

IN THE SUPREME COURT O1544155F BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

CIVIL REVISION NO.3957 OF 2009

Md. Abdul Ali

....Petitioner

-Versus-

Assistant Commissioner of Land, Netrokona and others

....Opposite parties

With

CIVIL REVISION NO.4612 OF 2009

Md. Abdul Ali

....Petitioner

-Versus-

Abdul Kadir and others

.... Opposite parties

Mr. Md. Golam Mostafa, Senior Advocate with

Mr. Sharif Uddin, Advocate and

Ms. Turzana Khanom, Advocate

.... For the petitioner in all the Civil Revisions.

Mr. Md. Moshihur Rahman, Assistant Attorney General with

Mr. Md. Mizanur Rahman, Assistant Attorney General

.... For the opposite party Nos.1-4 of Civil Revision No.3957 of 2009 and opposite party Nos.5-8 of Civil Revision Nos.4612 of 2009.

Mr. Shasti Sarker, Senior Advocate with

Mr. Laxman Biswas, Advocate

.... For the opposite party Nos.5-7 and 8(a)-8(h) of Civil Revision No.3957 of 2009

and opposite party Nos.1-3 and 4(a) - 4(h)
of Civil Revision No.4612 of 2009.

Heard on 07.11.2024 and 22.01.2025.

Judgment on 23.01.2025.

Civil Revision Nos.3957 of 2009 and 4612 of 2009 having arisen out of the identical judgment and decree passed by the learned Additional Joint District Judge, 2nd Court, Netrokona in Other Class appeal Nos.87 of 2005 and 97 of 2005 on 27.08.2009 allowing both the appeals and setting aside the judgment and decree passed by the learned Senior Assistant Judge, Netrokona in Other Class Suit No.79 of 2001 on 02.04.2005 decreed the suit those are heard together and being disposed of by this single judgment.

Facts in short are that the petitioner as plaintiff instituted above suit for a decree for declaration of title and permanent injunction for 1.50 acres land appertaining to plot No.800 of S. A. Khatian No.1 alleging that above property belonged to the Government and on an application by the plaintiff as a poor and landless peasant defendant No.1 gave settlement of above land to the plaintiff by L. A. Case No.1180 (XIII) 81-82 on 10.11.1981 and delivered possession. The plaintiff mutated his name for above land and was possessing the same by cultivation by paying rent to the government. Defendant Nos.3-7 are locally influential rich people and out of jealous they submitted a petition to defendant No.1 for cancellation of above settlement of land

and without serving any notice upon the plaintiff above settlement was cancelled by impugned order dated 23.12.2001 passed in Miscellaneous Case No.70(XIII)/85-86.

Defendant Nos.1 and 3-6 contested the suit by filing two separate written statements. Defendant No.1 stated that the disputed land is part of Raji River but the same was erroneously given settlement to the plaintiff and subsequently above settlement has been cancelled. Defendant No.1 cross examined the plaintiffs witnesses but did not adduce any evidence in support of above written statement.

Defendant No.3-6 stated that the land of plot No.800 is part and parcel of Raji River and the plaintiff by undue influence obtained settlement of above 1.50 acres land which was not cultivable land. Above Raji River is a navigable river and during winter water of above river is used for irrigation. These defendants submitted an application to defendant No.1 for cancellation of above settlement of the plaintiff and on an enquiry by the Assistant Commissioner (Land) defendant No.1 found that above land was Raji River and lawfully cancelled above settlement of the plaintiff.

At trial plaintiff examined 5 witnesses and documents of the plaintiffs were marked Exhibit Nos.1 and 2. On the other hand

defendant Nos.3-6 examined 3 witnesses and their documents were marked as Exhibit Nos."Ka" - "Cha".

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed above suit.

Being aggrieved by above judgment and decree of the trial court defendant No.1 preferred Title Appeal No.87 of 2005 and defendants No.3-6 preferred Title Appeal No.97 of 2005 to the District Judge, Netrakona and which were heard analogously by the learned Joint District Judge, 2nd Court, Netrokona who allowed both the appeals and set aside the judgment and decree of the trial Court and dismissed above suit.

Being aggrieved by and dissatisfied with above judgment and decree above respondent as petitioner moved to this Court with two petitions under Section 115 of the Code of Civil Procedure being Civil Revision Nos.3957 of 2009 and 4612 of 2009 and obtained these Rules.

Mr. Golam Mostafa, learned Advocate for the petitioner submits that petitioner is a poor landless peasant who submitted an application for settlement of disputed 1.5 acres land and on conclusion of necessary enquiry defendant No.1 gave settlement above 1.50 acres land to the plaintiff on 10.11.1981 and delivered possession. Plaintiff has mutated

his name for above land and paying rent regularly. In above deed of settlement disputed land was classified as low land or "Nama" and the same was not a part of Raji River. Defendant No.1 himself did not initiate any proceeding for setting aside above settlement but defendant No.3-6 the influential and rich people of the locality who were jealous of the landless plaintiff for getting settlement of above land and they filed a false application to defendant No.1 alleging that above land was Raji River and due to undue pressure of above defendants above settlement of the plaintiff was cancelled. The plaintiff has examined five competent witnesses who all are residents of the locality and they have consistently stated that the plaintiff possesses the disputed land by cultivation and above land is not Raji River. On consideration of above facts and circumstances of the case and evidence on record the learned judge of the trial Court rightly decreed the suit. But the learned judge of the Court of Appeal below on an erroneous assumption that disputed land is an integral part of Raji River and without any credible evidence on record most illegally allowed above appeals and set aside the lawful judgment and decree of the trial Court and dismissed above suit which is not tenable in law.

Mr. Md. Moshihur Rahman, learned Assistant Attorney General for opposite party Nos.1-4 of Civil Revision No.3957 of 2009 and

opposite party Nos.5-8 of Civil Revision Nos.4612 of 2009 submits that disputed 1.50 acres land appertains to Plot No.800 was rightly mentioned as Raji River in the relevant C. S. Khatian and S. A. Khatian and defendant No.1 and other Officers of the relevant Land Office most illegally gave settlement of above land of river to the plaintiff and when above facts came to the notice of defendant No.1 he initiated a miscellaneous case for cancellation of above unlawful settlement and on observing due process rightly cancelled above settlement of the plaintiff on 23.12.2001 vide Miscellaneous Case No.70(XIII)/85-86. The learned Advocate further submits that the plaintiff filed a case under Section 30 of the Survey Act, 1875 for recording his name in the B. S. Khatian but above case was rejected on the ground that disputed land was Raji River. On consideration of above facts and circumstances of the case the learned Judge of the court of appeal below rightly held that the disputed land being Raji River defendant No.1 had no legal authority to give settlement of above land to the plaintiff and rightly allowed two appeals and set aside the flawed judgment and decree of the trial Court which calls for no interference.

Mr. Shasti Sarker, learned Advocate for the opposite party Nos.5-7 and 8(a)-8(h) of Civil Revision No.3957 of 2009 and opposite party Nos.1-3 and 4(a) - 4(h) of Civil Revision No.4612 of 2009 submits that

this is a suit for permanent injunction but disputed 1.50 acres land has not been properly specified in the plaint and on above ground alone above suit was liable to be dismissed. The plaintiff has merely mentioned the quantity of the disputed land but did not mention the total land of above plot and above non specification of the subject matter of above suit for escaped the sight of the trial Court and the learned Judge of the Court of Appeal below on correct appreciation of materials on record rightly allowed above appeals and set aside the flawed judgment and decree of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for respective parties and carefully examined all materials on record including the pleadings, judgments of the courts below and evidence.

It is admitted that 4.13 acres land including disputed 1.50 acres belonged to the Government of Bangladesh which was rightly recorded in S. A. Khatian No.1 and in the comment column of above Khatian nature of above land was mentioned to be river. It is admitted that defendant No.1 gave settlement of above 1.50 acres land of plot No.800 to the plaintiff treating him as a landless peasant by a deed of settlement on 10.11.1981 and the plaintiff got his name mutated in above S. A. Khatian and paid rent to the Government. It is also

admitted that defendant Nos.3-6 submitted an application to defendant No.1 for cancellation of above settlement alleging that above 1.50 acres land was in fact Raji River and the plaintiff was not a landless peasant and on the basis of above complaint defendant No.1 initiated Miscellaneous Case No.70(XIII)/85-86 and ultimately cancelled above settlement of the plaintiff vide order dated 23.12.2001.

It has been alleged that an enquiry was held by the Office of the Assistant Commissioner (Land) for determination of nature of above land and it was found that above land but the defendants did not admit above report into evidence and subject the maker of above report to cross examination by the plaintiff.

It turns out from the impugned order dated 23.12.2001 of defendant No.1 that above settlement was cancelled solely on the ground that the disputed land was Raji River. The claim of defendant Nos.3-6 that plaintiff was not a poor and landless peasant was not proved in above proceedings. On the contrary DW2 Abul Kashem in his cross examination admitted that plaintiff was a landless and poor man. The plaintiff being a landless, poor and powerless person it is not believable that the plaintiff obtained above settlement by exerting undue influence on defendant Nos.1-2. Defendant Nos.1 and 2 gave settlement of above land to the plaintiff on 10.11.1981 and cancelled the

same on 23.12.2001 and when the plaintiff filed above suit challenging above order of cancellation of settlement above defendants did not adduce evidence to prove that disputed land was in fact Raji River. Above action and attitude of above Government Officers are irresponsible, careless and highly deplorable. Above Government Officers have failed to protect the interest of the Government and unnecessarily subjected a poor and landless peasant to immense sufferings.

If above land was truly river bed then the same was beyond the legal authority of defendant No.1 to give settlement of the same to any person let alone the plaintiff. There is nothing on record to show that the officers who were responsible for giving above settlement was not brought to book or subjected to any disciplinary proceedings. If defendant No.1 was convinced that the land given settlement to the plaintiff was river bed he could cancel above settlement and give settlement of another piece of cultivatable land to the plaintiff who is a landless and poor man and who was given settlement of above land about 15 years back.

The plaintiff has strenuously denied the claim that the disputed land was a part of Raji River and five plaintiff witnesses who all are local residents have in their evidence corroborated above claim of the

plaintiff and stated that above land was cultivable land and the plaintiff was possessing the same by cultivation for 15 years. Any land adjacent to a river may due to erosion become a part of the river and in course of time a river bed may reappear and become cultivable. The trial Court did not hold a local investigation to determine the actual and present nature of disputed 1.50 acres land which is the bone of contention.

The learned Judge of the trial Court held that the disputed land was cultivable land and not part of the river but on consideration of the same evidence on record the learned Judge of the Court of Appeal below held that the disputed land was Raji River. But as mentioned above defendant No.1 and 2 who are in charge of preservation and management of above River did not adduce any evidence in support of the claim that the disputed land was Raji River.

In above view of the materials on record I hold that the ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial with a direction for holding local investigation to determine the nature and character of disputed 1.50 acres land and if it is found that above land is an integral part in Raji River then upheld the order of cancellation of above settlement of the plaintiff and defendant No.1 shall compensate the

landless and poor plaintiff by giving settlement of another piece of 1.50 acre land for cultivation.

In the result, the impugned judgment and decree dated 27.08.2009 passed by the learned Joint District Judge 2nd Court, Netrokona in Other Appeal Nos.87 of 2005 and 97 of 2005 reversing the judgment and decree dated 02.04.2005 passed by the learned Senior Assistant Judge, Kendua, Netrokona in Other Class Suit No.79 of 2001 is set aside and above suit is remanded to the trial court for retrial after giving both parties opportunity to amend the pleadings and adduce further evidence and the learned Senior Assistant Judge shall appoint a Commissioner for determination of present character and nature of above land by local investigation and cost of above investigation shall be borne equally by the plaintiff and defendant Nos.3-6. If above land is found to be Raji River then the learned Judge shall upheld the order of cancellation of above settlement and pass a direction upon defendant No.1 to compensate the poor and landless plaintiff by giving settlement of another 1.50 acres cultivable land.

Both the parties are directed to maintain status-quo with regard to the possession and position of above land till conclusion of retrial by the trial Court. The learned Senior Assistant Judge is directed to

conclude the retrial of above suit expeditiously within a period of 06 (six) months from the date of receipt of this order.

With above directions these Rules issued in connection of Civil Revision No.3957 of 2009 and Civil Revision No.4612 of 2009 are hereby disposed of.

However, there will be no order as to costs.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER