

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 1887 of 2017

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Shah Alam Prodhan and others

--- Plaintiff-Respondent-Petitioners.

-versus-

A. Latif and others

---- Opposite Parties.

Mr. Selim Reja Chowdhury, Advocate

--- For the Petitioners.

Mr. Humayun Kabir Sikder with

Mrs. Asma Hossain, Advocates

--- For the Opposite Party Nos. 1-6.

Mr. A. B. Shawket Ali, Advocate

--- For the Opposite Party Nos. 11, 14, 16 and 17.

Mrs. Kazi Shahanara Yeasmin, DAG with

Mrs. Khalifa Shamsun Nahar Bari, AAG and

Mr. Md. Humayun Kabir, AAG

--- For the Opposite Party No. 18.

Heard on: 29.11.2022, 30.11.2022, 06.12.2022, 12.01.2023, 17.01.2023, 25.01.2023, 05.02.2023 and 02.03.2023.

Date of Judgment: 03.04.2023.

At the instance of the present plaintiff-respondent-petitioners, Md. Shah Alam Prodhan 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 Nos. 1-6 to show cause as to why the judgment and decree dated

28.03.2017 respectively passed by the learned Joint District Judge, Court No. 1, Chandpur in the Title Appeal No. 77 of 2005 allowing the appeal thereby reversing by modification those dated 12.07.2005 passed by the learned Assistant Judge, Matlab, Chandpur in Title Suit No. 26 of 2000 decreeing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioners as the plaintiffs filed the Title Suit No. 26 of 2000 in the court of the learned Assistant Judge, Matlab, Chandpur for declaration of title and also for declaration that the Settlement Case No. 10 of 1972-73 was void and inoperative. The plaint contains that Dhirendra Krishna Deb Bahadur and others were the original C. S. recorded owners being C. S. Khatian No. 3, Mouza-Awshinpur, Police Station- Matlab, Chandpur. Akhil Chandra Mollick and others were also C. S. recorded owners who sold land but his successors executed 4 (four) sale deeds dated 06.03.1961 in favour of A. Rahim and others (the predecessor of the plaintiffs) for the land measuring 2.01 acres. When the said purchasers went to pay khajna (খাজনা) they (Tahashil Office) were told that the property has been recorded in the S. A. Khatian in the name of the Government. After a miscellaneous case, the plaintiffs could mutate their names in the record and they are in possession

by the fishery. The defendants made out the Settlement Case No. 10 of 1972-73 fraudulently and leased out to landless persons on 26.06.1973 and the suit is not an agricultural land but it is a pond. A cause of action for filing the suit was created when the defendants tried to catch fish from the property.

The predecessor of the present opposite party Nos. 1-6 as defendant No. 2 contested the suit by filing a written statement contending that he took an oral settlement of land measuring 56 decimals out of 1.13 acres of land in C. S. Dag No. 112 from Jaminder Ram Chandra Mallick which was surrounded by Ayles (আইলস).

The land was subsequently recorded in S. A. Khatian No. 660 along with total land measuring 3.43 acres in their names. The present opposite party Nos. 7-17 as the defendant Nos. 1 and 3-8 contested the suit by filing a written statement contending *inter alia* that the suit land is a Government khas (খাস) land which used to be a pond (দিঘী) but most of the time the people cultivate the suit land. These defendants have been possessing the suit land pursuant to the Settlement Case No. 10 of 1972-73. By the said settlement case defendant No. 1, Sukkur Ahammad, got 28 decimals in plot No. 112 and 64 decimals in plot No. 136 and the predecessor of the defendant Nos. 3-8 got 29 decimals in plot No. 112 and also got 24

decimals from plot No. 136. Accordingly, the land measuring 1.45 acres was settled on 25.07.1974. The said settlement was made out initially for 15 (fifteen) years and subsequently, it became perpetual. The plaintiffs did not have title and possession.

After hearing the parties and considering evidence both documentary and depositions as PWs and DWs. the learned trial court decreed the suit by his judgment and decree dated 12.07.2005. Being aggrieved the present opposite parties as the defendants preferred the Civil Appeal No. 77 of 2005 in the court of the learned Joint District Judge, Chandpur which was allowed by the learned appellate court below by his judgment and decree dated 28.03.2017 and by decreeing the suit in part.

Mr. Selim Reja Chowdhury, the learned Advocate appearing on behalf of the petitioners, submits that the learned appellate court below overlooked the specific finding of the trial court as to the *locus standi* of the defendants and silence of the Government who is the proper authority to challenge it moreover the Government mutated plaintiffs name in the record of rights and realized rents (খাজনা) from the plaintiffs which carry evidentiary values, thus, committed an error of law in an error in the decision occasioning failure of justice.

He also submits that the learned appellate court below failed to appreciate that nobody filed any suit against the deed of the plaintiffs, as such, the learned appellate court below has no option to declare any relief against the deed, thus, the Rule should be made absolute.

The Rule has been opposed by the present opposite parties.

Mr. Humayun Kabir Sikder, the learned Advocate appearing along with the learned Advocate, Mrs. Asma Hossain for the opposite party Nos. 1-6, submits that the learned trial court committed an error of law by decreeing the suit in favour of the plaintiff-petitioners by ignoring the right accrued by the oral settlement of the suit land by Jaminder Ram Chandra Mallick in favour of the defendant No. 2, the predecessor of the present opposite party Nos. 1-6, who recorded their names in the S. A. Khatian and they have been paying khajna (খাজনা) to the Government.

Mr. A. B. Shawket Ali, the learned Advocate appearing for the opposite party Nos. 11, 14, 16 and 17, submits that the learned trial court and the learned appellate court below committed an error of law by disregarding the Settlement Case No. 10 of 1972-73 in favour of them as the landless persons under the provision of 'ভূমি প্রশাসন বোর্ড, ভূমি মন্ত্রণালয়, ঢাকা (ভূমি প্রশাসন ম্যানুয়াল)' and the land was

leased out in favour of them in the year 1974 and they are in possession by fishing in pond (দিঘী) and cultivating land, as such, the court below committed an error of law without recognizing them as the lessee under the Government, thus, the Rule is liable to be discharged.

Mrs.Kazi Shahanara Yeasmin, the learned Deputy Attorney General, appearing along with the learned Assistant Attorney General, Mrs. Khalifa Shamsun Nahar Bari and Assistant Attorney General, Mr. Md. Humayun Kabir, for the opposite party No. 18, the Government of Bangladesh, submits that both the learned trial court and the learned appellate court below ignored the claim of the Government of Bangladesh as to record of right in Khas Khatian No. 1 pursuant to the operation of section 20 of the State Acquisition And Tenancy Act, 1950 because the land is a class of fishery/pond, thus, came to an unlawful conclusion which is liable to be *set aside* by recognizing the suit land of S. A. Khatian in the name of the Deputy Commissioner, Comilla (now Chandpur). She also submits that the land (pond/fishery) has been leased out to landless persons, firstly, for 15 (fifteen) years and thereafter by the perpetual lessees who are in possession but the plaintiffs or any other persons were never in the possession of the suit land.

Considering the above submissions made by the learned Advocates appearing on behalf of the respective parties and also considering the revisional application 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 as well as considering the application filed for withdrawal of the suit along with some other annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below and also perusing the essential materials available in the lower court records, it appears to this court that the present plaintiff-petitioners filed a title suit claiming title and cancellation of a settlement case being the Settlement Case No. 10 of 1972-73. The plaintiffs claimed their title through the C. S. recorded owners Dhirendra Krishna Deb, Akhil Chandra Mollick and others when the Tahashil Office received the manual khajna (খাজনা) from them on the ground that the suit property was recorded in the name of the Government as Khas (খাস) Khatian No. 1, the Government falsely recorded as khas land/pond/fishery and settling the land in favour of the some of the present opposite parties by opening the Settlement Case No. 10 of 1972-73. The present opposite party Nos. 1-6 claimed their title through an oral settlement of the suit land from one Jaminder Ram

Chandra Mallick by recording the property in S. A. Khatian in their names. The present other opposite parties claimed the land as the landless persons who were given periodical settlement and then perpetual settlement in their favour pursuant by the Settlement Case No. 10 of 1972-73. Finally, the present opposite party No. 18, the Government of Bangladesh, represented by the Deputy Commissioner, Chandpur claimed that the suit property being land/pond/fishery became a khas by recording the land in the Khas Khatian No. 1, therefore, neither the plaintiffs nor the defendants who have any claim upon the suit land and subsequently leasing out the property by the Settlement Case No. 10 of 1972-73, as such, both the courts below failed to take notice as to the position of the case land.

In this regard, this court called the Deputy Commissioner, Chandpur and others to appear in person before this court to provide an explanation and information regarding the land of the Government.

They appeared in this court in person without any proper information or explanation but they provided some information through the learned Deputy Attorney General which are not part of the lower court record, so, the Government failed to appear or contest the suit on the ground that they were proforma informants.

This court observed that the Deputy Commissioner, Chandpur and others at the relevant time absolutely failed to provide the case of the Government and both the courts below found that the Government has ample opportunity but remained ignorant as to the claim of the Government of Bangladesh as the opposite party. In this regard, the persons who were under an obligation to preserve the right of the Government should have the more vigilant but the Government failed to pursue the matter as per their claim.

Regarding the claim of the plaintiff-petitioners the learned trial court found that the plaintiffs could prove their right, title and possession upon the oral settlement pursuant to the claim of right upon measuring 2.01 acres as they could prove their record of right. However, the learned trial court committed an error of law by decreeing the entire suit land without considering the rights and title accrued by some of the present defendant-opposite parties through their succession. The learned trial court also committed an error of law by decreeing the suit even finding some defects on the part of the plaintiffs in the following terms:

...“বিবাদীর সাক্ষীরা ইহাও বলিয়াছে যে, নাঃ সম্পত্তিতে ভূমিহীনদের গুচ্ছগ্রাম ধর-নর গৃহাদিও আ-ছ যাহা বাস্ত-ব নাই। পক্ষ-দর ম-ধ্য উভ-য়ই দোষ ক্রটি বা মালিকানা সম্পর্কিত ক্রটি আছে। বিবাদীপক্ষের ২/০১/৩-৮ দের ১৬ আনা ক্রটি আছে। বাদীপক্ষে কিস্তিতে ক্রটি আছে। কেননা, ৩০ শতক বাবদ দলিলটি বিত-কর উ-র্দ্ব অবস্থান ক-র নাই কিন্তু ৬৯ স-নর আ-দশ ও

তৎ-প্রেক্ষিত ১০/৭৩-৭৪ নং কেই-সর আ-দশ অনুযায়ী সরকার-রর নিরবতাও মানিয়া লওয়াই বাদীর দাবী-ক অগ্রাহ্য করা গেল না।”...

On the other hand, the learned appellate court below came to a lawful conclusion to decree the suit in part after taking into consideration all the relevant documents and evidence adduced and produced by the parties. In particular, the learned appellate court observed that the Government utterly failed to contest the suit despite the facts that it was made a proforma defendant because the Government should have responded quickly and urgently as soon as they came to know as to the provision of law as the practical situations of the land but they failed.

The learned appellate court below came to a lawful conclusion to decree the suit in part on the basis of the following lawful findings which reads as follows:

...“বর্ণিত আ-লাচনা ও পর্য-বক্ষ-ণর প্রেক্ষিত নালিশী ১১২ দা-গ ৮১ শতক, ১১৬ দা-গ ১৯^১/_২ শত-ক বাদীপ-ক্ষর এবং নালিশী ১১২ দা-গ ৩২ শত-ক ২ নং বিবাদীপ-ক্ষর এবং নালিশী ১১৬ দা-গ ৬৮^১/_২ শত-ক ১/৩-৮ নং বিবাদীপ-ক্ষর স্বত্ব, স্বার্থ ও দখল থাক-লও বিজ্ঞ নিম্ন আদালত বাদীপক্ষের অনুকূ-ল নালিশী ১১২ দা-গর সম্যক ১১৩ শতক, নালিশী ১১৬ দা-গ সম্যক ৮৮ শতক বাবদ স্বত্ব ঘোষণা করে ভ্রমাত্মক সিদ্ধান্ত নিয়েছেন বিধায় উক্ত তর্কিত রায়-ডিক্রি রদ-রহিতক্রমে মূল মোকদ্দমাটি বাদীপ-ক্ষর অনুকূ-ল আংশিক ডিক্রী-যোগ্য ম-র্ম সিদ্ধান্ত গৃহিত হ-লা।”...

In view of the above discussions and consideration of the judgments and decree passed by the learned courts below I am of the opinion that the learned appellate court below committed no error of law by non-considering or misreading any of the evidence adduced and produced by the parties and thereby concluded the decision upon taking into all aspects of this case. I am therefore not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 28.03.2017 passed by the learned Joint District Judge, Court No. 1, Chandpur in Title/Civil Appeal No. 77 of 2005 allowing the appeal thereby reversing by modification is hereby upheld.

The interim order of stay passed at the time of issuance of the Rule and subsequently the same was extended till disposal of the Rule 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 court below immediately.