

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

Civil Revision No. 393 of 2016

IN THE MATTER OF

Aminur Nesa and others

..... Defendants-Appellants-Petitioners

-Versus-

Hara Kishor Mondal and others

..... Plaintiffs-Respondents-Opposite parties

Mr. Shahadat Hossen, Advocate

.....For the petitioners

Mr. Md. Khalilur Rahman, Advocate

.....For opposite party No. 1

Heard on 11.10.23, 03.01.24, 21.01.24, 22.01.2024, 06.02.2024
and judgment passed on 10.03.2024

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, on an application under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following term-

“Let the records of the case be called for and a Rule be issued calling upon opposite party No. 1 to show cause as to why the impugned judgment and decree dated 12.11.2015 passed by the learned Jananirapatta Bighnokari Aparadh Daman Tribunal and Special District Judge, Barisal in Title Appeal No. 81 of 2011 disallowing the appeal affirming the judgment and decree dated 28.03.2011 passed by the learned Assistant Judge, Gournadi, Barisal in Title Suit No. 70 of 1996 decreeing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The present opposite party No. 1 as the plaintiff filed Title Suit No. 70 of 1996 before the Court of Learned Assistant Judge, Gournodi, Barisal imp leading the present petitioners and others as the defendants praying for a decree of declaration of title and partition in respect of the suit land, and for a declaration that the decrees as mentioned in schedule "Ka" and "Ga" to the plaint is fraudulent, null, void and illegal, and not binding upon the plaintiff. After hearing the same the learned Trial Judge by judgment and decree dated 28.03.2011 decreed the suit on the contest against defendant Nos. 16 and 17 and ex-parte against the rest without cost. Being aggrieved by the same the contesting defendants preferred an appeal before the learned District Judge, Barisal, and the same was numbered as Title Appeal No. 81 of 2011. After hearing the same the learned Special District Judge, Barisal by judgment and decree dated 12.11.2015 disallowed the appeal by affirming those of the Trial Court. Against which the defendants as the petitioners had preferred this civil revision before this court and obtained the instant Rule.

Anyway, Mr. Shahadat Hossen, the learned Advocate appearing for the defendants-petitioners mainly prayed for sending back the case on remand before the Appellate Court below for a fresh hearing of the appeal and submitted that the certified copy of the death certificate of the plaintiff's uncle Washsini Kumar (Exhibit-1) produced by the plaintiff before the court could be

treated as a piece of vital evidence as to the death of Washsini Kumar, who was made a party to the disputed suits and filed a solenama therein upon which the suits were decreed by the Court concerned. But both the courts below left the certified copy of the death certificate of Washsini Kumar (Exhibit no. 1) out of consideration to be proved by calling upon the concerned volume, so it was not admitted in evidence following the law which led the courts below to commit an error of law in decreeing the suit. He also submits that from Order No. 247 dated 18.08.2009 of Title Suit No. 70 of 1996 it appears that an application was filed by the plaintiff to call for the concerned death register which was allowed but thereafter, no step was taken to that effect, which as per section 114 illustration "g" of the Evidence Act indicates that "that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it" but non-consideration of such law led the courts below to commit an error of law in decreeing the suit causing failure of law.

Conversely, Mr. Md. Khalilur Rahman, the learned Advocate appearing for the plaintiff-opposite party No. 1 opposes the submissions so made by the learned Advocate for the petitioners and submits that both the Courts below considering the facts and circumstances of the case and the evidence on record rightly decreed the suit and thereby committed no error of law causing failure of justice.

I have heard the learned Advocates of both parties and have perused the materials on record and found substance in the submissions so made by the learned Advocate for the petitioners.

Given the above, considering the facts and circumstances of the case and the above observation it appears that justice will better be served if the case is sent back on remand to the appellate court below for a fresh hearing of the appeal giving the parties equal opportunity in view of the submissions so made by the learned Advocate for the petitioners herein before.

As a result, the Rule is disposed of without cost.

Stay vacated.

The impugned judgment and decree dated 12.11.2015 passed by the learned Jananirapatta Bighnokari Aparadh Daman Tribunal and Special District Judge, Barisal in Title Appeal No. 81 of 2011 disallowing the appeal is hereby set aside.

Accordingly, the case is sent back on remand to the appellate court below for a fresh hearing of the appeal for the ends of justice in view of the observations made herein before by giving the parties equal opportunity.

The learned Judge of the appellate court below is hereby directed to conclude the hearing of the appeal as early as possible.

The order of status-quo so passed in the instant civil revision at the time of issuance of the Rule on 22.02.2016 directing the parties to maintain in respect of possession and position of the suit

land is hereby upheld, which is to be continued till the conclusion of the hearing of the appeal.

Send a copy of this judgment along with the L.C.R. to the appellate court below at once.

(Md. Rafiqul Alam, BO)