

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)  
**CIVIL REVISION No. 667 OF 2015.**

**Md. Abu Alam and another**

...Petitioners.

-Versus-

**1(Ka) Farida Begum and others**

....Opposite parties.

Mr. Md. Moqbul Ahmed, Advocate

... for the petitioners

None appears

... for the opposite parties

**Heard and Judgment on: 2.09.2024.**

**Present:**

**Mr. Justice Md. Badruzzaman.**

This Rule was issued calling upon opposite party Nos. 1-5 to show cause as to why judgment and decree dated 30.11.2014 passed by learned Additional District Judge, 4<sup>th</sup> Court, Chattogram in Other Appeal No. 132 of 2007 allowing the appeal and sending the suit back on remand for fresh trial by reversing the judgment and decree dated 15.03.2007 passed by learned Senior Assistant Judge, Rawzan, Chattogram in Other Suit No. 206 of 2003 should not be set aside.

At the time of issuance of Rule on 16.3.2015 this Court stayed operation of the impugned judgment and decree for a period of 06 (six) months which was, subsequently, extended time to time.

Facts relevant, for the purpose of disposal of this Rule, are that the petitioners as plaintiffs instituted Other Suit No. 206 of 2003 in the Court of learned Assistant Judge, Rawjan, Chattogram against the opposite parties praying for a decree of declaration that registered sale deed No. 2814 dated 30.08.2003 was collusive, forged, fraudulent and not binding upon the plaintiffs mainly on the ground that the

defendants got the impugned sale deed executed and registered from the plaintiffs upon threat and duress.

Defendant Nos. 1, 2 and 5-7 jointly contested the suit by filing written statements denying the material averments of the plaint and contending that the plaintiffs upon receiving the consideration money executed and registered the deed in question at their free will and after execution and registration of the deed, they have got possession of the suit property and the plaintiffs filed the suit only for harassing the defendants.

During pendency of the suit, the plaintiffs filed an application under Order VI rule 17 read with section 151 of the Code of Civil Procedure for amendment of the plaint proposing to introduce some facts and a prayer for a decree of cancellation of the deed in question which was allowed by the trial Court vide order No. 35 dated 03.05.2006 and the plaintiffs paid *ad valorem* court fees due to amendment of the plaint. But the plaint was not amended as per proposed amendment.

During trial the plaintiffs adduced three oral witnesses and also produced documentary evidences which were marked as exhibits. The defendants did not adduce any oral or documentary evidence. The trial Court, upon considering the evidence and materials on record, decreed the suit vide judgment and decree dated 15.03.2007.

Being aggrieved by said judgment and decree, the contesting defendants preferred Other Appeal No. 132 of 2007 before the learned District Judge, Chattogram which was transferred to learned Additional District Judge, 4<sup>th</sup> Court, Chattogram for disposal. The learned Additional District Judge, upon hearing the learned Advocates for both the parties and considering the materials on record, allowed the appeal by judgment and decree dated 30.11.2014 by setting aside those of the

trial Court and sent the suit back on remand to the trial Court directing to incorporate the proposed amendment in the plaint with an opportunity to the defendants to file additional written statements and another opportunity to the parties to adduce further evidence.

Being aggrieved by said judgment and decree dated 30.11.2014 the plaintiffs have preferred this civil revision under section 115(1) of the Code of Civil Procedure and obtained the instant Rule.

None appears for the defendant-opposite parties to contest the Rule though, as per Office Note, the notice upon them has been duly served.

Mr. Md. Moqbul Ahmed, learned Advocate appearing for the petitioners by taking me to the revisional application as well as impugned judgment and decree passed by the Court of appeal submits that the Court of appeal committed an error of law in sending the suit back on remand because of the fact that it has got same jurisdiction as like as trial Court and as such, the appellate Court itself was competent to take additional evidence and dispose of the appeal on merit and accordingly, interference is called for by this Court.

I have heard the learned Advocate, perused the impugned judgment and decree, the judgment and decree passed by the trial Court and other materials available on record. On perusal of the impugned judgment it appears that the Court of appeal came to finding that the plaint was amended as per prayer of the plaintiffs by order of the trial Court dated 30.05.2006 and the plaintiffs filed *ad valorem* court fees in view of the amendment but the amendment was not incorporated in the plaint. The Court of appeal also held that the trial Court only passed decree of mere declaration though as per amendment the plaintiffs prayed for cancellation of the deed in question.

It appears that by the amendment, the plaintiffs only introduced an additional prayer for cancellation of the deed in question and P.W 1 deposed on behalf of the plaintiffs and prayed for cancellation of the disputed deed. Three P.Ws were examined on behalf of the plaintiffs. Though defendant Nos. 1, 2, 5-7 filed joint written statements but did not adduce any evidence to prove their case and upon considering the evidence and materials on record, the trial Court decreed the suit declaring the disputed deed as null, void and not binding upon the plaintiffs but did not give relief as per amended plaint, cancelling the deed in question. The appellate Court found that the plaintiffs could not prove their case as they could not adduce any evidence in regards of duress and threat made by the defendants in obtaining the deed in question. Neither of the parties filed any application for sending the suit back on remand to the trial Court and to adduce additional evidence. But the appellate Court vide impugned judgment set aside the judgment of the trial Court and sent the suit back on remand to the trial Court directing to incorporate the amendment in the plaint with an opportunity to the defendants to file additional written statements and another opportunity to the parties to adduce further evidence. It appears that the Court of appeal gave gratuitous relief to the parties which they did not pray at all. Since the parties did not pray for sending the suit back on remand and file any application for taking additional evidence, the Court of appeal should have disposed of the appeal on merit on the basis of the evidence and materials available before it.

It is settled principle of law that a remand order cannot be passed to enable a party to adduce fresh evidence which he failed to do during hearing of the suit or to give fresh opportunity to defeated litigant who has lost in a full and fair trial. Where the trial court, after framing issues and giving the parties opportunity to adduce evidence, disposes

of the suit on merits, the appellate Court cannot remand the case back to the trial court for disposal of the suit on merits by giving opportunity to the parties to adduce further evidence. Moreover, under section 107 of the Code of Civil Procedure the appellate Court clothed with all the powers of a trial Court.

In view of the above I am constrained to hold that the Court of appeal committed an error of law resulting in an error in sending the suit back on remand. It should have disposed of the appeal on merit on the basis of the evidence already on record.

Accordingly, I find merit in this Rule.

In the result, the Rule is made absolute, however without any order as to costs.

The impugned judgment and decree passed by the Court of appeal are set aside.

The order of stay granted earlier by this Court is hereby recalled and vacated.

The learned Additional District Judge, 4<sup>th</sup> Court, Chattogram is directed to dispose of Other Appeal No. 132 of 2007 on merit on the basis of the evidence available on record by serving fresh summons upon the parties and conclude the hearing of the appeal as expeditiously as possible, preferably within 06 (six) months from the date of receipt of the copy of this judgment.

Send down the L.C.R along with a copy of this judgment to learned Additional District Judge, 4<sup>th</sup> Court, Chattogram at once.

**(Justice Md. Badruzzaman)**