

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 3089 of 1999

with

Civil Revision No. 2971 of 1999

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Fayezuddin Khan died leaving behind his legal heirs: 1(a)-1(r) and others

--- Plaintiff-Respondent-Petitioners.

-versus-

Shamsar Ali Khan and others

--- Defendant-Appellant-Opposite Parties
(In C. R. No. 3089 of 1999).

Fayezuddin Khan died leaving behind his legal heirs: 1(a)-1(r) and others

--- Plaintiff-Respondent-Petitioners.

-versus-

Ram Gopal Das Paul

--- Defendant-Appellant-Opposite Party
(In C. R. No. 2971 of 1999).

Mr. Md. Shahadat Tanveer Amin, Advocate

--- For the Plaintiff-Petitioners
(In both cases).

Mr. Md. Humayun Kabir, AAG

--- For the Government.
(In both cases).

**Heard on: 27.03.2023, 14.05.2023, 18.05.2023,
22.05.2023 & 24.05.2023.**

Date of Judgment: 24.05.2023.

These 2 (two) revisional applications filed by the same petitioners and the relevant laws are similar and these 2 (two) Rules arose from a similar judgment and both Rules have been taken up together by passing a common judgment as the facts of both cases involved similar parties and also related to a similar laws.

At the instance of the present plaintiff-petitioners, Fayezuddin Khan died leaving behind his legal heirs: 1(a)-1(r) and others, the Rule, was issued upon a revisional application being Civil Revision No. 3089 of 1999 filed under section 115(1) of the Code of Civil Procedure calling upon the opposite parties as the defendants to show cause as to why the judgment and decree dated 18.11.1998 passed by the then learned Sub-Judge, Court No. 2, Naogaon in the Title Appeal No. 197 of 1997 should not be *set aside*.

Another Rule was issued, at the instance of the present same parties, upon a revisional application being Civil Revision No. 2971 of 1999 filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party as the defendant to show cause as to why the judgment and decree dated 18.11.1998

passed by the then learned Sub-Judge, Court No. 2, Naogaon in the Title Appeal No. 197 of 1997 should not be *set aside*.

The relevant common facts for disposal of these 2 (two) Rules, *inter-alia*, are that the present petitioners as the plaintiffs filed the suit for partition of the suit land described in the schedule of the plaint. The plaintiffs claimed that schedule- Ka (क) land of the petitioners belonged to Trailaksha (Trailakkha) and Ramgopal in equal shares but the land measuring 3.96 acres of Kha (ख) schedule at Khatian No. 285 belonged to 16 anna share only Ram Gopal. R. S. Record of rights was duly prepared and published. Ram Gopal left the then East Pakistan now Bangladesh for India, thus, the property was enlisted as enemy property. The plaintiffs further claimed that the said Ram Gopal sold his land to the plaintiff No. 1 who was living in Bangladesh and the plaintiff mutated the land measuring 1.14 acres. The plaintiff No. 1 filed Other Class Suit No. 1387 of 1980 and obtained a decree therefrom. The said Trailaksha (Trailakkha) executed a deed of will for the land measuring 2.65 acres in favour of the daughter, namely, Kalpana Rani and she got Probate (Probata) in the Miscellaneous Case No. 31 of 1978 from the court of the learned District Judge, Rajshahi on

01.07.1981. The said Kalpana Rani sold the land to the plaintiff Nos. 2-6 and 7-11 respectively.

The said suit was contested by the defendant opposite party No. 17 being the Deputy Commissioner, Naogaon and Deputy Custodian of Enemy Property at Naogaon by filing a written statement contending, *inter alia*, that the Khatian No. 167 was owned by 2 brothers, namely, Trailaksha (Trailakkha) and Ram Gopal in an equal shares. The land of R. S. Khatian No. 185 was owned by Ram Gopal alone who left the then Pakistan now Bangladesh for India, thus, the property was enlisted as enemy property. These defendants contended that the will (উইল) and the Probate (Probata) created in favour of Kalpana Rani was false but the total land measuring 5.11 decimals of land was vested upon the Government as the enemy property and the R. S. Record was wrongly published. These defendants also contended that the property of Khatian Nos. 167 and 285 the land measuring 9.07 should have been in the list of enemy property after enactment of the Pakistan Defense Law, the owners left the then Pakistan for India. After the listing as an enemy property, the Government leased it out to different persons.

After hearing the parties the learned Senior Assistant Judge, Court No. 1, Sadar, Naogaon decreed the suit by the judgment and decree dated 22.06.1997 in the O. C. Suit No. 109 of 1993. Being aggrieved the defendant No. 1 being the Deputy Commissioner, Naogaon and the Deputy Custodian of Enemy Property, Naogaon preferred the Title Appeal No. 197 of 1997 which was heard along with the Title Appeal No. 170 of 1997 and the judgment and decree was passed by the then Subordinate Judge, Court No. 2, Naogaon who allowed the appeal by reversing the judgment passed by the learned trial court. Being aggrieved these 2 (two) revisional applications were filed by the present petitioners under section 115(1) of the Code of Civil Procedure challenging the legality and validity of the impugned judgment passed by the learned appellate court below and these 2 (two) Rules were issued by this court thereupon. It is to be mentioned here that the defendant Nos. 1-16 and 18-20 did not contest the suit filed by the present plaintiff-petitioners and instead preferred the above appeal being Title Appeal No. 170 of 1997, as such, both the suits were heard analogously and by passing the present common judgment.

Mr. Md. Shahadat Tanveer Amin, the learned Advocate, appearing for the present petitioners made the common submission in both the Rules that the judgment of the court of appeal below is not a proper judgment of reversal inasmuch as the judgment of the trial court has been reversed without adverting to the cogent reasoning and sound finding arrived at by the said court. The court of appeal below which is a final court of fact has disposed of the appeal without discussing and considering the oral evidence and other material on record, as such, arrived at a wrong decision, therefore, court of appeal below committed an error of law resulting in an error in the decision occasioning failure of justice.

The learned Advocate also submits that the learned trial court examined the documents adduced and produced by the plaintiff-petitioners as to the presence of a brother Trailakkha the then East Pakistan who executed probate (Probata) in favour of his daughter Kalpana Rani who sold the land to the plaintiffs, as such, the claim of enlistment as the enemy property was unlawful and without any basis but the learned appellate court below made out some decisions raising questions as to the said Trailakkha/Kalpana Rani, thus, came to a wrongful conclusion to

reverse the judgment of the learned trial which is liable to be *set aside* by making these 2 (two) Rules absolute.

Both the Rules have been opposed by the present opposite party as the Deputy Commissioner, Naogaon and the Deputy Custodian of the Enemy Property, Naogaon.

Mr. Md. Humayun Kabir, the learned Assistant Attorney General appearing for the Deputy Commissioner, Naogaon and Deputy Custodian, Enemy Property, Naogaon submits that the learned trial court misread and failed to consider the relevant facts by filing the documents in support of the plaintiffs case, therefore, came to a wrongful conclusion to decree the suit. However, the learned appellate court below totally considered the factual aspects of the case by making some lawful queries in order to come to a lawful conclusion to reverse the judgment and decree passed by the judgment by reversing the judgment of reversal but the present petitioners obtained the present Rules by misleading the court, as such, these 2 (two) are liable to be discharged.

The learned Assistant Attorney General also submits that the plaintiffs have created some documents in order to grab the property originally belonged to Hindu person after the War 1965

then the owner of the Hindu properties became vested property by operation of law because admittedly Ram Gopal and his brother left the then Pakistant for India, as such, they cannot create any property in favour of Kalpana Rani which is a manufactured document in order to enter their names recorded in the R. S. Record of right, as such, Government became owner as the vested/enemy property by the operation of law.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering both the revisional applications filed by the petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below and also perusing the relevant materials available in lower courts records, it appears to this court that there are some admitted positions among the parties. Both the parties admitted that the suit lands described in the schedule of the plaint of the suits in different Khatians originally belonged by Ram Gopal and Troilakkha in their respective shares as 2 (two) brothers. However, the dispute arose among the parties as to the possession of the above 2 (two) brothers after or before

enactment of the Pakistan Defense Ordinance, regarding the owners of the Hindu property who left the then Pakistan for India for safety of their lives due to the War in 1965 leaving the properties unattended, thus, their property became the then enemy property and subsequently vested property.

The plaintiffs claimed that the suit property owned by Ram Gopal was enlisted as an enemy property as he left the then Pakistant for India. However, the plaintiffs claimed that the another brother Troilakhkha did not leave the then Pakistant for India, thus, he remained an owner of the land described in the Kha (ख) schedule of the plaint and he transferred his property in favour of his daughter Kalpana Rani by way of written will as probate (Probata) and she thereafter sold the property to the plaintiffs by the above probate (Probata) as exhibit- 7 adduced by the present plaintiff-petitioners. The learned trial court examined the documents and depositions but came to a wrongful decision on the basis of the DWs by referring particularly to defendant No. 1 Toha Shikder of the Government Office who deposed that the suit property did not enter into the enemy property list and the learned trial court did not consider the deposition of the DW- 3. Mainly, DW- 3. Amzad Hossain, deposed that the suit land

have been leased out 14 years and he received the rent, as such, the learned trial court came to a decision that the DWs have given conflicting depositions but the plaintiffs could depose consistently as to their ownerships. After examining the documents I found that the learned trial committed an error of law by decreeing the suit on the basis of the following findings which reads as follows:

...“উপরোক্ত রূপে আলোচনা ও সাক্ষ্য পর্যালোচনা ও দাখিলী প্রমাণ চিহ্ন কাগজাত পর্যালোচনা করিলে দেখা যায় বাদী পক্ষ বর্ণিত মোতা-বক কবলা মূল মোট ২.৮৪ শতক সম্পত্তিতে স্বত্ববান ও দখলিকার আছেন মর্ম প্রমাণ করিতে সমর্থ হইছেন। অপরদিক বিবাদী পক্ষ বর্ণিত মোতা-বক লিজ মূলে নাঃ সম্পত্তিতে দখল পত্তন প্রদান, পত্তন গ্রহণ ও তৎমর্ম দখল প্রমাণ করিতে সমর্থ হন নাই বিধায় অত্রাকারে বাদী পক্ষে তাহাদের প্রার্থিত রূপ প্রতিকার পাইতে হকদার মর্ম সিদ্ধান্ত গৃহিত হয়।”...

On the other hand the learned appellate court below categorically examined the documents adduced and produced by the parties and validity or invalidity of those documents. In particular, the appellate court below raised some serious questions as to the defect of parties and production of some invalid and unlawful documents adduced and produced by the parties and therefore came to a lawful conclusion on the basis of the following findings:

...“পি. ডব্লিউ. ৪ এর জবানবন্দি, নামের স্বাক্ষর এবং অত্র দলিল-লর সাক্ষী হিসা-ব মোঃ মোস-লম আলীর স্বাক্ষর খালি চো-খ পর্য-বক্ষণ এবং পর্যালোচনাক্রমে এক এবং অভিন্ন বলিয়া মনে হয় না। বা আমরা একই বলিয়া দেখি-ত পাই না। মূলতঃ ২ টি সম্পূর্ণরূ-প ভিন্নতর এবং ভিন্ন শ-ব্দ ব্যবহৃত। অত্র ১ নং বাদীর খরিদা দলিলে মূল ভলিউম বহির কোন অস্তিত্ব নাই। ১ নং বাদীর খরিদা দলিল এর স্ট্যা-ম্পর প্রথম পাতার জলছা-পর সহিত অন্যান্য পাতার জলছাপের কোন মিল নাই। উপরোক্ত অবস্থা এবং ঘটনাধী-ন ১ নং বাদীর খরিদা দলিল এবং ২-১০ বাদীর খরিদা দলিলগুলি সন্দেহ মুক্ত নহে। অত্র দলিলগুলি জেনুইননেস সম্পর্কে আদালতের যথেষ্ট স-ন্দহ রহিয়া-ছা”...

In view of the above judgment of reversal, I am of the opinion that the learned trial court committed an error of law by decreeing the suit. However, the learned appellate court below came to a lawful conclusion by raising a question about the depositions by the PW- 4 which were not similar with the signatures put on the deed as a witness. The learned appellate court below also examined the documents produced by the parties regarding the transfer of land by the sale of Probate (Probata) which is not in existence in the volume book of the Sub-Registry Office. He also found some discrepancies as to the standard upon which of the balance of probability. It is to be mentioned here that in a civil suit, the parties assert any statement must prove and the same is to be proved on the

standard of balance of probability. In the instant case, the defendant-opposite parties case appears to be more probably true than the plaintiff-petitioners'. Upon such situation I am not inclined to interfere upon the impugned judgment and decree dated 18.11.1988 passed by the learned appellate court below. As such, these 2 (two) Rules issued in the Civil Revision No. 3089 of 1999 and the Civil Revision No. 2971 of 1999 have no merits for any further consideration.

In view of the above discussions, I am of the opinion that the learned appellate court below committed no error of law by reversing the judgment and decree passed by the learned trial court.

Accordingly, I do not find merit in the above Rules.

In the result, both the Rules issued in the Civil Revision No. 3089 of 1999 and in the Civil Revision No. 2971 of 1999 are hereby discharged.

The interim direction passed by this court at the time of issuance of the Rules to maintain *status quo* by the parties in respect of their possession and position of the suit property until disposal of the Rules are hereby recalled and vacated.

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