

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 5915 OF 1991

Jitendra Nath Das being dead his heirs
1(a) Biman Kumar Roy and others
Plaintiffs-Respondents-Petitioners

Versus

Sub-Divisional Officer, Bagerhat and others
Defendants-Appellants-Opposite Parties

Mr. Sheikh Atiar Rahman, Advocate
for the plaintiffs-respondents-petitioners

None appears
for the defendants-appellants-opposite parties

Judgment on: 20.6.2023

This Rule was issued calling upon the opposite party Nos. 1-3 at the risk of the petitioners to show cause as to why the impugned Judgment and Decree dated 22.4.1985 passed by the learned Sub-ordinate Judge (Joint District Judge,) Bagerhat in Title Appeal No. 253 of 1984 allowing the appeal and thereby reversing the Judgment and Decree dated 26.4.1984 passed by the learned Upa-zilla Munsif, Morrelgonj, Bagherhat in Title Suit No. 578 of 1984 decreeing the suit should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Mr. Sheikh Atiar Rahman, the learned Advocate for the plaintiffs-petitioners filed an application for abatement and submits that the suit of the instant Civil Revision enlisted as vested property and release case is pending before the Vested Property Tribunal, Bagerhat and thus the present Civil Revision be abated according to the provision of Section 13(A) of the Restoration of Vested Property Act, 2001.

Heard the learned Advocate and perused the application. I find substance in this application and accordingly the application is allowed.

In the result, the Rule is discharged.

Send down the lower Court's record with a copy of this judgment at once.

The petitioners as plaintiff filed Title Suit No. 330 of 1974 in Munsif's 2nd Court, Bagerhat which on transfer to the Court of the Upazilla Munsif, Morrelganj, Bagerhat was re-numbered as Title Suit No. 578 of 1984 and was disposed of as such the Suit was for declaration to the effect that the enlistment of the suit

property as vested and non-resident property was illegal, ultravires and without jurisdiction and also for permanent injunction.

The plaintiff's case, in short, is that the suit land originally belonged to Radhika Mohan and Rai Mohan to the extent of 6 annas share each and to Nagendra and Upendra to the extent of 4 annas share. Rai Mohan died leaving behind 4 sons namely, the plaintiff Satyendra Nath, Burehdra and Atindra Nath as his heirs. Each of his sons thus inherited to extent of 1 anna and 10 gondas share. There had been a family arrangement among the co-sharers with regard to their properties and a Deed of Memorandum was executed by the co-sharers on 02.7.1954. On the basis of this family arrangement the joint properties of the co-sharers situated in west Bengal and the then East Pakistan were mutually divided. The other co-sharers obtained the properties situated in West Bengal and the plaintiff got the suit land.

The further case of the plaintiff is that the S.A. Khatian in respect of the suit properties has been wrongly prepared and that subsequently the suit land has been wrongly and illegally enlisted as vested/non-resident property. During the War of liberation the plaintiff for fear of life went to India and returned to his home in the year 1972 and found that different persons are in possession of the suit land on the plea of settlement from the then Enemy

Property Authorities. On enquiry the plaintiff came to know that defendant Nos. 1-10 took lease of the suit land along with other lands from defendant No. 11. The plaintiff thereafter on 30.7.1973 under compulsion prayed for taking lease of the suit land from defendant No. 11 and got lease of the same as a co-sharer and the previous annual lease given to defendant Nos. 1-10 was cancelled by the Vested Property Authorities. Thus the defendants surrendered possession of the suit land in favour of the plaintiff. But subsequently they filed a review petition to defendant No. 11 and started threatening the plaintiff to dispossess from the suit land. The plaintiff was therefore, constrained to file the suit.

The defendants Nos. 11-15, 16-20 and 28 contested the suit by filling written statements. The case of defendant Nos. 11-15 and 16-20 are in substance the same.

The case of defendant Nos. 11-20, briefly stated, is as under;

That the suit land is vested/non-resident property and the owners thereof have been permanently residing in India since 1947. The lands have been legally and rightly enlisted as vested/non-resident property and the same was leased out to defendant Nos. 1-9 before order of injunction against the annual lessees and the Vested Property Authority.

The case of defendant No. 28, briefly put is as follows:-

His father Nazem Sardar took settlement of 1.67 acres of land appertaining to S.A. Khatian No. 911 from Rai Mohan and others and was inducted into possession thereof. Subsequently Nazem Sardar died leaving his wife, this defendant as his son and a daughter as his heirs. The mother and the daughter subsequently gave up their shares in favour of this defendant and that he has been in possession of the same. His father contention is that the relevant B.S. and S.A. Khatian were wrongly prepared in respect of his 1.67 acres of land. Consequently this defendant filed Title Suit No. 554 of 1976 in Munsif's, 2nd Court, Bagerhat and got an ex parte decree but the same was set-aside in Miscellaneous Case No. 120 of 1981 for which this defendant filed Civil Revision No. 66 of 1980 for which this defendant filed Civil Revision No. 66 of 1981 in the Court of the District Judge, Khulna and the same is now pending.

The Munsif, Morrelganj, Bagerhat on consideration of the evidence on record decreed the suit vide its judgment and decree dated 26.4.1984 in Title Suit No. 578 of 1984.

Against the aforesaid judgment and decree the defendant Nos. 11-13 filed Title Appeal No. 578 of 1984 before the District Judge, Bagerhat allowing the appeal and thereby reversing the judgment and decree dated 26.4.1984 passed by the Munsif,

Morrelganj, Bagerhat vide judgment and decree 26.4.1984 in Title Suit No. 578 of 1984.

Being aggrieved by and dissatisfied with the impugned judgment and decree Petitioner moved this application under Section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

Against which the defendant Nos. 11-13 filed Title Being aggrieved and

The learned Sub-ordinate Judge, Bagerhat dismissed the appeal by his Judgment and Decree dated 22.4.1985 in Title Appeal No. 253 of 1984.

Being aggrieved by and dissatisfied with the impugned Judgment and Decree Petitioner moved this application before this Court and obtained this Rule.

Mr. Sheikh Atiar Rahman learned Advocate for the opposite party No. 26 applicant has filed an application for abatement of the instant Revision and also submits that the instant Revision arose out of Title Suit No. 578 of 1984 is vested property and the same has been mentioned in the Gazette notification and challenging the same petitioner of the main Revision has filed a release case being Release Case No. 2233 of 2012 before the Restoration of Vested

Property Tribunal, Bagerhat and Opposite Party No. 35 of the main Anwar has also filed another release case being Release Case No. 1121 of 2012 and Heirs of Opposite Party No. 37 of the present abatement application Mahabat Ali Sardar has also filed another release case being Release Case No. 2781 of 2012 all the cases and are pending there.

No one oppose the application for abatement.

Considering the facts and circumstances of the case, I find substance in the submission of the learned Advocate for the applicant. Accordingly, the instant Civil Revision is abated.

In the result, the Rule is discharged.

Send down the lower Courts record with a copy of the Judgment to the Court below at once.

