

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No. 3505 of 1993

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure

- AND -

IN THE MATTER OF:

Jane Alam and others

..... Plaintiff-Petitioners

-Versus –

Md. Kalu and others

.....Opposite Parties

Mr. SK. Zulfiquar Bulbul Chowdhury, Advocate

..... For the petitioners

Mrs. Umme Masumun Nesa, A.A.G

..... For the opposite parties

**Heard on 20.07.2023 and
Judgment on 03.08.2023**

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioners, under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the principal defendant appellant opposite party No.1 to show cause as to why the impugned judgment and decree dated 09.08.1993 and 16.08.1993 passed by the Subordinate Judge, Patiya, Chittagong in Other Appeal No. 128 of 1992 reversing the judgment and decree dated 28.01.1992 and

04.02.1992 passed by the Additional Assistant Judge, Satkania, Chittagong in Other Suit No.32 of 1991 should not be set-aside and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court stayed the operation of impugned judgment and decree dated 09.08.1993 and 16.08.1993 passed by the Subordinate Judge, Patiya, Chittagong in Other Appeal No.128 of 1992 reversing the judgment and decree dated 28.01.1992 and 04.02.1992 passed by the Additional Assistant Judge, Satkania, Chittagong in Other Suit No.32 of 1991.

Facts necessary for disposal of the Rule, in short, are that the plaintiffs and proforma defendants are the inhabitant of "Hatlar Kul" area and hereditarily cultivators. The suit land is situated at hatlar Kul, south of Dalu River, though identified by name as part of Rupkania Village. The house of defendant No.1 is in about 2 miles north-west of suit land and he was not a cultivator and he is a businessman. The defendant No.1 and his nephew (brother's son) are engaged in business at Satkania and some other places and geographically his house is situated at west Demsha Village. The schedule 1 land is homestead land belonging to plaintiffs and the proforma-defendant from their predecessors. The land is western contiguous of schedule-1 land belonging to plaintiffs by way of inheritance. The schedule 3 land is western contiguous to schedule 2 land and schedule-3 land is reversionary land of Dalu River. The plaintiff regularly collects the water from Dalu River by over crossing the schedule-3 land for their family/house utilization and cultivation of schedule-2 land and they have no other alternative. Plaintiffs and proforma defendants are possessing the schedule-

3 land beyond statutory period of limitation and by that way they acquire right, title, interest over the schedule- 3 land. Without schedule-3 land plaintiffs shall not cultivate in schedule-2 land and should not reside in the schedule-1 land along with their families and the same is the only source of leaving their life. On the other hand the defendant No.1 has/had no connection/relationship with hatiarkul area or schedule-3 land and he is a litigant person and concealing the real facts the defendant No.1 took lease the schedule-3 land through settlement rise Case No.271/72-73, but he never passed the schedule-3 land nor he took any attempt as such, and hence the aforesaid lease proceeding document is a mere paper transaction malafide, without jurisdiction and void, which the plaintiffs at first knew on 16.01.1991 after obtaining certified copy of the same.

The defendant No.1 contested the said case denying all the material facts raised by the plaintiffs and his case is that, the suit is barred by resjudicata, limitation, waiver, acquiescence and estoppel. The schedule-3 land was Govt. Khas land and defendant No.1 and his brother Mohammad Petan as land less cultivator took lease the same from the Government and possessed the same since long and plaintiffs never claim the schedule-3 land at the time of lease but subsequently the plaintiffs instituted other suit No.55 of 1977 in Satkania Munsif Court against the defendant No.1 and others (the leasee) and this defendant No.1 brought Other Suit No.125 of 1977 against the plaintiffs and others and on analogous hearing aforesaid Other Suit No.55 of 1977 was dismissed and Other Suit No.125 of 1977 was decreed by learned Trial Court and then the plaintiffs preferred Other

Appeal No.310 of 1982 and Other Appeal No.311 of 1982 against the aforesaid decrees but lost in both appeals by judgment dated 29.02.1984.

After hearing both the parties and upon considering the evidences and documents on record the learned Additional Assistant Judge, Satkania, Chattogram decreed the suit in Other Suit No.32 of 1991 by his judgment and decree dated 28.01.1992 and 04.02.1992 respectively.

Being aggrieved by and dissatisfied with the judgment and decree dated 28.01.1992 and 04.02.1992 passed by the learned Additional Assistant Judge, Satkania, Chattogram decreed the suit in Other Suit No.32 of 1991 the opposite parties filed Other Appeal No.128 of 1992 and after hearing both the parties and upon considering the evidences and materials on record the learned Sub-ordinate Judge, Patiya, Chattogram allowed the said appeal and dismissed the judgment and decree dated 28.01.1992 and 04.02.1992 passed by the learned Additional Assistant Judge, Satkania, Chattogram decreeing the suit in Other Suit No.32 of 1991 by his judgment and decree dated 09.08.1993 and 16.08.1993.

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 09.08.1993 and 16.08.1993 passed by the learned Sub-ordinate Judge, Patiya, Chattogram in Other Appeal No.128 of 1992 allowing the Appeal the petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and stay.

Mr. SK. Zulfiqur Bulbul Chowdhury, the learned Advocate appearing on behalf of the petitioners submits that the learned Appellate

Court below committed an error of law resulting in an error in the decision occasioning failure of justice in not holding that the alleged lease has been expired on 1394 B.S. and cancelled on 26.01.1992 on contested hearing by the Competent Authority (Annexure 'D' to the petition) and the instant Other Appeal No.128 of 1992 was preferred on 18.03.1992 claiming his title in the suit schedule-3 land as such, the principal defendant-appellant-opposite party No.1 lost his all right, title and interest in respect to the suit land on the date of expiry of the lease and previous judgment and decree in his favour relating to the suit land has no application on the date of cancellation of lease, and he has no locus-standi to call in question the right, title and possession of the suit land, hence, the Principal of res-judicata has no application in the instant case.

The learned Advocate lastly submits that the learned Appellate Court below erroneously failed to appreciate the order dated 26.01.1993 (Annexure-D to the petition) passed by Additional Deputy Commissioner (Revenue), Chattogram in objection case No.9/1989-90 submitted in Other Appeal No.128 of 1992 by this petitioners and therefore, arrived at an erroneous findings, as such, committed an error of law resulting in an error in the decision occasioning failure of justice. Therefore, the impugned judgment and decree dated 09.08.1993 and 16.08.1993 passed by the learned Sub-ordinate Judge, Patiya, Chattogram in Other Appeal No.128 of 1992 is not a proper judgment and decree, which is not sustainable in the eye of law. Accordingly, he prays for making the Rule absolute.

Mrs. Umme Masumun Nesa, the learned Assistant Attorney General appearing on behalf of the opposite parties submits that the schedule-3 land

was Govt. Khas land and defendant No.1 and his brother Mohammad Petan as land less cultivator took lease the same from the Government and possessed the same since long and plaintiffs never claim the schedule-3 land at the time of lease but subsequently the plaintiffs instituted other suit No.55 of 1977 in Satkania Munsif Court against the defendant No.1 and others (the leasee) and this defendant No.1 brought Other Suit No.125 of 1977 against the plaintiffs and others and on analogous hearing aforesaid Other Suit No.55 of 1977 was dismissed and Other Suit No.125 of 1977 was decreed by learned Trial Court and then the plaintiffs preferred Other Appeal No.310 of 1982 and Other Appeal No.311 of 1982 against the aforesaid decrees but lost in both appeals by judgment dated 29.02.1984.

The learned Assistant Attorney General lastly submits that the learned trial Court unlawfully held that the opposite party was not a landless farmer. The concerned department of the government has sole jurisdiction to decide whether a person should be given a Khas land settlement or a person should not be given a Khas land settlement and the concerned department of the Government had given Khas land settlement to the opposite party in accordance with the rules. The suit land is river filled government khas land and the plaintiffs have not received settlement of the suit land from the government at all. Rather, the opposite party has received settlement of the suit land from the government. So, the learned Sub-ordinate Judge, Patiya, Chattogram passed the impugned judgment and decree dated 09.08.1993 and 16.08.1993 in Other Appeal No.128 of 1992 rightly, which is maintainable in the eye of law. Therefore, she prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and decree of the Courts' below, the submissions of the learned Advocate for the petitioners and the submissions of the learned Assistant Attorney General for the opposite parties, the papers and documents as available on the record.

It appears from the record that the schedule-3 land was Govt. Khas land and defendant No.1 and his brother Mohammad Petan as land less cultivator took lease the same from the Government and possessed the same since long and plaintiffs never claim the schedule-3 land at the time of lease but subsequently the plaintiffs instituted other suit 55 of 1977 in Satkania Munsif Court against the defendant No.1 and others (the leasee) and this defendant No.1 brought Other Suit No. 125 of 1977 against the plaintiffs and others and on analogous hearing aforesaid Other Suit No.55 of 1977 was dismissed and Other Suit No.125 of 1977 was decreed by learned Trial Court and then the plain tiffs preferred Other Appeal No. 310 of 1982 and Other Appeal No.311 of 1982 against the aforesaid decrees but lost in both appeals by judgment dated 29.02.1984. The learned trial Court unlawfully held that the opposite party was not a landless farmer. The concerned department of the government has sole jurisdiction to decide whether a person should be given a Khas land settlement or a person should not be given a Khas land settlement and the concerned department of the Government had given Khas land settlement to the opposite party in accordance with the rules. The suit land is river filled government khas land and the plaintiffs have not received settlement of the suit land from the

government at all. Rather, the opposite party has received settlement of the suit land from the government.

In the light of the above discussion, it appears before me that the learned Additional Assistant Judge, Satkania, Chattogram illegally passed the impugned judgment and decree date 28.01.1992 and 04.02.1992 in the Other Suit No.32 of 1991 without properly reviewing the specific provisions of the Act and without properly considering the relevant documents on record, which is not sustainable in the eye of law at all. On the other hand, the learned Sub-ordinate Judge, Patiya, Chattogram passed the impugned judgment and decree dated 09.08.1993 and 16.08.1993 in Other Appeal No.128 of 1992 rightly, which is maintainable in the eye of law.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The impugned judgment and decree dated 09.08.1993 and 16.08.1993 passed by the learned Sub-ordinate Judge, Patiya, Chattogram in Other Appeal No.128 of 1992 allowing the Appeal and dismissing the judgment and decree dated 28.01.1992 and 04.02.1992 passed by the learned Additional Assistant Judge, Satkania, Chattogram in Other Suit No.32 of 1991 decreeing the suit is hereby upheld and confirmed.

The order of stay granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

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