

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

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 3459 OF 2005**

**IN THE MATTER OF:**

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

-And-

**IN THE MATTER OF:**

Mohammad Aminul Haque and others

--- Defendant-Respondent-Petitioners.

-Versus-

Md. Jalal Ahmed and another

--- Plaintiff-Appellant-Opposite Parties.

Mr. Shasti Sarker with

Mr. Mohammad Mosarof Hosen Sikder,  
Advocates

--- For the Defendant-Res.-Petitioner No. 1.

Mr. Md. Habibur Rahman, Advocate

---For the Plaintiff-Appellant- O. P. No. 1.

**Heard on: 19.07.2023, 20.07.2023,**  
**27.07.2023 and 03.08.2023.**

**Judgment on: 23.08.2023.**

At the instance of the present defendant-respondent-petitioners, Mohammad Aminul Haque and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1 to show cause as to why the judgment and decree dated 21.05.2005 and 28.05.2005 complained of in the petition moved in Court should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party No. 1, namely, Md. Jalal Ahmed as the plaintiff filed the Title Suit No. 331 of 2002 in the court of the learned Assistant Judge, Court No. 2, Dhaka praying for the declaration of title of the suit property and also cancellation of 2 (two) other registered Heba-Bill-Ewaj Deed described in the schedules of the plaint as schedules 'Ga', 'Gha' and 'Uma' of the plaint. The plaint contains that the plaintiff was the owner of the suit land by purchasing and mutating his name and also constructed a house on his portion of land, therefore, he rented to the wife of defendant-petitioner No. 1 being defendant-petitioner No. 3, namely, Mosammat Rowshan Ara Haque. The plaint further contains that in the year 1999 wife of the plaintiff was seriously ill and for her treatment plaintiff sold schedules 'Ka' and 'Ga' to the present defendant-petitioner No. 1 in return for Tk. 8,00,000/- (Eight Lac). The plaintiff further committed to transfer the schedule 'Gha' land to the plaintiff by executing an exchange deed with the schedule 'Ka' property. The plaint also alleged that the defendant-petitioner No. 1 created an exchange deed of the schedule 'Ka' and schedule 'Kha' properties as mentioned in the plaint being deed No. 5545 dated 10.05.2000.

The defendant-petitioner No. 1 failed to pay the said amount of Tk. 8,00,000/- (Eight Lac) but the terms and conditions of the exchange deed would not be committed. There was a Shalish (শালিস) by the Chairman of Uttar Khan Union Parishad, Dhaka. In the meantime, defendant-petitioner No. 1 transferred the 'Ka' schedule land to defendant No. 2 by executing a Heba-Bill-Ewaj on 15.05.2000 with an ill motive, thus, which should be canceled, therefore, the deed should be canceled.

The suit was contested by the present defendant-petitioner No. 1 who filed an application under Order 7 rule 11 of the Code of Civil Procedure for rejection of plaint. The written statement further contended that the present plaintiff-opposite party registered the deed of exchange No. 5545 dated 10.05.2000 and delivered the possession of the land measuring .0660 Ajutangsha (অযুতাংশ) of land to the defendant-petitioner No. 1 who executed a registered Heba-Bill-Ewaj Deed Nos. 5803 and 5804 both dated 15.05.2000 to the present defendant-petitioner Nos. 2 and 3 where the present plaintiff-opposite party was an identifier and attested witness by putting her signature. The defendant-petitioner got gas and electricity connections in the year 2001 and set up a tube well in the suitland. The defendant-petitioners

have been possessing the suit land by constructing a residential house.

After hearing the parties the learned Assistant Judge, Court No. 2, Dhaka allowed the application filed under Order 7 rule 11 of the Code of Civil Procedure by rejecting the original plaint. Being aggrieved the present plaintiff-opposite party preferred the Civil/Title Appeal No. 220 of 2004 in the court of the learned District Judge, Dhaka which was subsequently heard by the Additional District Judge, Bankruptcy Court, Dhaka who also after hearing the parties and considering the evidence passed the judgment and decree dated 21.05.2005 by allowing the appeal and thereby *setting aside* the Order No. 28 dated 06.05.2004 so-original judgment and decree signed on 12.05.2004 by the learned Senior Assistant Judge, Court No. 2, Dhaka and also sent the matter on remand for rehearing by the learned trial court. Being aggrieved the present petitioners filed this revisional application challenging the legality of the impugned judgment of the learned appellate court below and this Rule was issued thereupon.

Mr. Shasti Sarker, the learned Advocate, appearing along with the learned Advocate Mr. Mohammad Mosarof Hosen

Sikder on behalf of the defendant-petitioner No. 1, submits that the learned Additional District Judge, Dhaka has failed to appreciate the facts and law involved in the case. As per the statements in the plaint, there is no cause of action for the suit and it is also barred under law as the learned court committed an error of law by sending the case back on remand relying upon an unexhibited private Salishnama (শালিসনামা) which was not admitted into evidence at all thereby committed an error of law which caused an error decision occasioning failure of justice, as such, the Rule should be made absolute.

The learned Advocate further submits that under the Evidence Act documentary evidence is more valuable than the oral statement, thus, the learned trial court rejected the plaint for finding no cause of action in the case of the present opposite party within the provision of the Code of Civil Procedure, thus, the learned trial court committed no error of law by applying his judicial mind and considering the case of the plaintiff at its initial stage of the trial, as such, the learned trial court committed no error of law but the learned appellate court committed an error of law by allowing the appeal for retrial/rehearing of the original suit upon finding as to a Salish (শালিস) was held before the local

union parishad Cairannn and also the claim of the amount in the exchange of land, therefore, this court should interfere upon the impugned judgment passed by the learned appellate court below in order to make the Rule absolute.

The present Rule has been opposed by the present plaintiff-opposite party No. 1.

Mr. Mohammad Habibur Rahman, the learned Advocate, appearing for the present plaintiff-opposite party No. 1 submits that the present plaintiff-opposite party adduced and produced sufficient evidence by way of documents to prove its own case but the learned appellate court below technically avoided the plaintiff's case, as such, the plaintiff could not get a judgment and decree on merit from the learned trial court which is a non-consideration of the facts and legal aspects. However, the learned appellate court below allowed the appeal and sent the matter back on remand lawfully, thus, this court should not interfere upon the impugned judgment and decree and the Rule is liable to be discharged.

The learned advocate further submits that there were sufficient causes of action which have been described in the plaint in detail but the learned trial court misread and failed to

apply his judicial mind, as such, rejected the suit by his judgment and decree passed upon an application under Order 7 rule 11 of the Code of Civil Procedure which have committed an error of law but the learned appellate court below properly considered the above matter by sending the matter back on remand for rehearing and deciding the matter on merit, as such, the Rule is liable to be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed 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 documents adduced and produced by the respective parties by way of depositions as PWs and DWs in the learned courts below which have been included in the lower courts records, it appears to me that the present opposite party No. 1, namely, Md. Jalal Ahmed, as the plaintiff filed the title suit claiming a declaration of title of the suit property and also cancellation of the deeds of Heba-Bill-Ewaj. It further appears that in the plaint described in detail as to the execution of an exchange deed with the present defendant-

petitioner No. 1 on 10.05.2000 in order to get Tk. 8,00,000/- for the treatment of his wife.

I am surprised to see that the plaintiff-opposite party could execute a deed of exchange in return for such a huge amount instead of exchanging the property which is not believable and reliable evidence in support of the plaintiff's case. Moreover, the claim of the plaintiff that the exchange deed was not acted upon because no money was paid which could be implemented because of any pending litigation of a C. R. Case. The question is the document for exchanging the land and a document for sale in return for money are 2 different pieces of evidence for the court of law which the plaintiff could not make different in order to prove the case.

Secondly, it further appears that the plaintiff sought cancellation of 2 (two) Heba-Bill-Ewaj deeds which he himself identified by putting his own signature being an educated person but subsequently seeking cancellation of such deed is a contradictory statement, as such, the learned trial court committed no error of law by applying his judicial mind and considering the plaint itself rejected on the basis of the no cause of action.

The learned Advocate for the plaintiff-opposite party made submission on similar and several occasions that all these deeds were executed on good faith and good relationship between/among the parties. Under the provisions of the Evidence Act, the mental condition of the parties before the execution of a valid deed is more important evidence in order to prove the respective case.

I will now consider the judgment passed by the learned courts below. The learned trial court rejected the plaint by its Order No. 28 dated 06.05.2004 upon an application under Order 7 rule 11 of the Code of Civil Procedure finding the following manner:

...“These being the facts and circumstances, the plaint is liable to be rejected. On perusal of the record of this suit, I have found that the alleged instrument does not contain any such condition that the defendant No. 1 is to pay any amount of money to his counterpart (the plaintiff) in addition to the land he is to exchange with that of the plaintiff. So, the plaintiff’s claim is not document-based. As a party to the alleged instrument, the plaintiff cannot go beyond it.”...

However, the learned appellate court below allowed the appeal without considering the relevant facts for disposal of the suit thereby coming to a wrongful conclusion on the basis of the following findings:

...“অতএব, উপরোক্ত আলোচনার প্রেক্ষিতে এবং বাদীপক্ষের আরজী ও উত্তর খান ইউনিয়ন পরিষদের চেয়ারম্যান কর্তৃক গত ০১.০৩.২০০২ ইং তারিখের সালিশনামার কপি এবং মহামান্য উচ্চতর আদালতের উল্লেখিত রুলিংগুলি পর্যালোচনাক্রমে এই সিদ্ধান্তে উপনীত হওয়া যায় যে, বিজ্ঞ নিম্ন আদালত আইনগত ও ঘটনাগত বিষয় সঠিকভাবে ধারণা লাভে ব্যর্থ হইয়া ভ্রমাত্মক সিদ্ধান্ত প্রদান করিয়াছেন এবং তর্কিত গত ০৬.০৫.২০০৪ ইং তারিখের ২৮ নং আদেশ দ্বারা দেঃ কাঃ বিঃ আইনের ৭ আদেশের ১১ নিয়ম এর বিধান মতে বাদীপক্ষের আনিত মোকদ্দমাটি খারিজ করায় ন্যায় বিচার বিঘ্নিত হইয়াছে।”...

After examining the impugned judgment and the documents of the lower court records I am of the opinion that the learned trial court committed no error of law by rejecting the plaint under the provision of Order 7 rule 11 of the Code of Civil Procedure but the learned appellate court below without considering the plaint itself and the supporting documents for the case in the plaint the learned appellate court below committed an error of law, therefore, I am inclined to interfere upon the impugned judgment passed by the learned appellate court below.

Accordingly, I find merit in the Rule.

In the result, the Rule is hereby made absolute.

The judgment and decree dated 21.05.2005 passed by the learned Additional District Judge, Bankruptcy Court, Dhaka in the Civil/Title Appeal No. 220 of 2004 is hereby *set aside*.

The interim order passed by this court at the time of issuance of this Rule staying the operation of the impugned judgment dated 21.05.2005 passed by the learned Additional District Judge, Bankruptcy Court, Dhaka in the Title Appeal No. 220 of 2005 is hereby recalled and vacated.

The judgment and decree dated 06.05.2004 passed by the learned Assistant Judge, Court No. 2, Dhaka in the Title Suit No. 331 of 2002 is hereby upheld.

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