

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Emdadul Huq

Civil Revision No. 2137 of 1999.

In the matter of:

Jamshed Ali and another.

.....Petitioners.

Versus.

Deputy Commissioner, Mymensingh and others.

.....Opposite

parties.

Mr. Md. Abdul Haque Advocate,

..... For the

petitioners.

Mr. Md. Haroon-Ar-Rashid, DAG.

..... For the Opposite

parties.

Heard on: 20.11.2014.

Judgment on: 23.11.2014.

The Rule issued in this Civil Revision is about sustainability of the judgment and decree dated 1-4-1998 by which the learned Subordinate Judge, 1st Court, Mymensing allowed Other Class Appeal No. 101 of 1992 and thereby dismissed Other Class Suit No.175 of 1991 on reversing the judgment and decree dated 31-3-1992 decreeing the said suit for declaration that the eviction of the petitioner-plaintiffs from the suit land was illegal.

Plaintiff's Case.

Plaintiffs claim that plaintiff No.1 and plaintiff No.2 took permanent lease of two separate parcels of land measuring 1 (one) decimal and $\frac{1}{4}$ (one-fourth) decimal of land respectively. They executed two separate registered kabuiylats in favour of the

Government in two separate lease cases and also paid salami. They raised separate tin shed structures and had been carrying on business. But on 10.5.1991 the defendants being the government functionaries illegally demolished the said structure without serving any notice and thereby caused loss to the plaintiffs. Hence the suit.

Defendant No.2, the Additional Deputy Commissioner (Revenue), Mymensingh, in his written statement contends that the lease of the suit land in favour of the plaintiffs were approved in the relevant files. But the suit land is part of the periphery of a Bazar located in the khas land of the Government. So the leases earlier approved were cancelled by the Deputy Commissioner and plaintiffs were duly notified about such cancellation. Thereafter on 11-5-1991 the Government functionaries undertook a process of eviction of unauthorized occupants of the land of the local Bazar. On that day the plaintiffs voluntarily left of the suit land.

Deliberation in Revision:

At the hearing of this Revision, Mr. Md. Abdul Hoque, the learned Advocate for the petitioner plaintiffs, submits that after disposal of the suit by the trial court, plaintiffs received all their exhibited documents back from the trial court on 31.05.1992, but due to dislocation in the Chamber of the concerned Advocate, those documents could not be filed in the appeal.

Mr. Haque, the learned Advocate next submits that the plaintiff (petitioner) have filed these documents on 3.6.2013 in connection with the requisition of this Revision and therefore the matter may be sent back on remand so that petitioner plaintiffs may get an opportunity to produce the documents for consideration and decision of the appellate Court.

However, on my query with regard to title documents of plaintiff No.2, Mr. Abdul Haque the learned Advocate submits

that plaintiff No.2 has filed some documents namely two DCR (Exhibit-4 and 4Kha) showing payment of salami and some Stamp paper containing reference to the concerned lease Case and that the said plaintiff may also be allowed opportunity to produce the lease documents as additional evidence in the appellate court.

Mr. Md. Haroon-Ar-Rashid, the learned Deputy Attorney General submits that since the plaintiffs could not file sufficient documents the Rule should be discharged.

Finding and decisions in revision:

On perusal of the materials on record it appears that the trial Court decreed the suit upon recording findings that the plaintiffs could prove their case with regard to their title, possession and illegal demolition of the structure on the suit land. It further appears that plaintiffs filed some documents namely Exhibits-1,1ka, 2, 2ka, 3 and 4 (series) which were received back by the plaintiff side on 31.5.1992 but those were not filed in appeal. Plaintiffs however filed those documents on 13-06-2013 in the trial court pursuant to the requisition of this Revision.

It further appears that the learned Joint District Judge, as the appellate Court, dismissed the Appeal on the preliminary point that the documents were not available.

The plaintiffs filed some documents relating to their lease but the lease documents being the alleged kobuliats were not produced in evidence, except some signed stamped paper containing reference to Miscellaneous Case.

It is noted that the defendant admits approval of the lease in favour of the plaintiffs. But the claims that the leases were cancelled, yet the defendant did not produce any cancellation documents or any evidence supporting such cancellation.

In view of the above I agree with the submission of Mr. Md. Abdul Haque, the learned Advocate for the petitioners that the suit should be sent back on remand to the trial court for proper adjudication of the dispute.

In the result, the Rule is made absolute. The Judgment and decree dated 1.4.1998 passed by the learned Subordinate Judge, 1st Court, Mymensingh in Other Class Appeal No.101 of 1992 and those dated 31.3.192 passed by the learned Senior Assistant Judge, Sadar, Mymensingh in Other Class Suit No.175 of 1991 are hereby set aside. The said Suit is sent back on remand to the trial Court.

The learned Senior Assistant Judge is directed to dispose of the suit in accordance with law after allowing both sides reasonable opportunity to both sides to produce further evidence in support of their respective claims.

No order as to costs.

Send down the LCR with a copy of the judgment and order to the courts below.

B.H.