

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 1925 of 2016

Md. Abdul Latif Hawlader being dead his
legal heirs; 1(a) Nure Fatematul Jannat
and others

... Petitioners

-Versus-

Md. Badsha Miah and others

...Opposite-Parties

Mr. Md. Lutfor Rahman, Advocate with

Ms. Shamima Sultana, Advocate

...For the Petitioners

Ms. Syeda Nasrin with

Ms. Jannatul Islam Peya,

Ms. Salma Kulsum and

Mr. Ziaur Rahman, Advocates

...For the Opposite-Party No.1

Ms. Nusrat Jahan Advocate with

Mr. Laxman Biswas, Advocate

...For the Opposite-Party Nos.2-3.

Judgment on 2nd June, 2025.

On an application under Section 115(1) of the Code of Civil
Procedure this Rule was issued at the instance of the petitioner
calling upon the opposite party Nos.1-9 to show cause as to why the
judgment and decree dated 31.03.2015 passed by the learned Joint
District Judge, 1st Court, Madaripur in Title Appeal No.177 of 2010
disallowing the same and thereby affirming the judgment and
decree dated 27.09.2010 passed by the learned Assistant Judge,
Rajoir, Madaripur in Title Suit No.77 of 1998 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.

Shorn of unnecessary details, fact of the case lies in a very narrow compus. The opposite party No.2 (Altaf Hossain Molla) and the opposite party No.3 (Abdul Kader Molla), as plaintiffs, filed the original suit on 30.11.1998 for declaration of title and permanent injunction in respect of 6(six) decimals of land as described in schedule A stating that the total land measuring 26 decimals (District-Madaripur, Police Station-Rajoir, Mouza-Rajoir No.69, R.S. Khatian No.967, S.A. Khatian No.894, S.A. Dag Nos.5163/5164) originally belonged to the predecessor of the defendants named Kolom Howlader. Out of the said land, Kolom Howlader during his life time sold out 6 decimals land from S.A. Dag No.5163 to Mainuddin and delivered possession on the North-West side. Thereafter, his heirs (who are the defendants in the suit) sold rest $19\frac{1}{2}$ decimals on 01.04.1987 vide registered Sale Deed No.1471 (Exhibit-Na) to the plaintiffs. The plaintiffs built their house on the adjacent land of south side, college road. North side of college road measuring 6 decimals is a rotten pond. On 15.11.1995

the defendant Nos.1-5 threatened the plaintiffs claiming the suit land of their own and hence, the present suit.

The defendant Nos.1, 3-5, 7, 9, 11, 13-16 contested the suit by filing written statement stating that the land situated on the north side of Rajoir college road was not sold to the plaintiffs. The defendants have been possessing the suit land. They also asserted that though in S.A. Dag No.5162 and 5168 the total land is recorded as 26 decimals, but practically there is only 22 decimals. There is no land of Dag No.5163 on the north side of Rajoir College road. Basically, the said north side land belonging to Dag Nos.5020, 5021, 5160, 5162 and 5164 land are in possession of the defendants.

The trial court framed 5(five) issues for adjudication of the matter in dispute between the parties. In course of hearing the plaintiff examined 5(five) witnesses as P.Ws and the defendants examined only witness as D.W. Both the parties submitted documents in support of their respective claim and got them marked as exhibits. The trial court by its judgment and decree dated 27.09.2010 decreed the suit.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the defendant preferred Title Appeal No.177 of 2010 before the Court of learned District Judge, Madaripur. Eventually, the said appeal was transferred to the Court of learned Joint District Judge, 1st Court, Madaripur for hearing and disposal who after hearing by the impugned judgment and decree dated 31.03.2015 disallowed the appeal and thereby affirmed the judgment and decree passed by the trial court. At this juncture, the petitioner, moved this Court by filing this application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Md. Lutfor Rahman, learned Advocate appearing for the petitioners also submitted that during pendency of this case, the B.S. khatian has come into operation and some changes occurred in respect of position of road and suit plots. Therefore, unless the plaint is amended giving present khatian and plot numbers and further investigation through court it is difficult to say whether the land of north side of the road is part of plot Nos.5163/5164, as

such, the suit is required to be sent back to the appellate court on remand for hearing afresh.

Ms. Syeda Nasrin and Ms. Nusrat Jahan, learned Advocates appearing for the opposite party Nos.1 and 2-3 submits that the trial court correctly arrived at the finding that after selling out entire land from disputed S.A. Plot Nos.5163 and 5164, said Kolom Howlader and the defendants had no land in those plots. During trial, the Advocate Commissioner submitted report finding that 0.018 acre land was taken for road i.e. for said Rajoir college road. But that land was not deducted from the claim of the plaintiffs i.e. schedule to the plaint. The plaintiffs did not take any step for amendment of plaint to this effect.

She submits that it is the admitted position of the plaintiffs that after purchase of total $19\frac{1}{2}$ decimals, the Rajoir college road was constructed, which clearly proves that Rajoir college road has brought some changes in the demarcation of total land of the plaintiffs, and the entire land has been divided by road. That division necessarily brought some changes in the total land of the

plaintiffs; as such, the plaint in suit is required to be amended to that effect. It also appears that the opposite party Nos.1-3 entered into compromise in Civil Revision No.1812 of 2020 arising out of same impugned judgment and decree which was decreed accepting the compromise by the High Court Division vide judgment and decree dated 23.11.2021. It has brought changes in the position of parties as plaintiff and defendants. Considering the subsequent development the suit is liable to be decided fully and finally on remand.

The learned Advocates for both the parties pray for sending the suit on remand to the appellate court affording the parties opportunity to amend their pleadings by demarcation of the land properly, subsequent development of ownership etc. in order to settle their dispute fully and finally, and the parties may also be allowed to produce their evidences if necessary.

Opposite party Nos.2 and 3 also filed an application for amendment of the schedule of the plaint, which can be allowed by the appellate court at the time of hearing of the matter afresh on remand.

Heard the learned Advocates of both the parties, have gone through the application under Section 115(1) of the Code of Civil Procedure, plaint, written statement and evidences on records and also the impugned judgment and decree passed by both the courts below.

From perusal of plaint in suit, it appears that the suit was filed by the plaintiff mentioning R.S. and S.A. khatians and plots. But position of the suit property as appearing on the face of field map in B.S. has been changed and as per claim of the plaintiffs a portion of the suit property went on the north side of the running Rajoir college road which has given rise to dispute between the parties that north side of the running road is part of plot No.5163. But the defendants claimed that it is part of plot Nos.5020, 5021, 5160, 5162 and 5164. In this situation to avoid confusion about suit plots, plaintiff-opposite party filed an application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of plaint for inclusion of B.S. khatian and B.S. plot number.

From record, it is seen that the suit property has been investigated by a survey knowing Advocate Commissioner and

submitted report on the basis of R.S. and S.A. plots when the position of the property was otherwise. In this situation, I feel it necessary to investigate the suit plot again by appointing an Advocate Commissioner on the basis of present B.S. plot and B.S. map corresponding to R.S and S.A Plots by superimposition. Therefore, to consider and allow the application for amendment for inclusion of B.S. khatian and B.S. plot and the subsequent changes of parties as well as to get the dispute properly adjudicated upon by further investigation of the property in question, the suit is required to be sent back on remand to the appellate court.

Apparently, there is no major dispute between the parties regarding sale and purchase of land of plot No.5163, but the dispute is only relating to present position of the suit plot. If it is determined by way of local investigation as to whether north side of running road is part of plot Nos.5163 and 5164, the dispute can be finally set at rest.

Therefore, I find that the matter has not been properly looked into on the basis of present position of the suit plot and as such, I

find merit in the Rule as well as in the submissions of the learned Advocate for the petitioners.

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

The judgment and decree passed by the learned Joint District Judge, 1st Court, Madaripur is hereby set aside.

The suit is hereby sent back to the appellate court on remand for hearing and passing judgment a fresh allowing application for amendment of plaint for inclusion of B.S. khatian and plot number, changes of parties and to take step for local investigation of the suit plot corresponding to B.S. khatian and B.S. plot and after obtaining report the court of appeal shall pass judgment afresh.

The appellate court is also directed to dispose of the appeal affording opportunity to the parties as observed above within 06(six) months from the date of receipt of this judgment and order without fail.

Order of *stay* granted at the time of issuance of the Rule stand vacated.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.