal Biswas, who is the son of Kali Dashi prior to introduction of the Defense Pakistan Ordinance, 1965.

I have perused the relevant documents and the materials available in the lower courts records as well as the revisional application along with the annexures therein.

In view of the above discussions and analysis of the documents in the lower courts records, I consider that the learned courts below committed no error of law by deciding in favor of the defendant opposite party No.04, as such, I am not inclined to interfere upon the impugned Judgment and Decree passed by the learned appellate court below. Therefore, this Rule does not have merit for further consideration.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The interim order of stay passed at the time of issuance of the Rule and subsequently the same was extended from time to time is hereby recalled and vacated.

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