

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

**Present:**

**Mr. Justice K.M. Hafizul Alam**

**Civil Revision No.1006 OF 2018**

Md.Kamrul Hasan being dead his heirs  
1(a) Md. Masum Reza and others

*.....Plaintiff-Appellant-Petitioners*

**-VERSUS-**

1. Md. Nurul Islam being dead his heirs  
1(a) Md. Sultan Ferdous and others

*...Defendant-Respondent- Opposite parties*

Mr. Md. Abdus Saleque with Mr.  
Ratneswar Bhattacharee, Advocates

*.....For the Petitioners*

Mr. Md. Bazlur Hasan, Advocate

*....For the Opposite parties*

**Heard and Judgment on 22.08.2024**

**K.M. Hafizul Alam, J.**

On an application under Section 115(1) of the Code of Civil Procedure, 1908 (the CPC), this Rule was issued on 09.04.2018, calling upon opposite party No. 1 to show cause as to why the impugned judgment and order dated 17.01.2018, passed by the learned Additional District Judge, 1st Court, Naogaon, in Miscellaneous Appeal No. 01 of 2017 affirming the judgment and order dated 01.12.2016 passed by the learned Joint District Judge,

3rd Court, Naogaon, in Other Class Suit No. 55 of 2014, should not be set aside and/or such other or further orders passed as to this court may deem fit and proper.

At the time of issuing the Rule, an ad-interim order was passed staying the operation of the aforesaid judgment and order dated 17.01.2018 for a period of 1(one) month. Subsequently, the stay order was extended until the disposal of the Rule.

Facts, relevant for the disposal of the Rule, in brief, are that the petitioner, as the plaintiff, filed Other Suit No. 55 of 2014 in the court of the learned Joint District Judge, 3rd Court, Naogaon, seeking a declaration of title over the lands described in the Ka, Kha, and Ga schedules of the plaint. Opposite party no.1, as defendant no.151, contested the suit by filing a written statement.

During the pendency of the suit, defendant-opposite party no. 151 filed an application under Order 39, Rule 1 of the CPC, seeking a temporary injunction to restrain the plaintiff from dispossessing him from his shops and from changing the nature and character of the shops situated on the suit land, as described in the schedule of the injunction petition.

On the other hand, the plaintiff filed a written objection to the application for a temporary injunction, stating that the land in question is Waqf property, that he is the Mutawalli of said property, and that he has been in possession of the land. He further stated that defendant no. 151 has no right, title, or possession over it. Therefore, the injunction petition submitted by defendant no. 151 is liable to be rejected.

The learned Joint District Judge, 3rd Court, Naogaon, after hearing both parties and considering the documents on record, allowed the temporary injunction petition by judgment and order dated 01.12.2016.

Being aggrieved by and dissatisfied with the aforesaid judgment and order of injunction dated 01.12.2016 passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Naogaon, the plaintiff as appellant preferred Miscellaneous Appeal No.01 of 2017 before the learned District Judge, Naogaon. The learned District Judge thereafter transferred the said appeal to the learned Additional District Judge, 1<sup>st</sup> Court, Naogaon for disposal. The learned Additional District Judge, Naogaon after hearing the parties and considering the

materials on records vide judgment and order dated 17.01.2018 disallowed the said appeal and thereby affirmed the judgment and order dated 01.12.2016 passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Naogaon.

The petitioner being aggrieved by and dissatisfied with the aforesaid judgment and order dated 17.01.2018 passed by the learned Additional District Judge, 1<sup>st</sup> Court, Naogaon in Miscellaneous Appeal No. 01 of 2017 has preferred this revisional application before this Court under section 115(1) of the CPC and obtained the instant Rule on 09.04.2018 along with an order of stay of the impugned order which was subsequently extended.

At the time of Rule hearing, Mr. Md. Abdus Saleque, the learned Advocate appearing on behalf of the plaintiff-petitioner, submits that one Katemun Nessa made the land in question Waqf property through registered deed no. 3048 dated 07.06.1943 therefore, the claim of defendant no. 151 to become the owner of the said land by way of exchange deed no.10806 dated 02.09.1986 is not lawful.

Mr. Saleque next submits that the Kha schedule land was wrongly recorded in the RS Khatian and that defendant no. 151 has no right, title, or possession over the land in question but, the learned court below, without considering this aspect, passed the impugned judgment and order, therefore, the Rule may kindly be made absolute.

**Per contra**, Mr. Md. Bazlur Hasan, learned Advocate appearing for the defendant no.151-opposite party no.1 submits that 94 decimals of land out of 173 decimals of CS plot no. 51 under CS Khatian No. 26, mentioned in the Kha schedule of the plaint, were not included in the Waqf property, and that the said land was rightly recorded in the S.A. Khatian in the name of one Khatemun Nessa. Subsequently, after the death of Khatemun Nessa, her daughter Lutfan Nessa inherited the property.

Mr. Hasan next submits that 32 decimals in plot no. 134 and 62 decimals in plot no.136 of RS Khatian No. 247 were rightly recorded in the name of Lutfan Nessa, from whom defendant no.151 acquired 32 decimals of land through registered exchange deed no.10806 dated 02.09.1986. The defendant no.151 filled the pond, constructed buildings and shops, and rented out the

shops. Thus, defendant no. 151 has been in possession for more than 30 years, and the court below rightly found possession and a *prima facie* case in favor of defendant no. 151.

Mr. Hasan further submits that both courts below concurrently found that defendant no. 151 has been in possession; hence, the Rule may kindly be discharged. In support of his submissions, Mr. Hasan referred to the case of **World Bank Office, Dhaka and another vs. Ismet Zerin Khan**, reported in **70 DLR (2018) 137**, wherein the High Court Division held—

"37. It is well settled position in law that under section 115 of the Code of Civil Procedure, the High Court cannot re-appreciate the evidence and cannot set aside concurrent findings of court's below by taking a different view of the evidence. The high Court is empowered only to interfere with findings of fact, if the findings are perverse or there has been a non-appreciation or non-consideration of the material evidence on record by the court below. Simply because another view of the evidence may be taken is no ground by the High court to interfere in its revisional jurisdiction."

I have perused the application, along with the annexures attached thereto, and the materials on record. I have also heard the learned advocates and considered their submissions and the relevant laws.

Upon perusal of the records, it *prima facie* appears that defendant no.151-opposite party no.1 obtained 32 decimals of land in plot no.134 of RS Khatian no. 247 through registered exchange deed no.10806 dated 02.09.1986 from one Lutfan Nessa, whose name was recorded in RS Khatian no. 247. However, the plaintiff has filed the present suit approximately 38 years later, on 28.05.2024, claiming the land in question as Waqf property. The Trial Court, after considering the mutation khatian in the name of defendant no.151, khajna dhakhila, rent collection receipts for shops, and electricity bill receipts, found that defendant no. 151 has been in possession of the suit land and that a *prima facie* case exists in his favor. The learned Appellate Court also upheld the Trial Court's findings regarding possession and the *prima facie* case.

In view of the discussion above, I am of the opinion that defendant no. 151-opposite party no. 1 has a *prima facie* arguable case regarding possession of the suit land. Therefore, I hold that the concurrent findings of the court

below do not warrant interference by this court, and the Rule is liable to be discharged.

As a result, **the Rule is discharged** without any order as to costs. The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

However, the learned Judge of the Trial court is directed to conclude the trial of the suit on its merits as expeditiously as possible, preferably within six (6) months from the date of receiving a copy of this judgment.

Send down the lower Court records immediately, along with a copy of this judgment and order, for information.