

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 518 of 2018

IN THE MATTER OF:

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

(Against Judgment & Decree)

And

IN THE MATTER OF:

Mostakin Ali {proceedings of the case petitioner No. 3 died leaving behind his legal heirs as being petitioner Nos. 3(a) and 3(b)} and others

--- Plaintiff - Petitioners.

-versus-

Fakhon Miah {proceedings of the case opposite party Nos. 2, 4 and 24 died leaving behind their legal heirs as being opposite party Nos. 2(a)-2(e), 4(a) and 4(b) and also 24(a)-24(e)} and others

--- Opposite Parties.

Mr. Mustaque Ahmed Chowdhury with

Mr. Mohammad Hossain and

Mr. Mohammad Abidul Haque, Advocates

--- For the Plaintiff-Petitioners.

Mr. Uzzal Bhowmick with

Mr. Manoz Kumar Kirtania, Advocates

--- For the Opposite Parties.

**Heard on: 27.11.2022, 05.01.2023, 10.01.2023,
22.01.2023, 13.02.2023, 15.02.2023
and 01.03.2023.**

Date of Judgment: 30.03.2023.

At the instance of the present plaintiff-respondent-petitioners, Mostakin Ali and others, this revisional application has been filed under section 115(1) of the Code of Civil Procedure and

the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 27.08.2017 passed by the learned Additional District Judge, Court No. 4, Sylhet in the Title Appeal No. 56 of 2014 reversing the judgment and decree dated 10.03.2014 passed by the learned Senior Assistant Judge, Additional Court, Sadar, Sylhet in the Title Suit No. 23 of 2013 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioners as the plaintiffs filed originally the Title Suit No. 94 of 2003 which was renumbered as Title Suit No. 23 of 2013 claiming that Moulavi Azibur Rahman and others were the original owners and one Mohammad Roju acquired title and possession through a jote (জোত) settlement who is the father of the defendant-predecessors and he sold the land in dispute to one Md. Botoi on 01.11.1958 by a registered sale deed No. 5088/58 and also sold to one Mostakin Ali as the Plaintiff No. 4 vide registered deed Nos. 3653/58 and 3918/58 dated 02.08.1958 and 19.08.1958 respectively. The said Botoi died leaving behind his legal heirs, the plaintiff Nos. 1-3 and their names were mutated. The present defendant-opposite parties tried to dispossess/trespass the present petitioners on 15.08.2003.

The present opposite party Nos. 1-5, 7-16, 18 and 19 contested the suit by filing a written statement contending, *inter*

alia, that the suit land is situated within the Taluk Mohammad Ali Chowdhury being Nos. 476/1, 445/5 and 177/14. One Roju the predecessor of the defendants became owner and possessor of the suit land jote (জোত) settlement from the Superior Landlord and his name was entered in the S. A. Record of right. The said Roju died leaving behind 4 sons and 2 daughters who had succeeded the land by way of inheritance as the legal heirs. Previously, the defendant Nos. 1, 2 and 9 used to look after the suit land by virtue of long-term possession. Roju never sold the suit land to Botoi / Mostakin Ali by executing the 3 deeds in the year 1958 but the suit land was mutated in the names of the plaintiffs collusively which was earlier challenged by the defendants. It is further contended that the scheduled land and the claims of the deeds do not relate to the suit land, Taluk, boundary and measurement of land.

The suit was heard by the learned Senior Assistant Judge, Additional Court, Sadar, Sylhet who after examining the documentary and oral evidence by way of depositions decreed the suit on 10.03.2014. Being aggrieved the present defendant-opposite parties as the appellants preferred the Title Appeal No. 56 of 2014 in the court of the learned District Judge, Sylhet but it was heard by the learned Additional District Judge, Court No. 4, Sylhet who allowed the appeal by reversing the judgment and decree of the learned trial court. Challenging the legality of the impugned

judgment and decree of the learned appellate court below this Revisional Application has been filed under section 115(1) of the Code of Civil Procedure and this Rule was issued thereupon.

Mr. Mustaque Ahmed Chowdhury, the learned Advocate, appearing along with the learned Advocates, Mr. Mohammad Hossain and Mr. Mohammad Abidul Haque on behalf of the petitioners, submits that the learned appellate court below erred in holding that the plaintiff No. 4 had purchased the suit land by registered deed (Exhibit-3) in 1958 and possessed the suit land separately but did not consider the fact that though the plaintiff No. 4 purchased the land by 2 (two) separate registered deeds of the land of all 3 (three) deeds of 1958 including that of Md. Botoi are situated in the same boundary and this is supported by the Advocate Commissioner's report and thus, the appellate court committed an error which resulted in an error in the impugned decision occasioning failure of justice.

He also submits that the lower appellate court erred in not considering that the PW-1 made a deposition categorically supporting the plaintiffs' case while the PW-2 and PW-3 being the heirs of Jamindar corroborated the possession of the plaintiffs over the suit land but the appellate court below committed an error resulted in the decision occasioning failure of justice.

The Rule has been opposed by the present opposite parties.

Mr. Uzzal Bhowmick, the learned Advocate, appearing along with the learned Advocate, Mr. Manoz Kumar Kirtania for the opposite parties, submits that the learned trial court committed an error of law by not considering the vital fact as to the situation and location of the suit land, thereby, he came to a wrongful conclusion, whereas, the learned appellate court below properly considered all the legal and factual aspects in the case including the identification of the land by mentioning Taluk of the suit land and also considering the legality of the 3 (three) deeds came to have been executed by Roju, thereby, came to a lawful conclusion but the present petitioners obtained the Rule by misleading the court, thus, no interference from this court is called for and the Rule is liable to be discharged.

The learned Advocate further submits that the Advocate Commission appointed by the learned trial court could not ascertain the situation relating claim of the land by 3 (three) deeds and the claim of the contention of the defendant- opposite parties as to the case land, however, the learned appellate court below took into consideration as to the vital issue by passing the impugned judgment and decree, as such, no error has been committed by the learned appellate court below.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering

the revisional application filed by the plaintiff-petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree and also perusing the beneficial materials available in the records of the lower courts below, it appears to this court that the present plaintiff-petitioners filed a title suit claiming title and permanent injunction upon the suit land on the basis of purchasing the land from the Roju in the year 1958. It further appears to me that the opposite parties as the defendants contended that they are the successors of Roju and there was no break in their succession. Thus, there are claims and counterclaims of the ownership and possessor rights by the parties which have been dealt with by the courts below. During the hearing of this suit, the learned trial court faced a question as to the identity and location of the suit land, therefore, an Advocate Commissioner was appointed to file a report as to the said claims and counterclaims and as to the location of the suit land. The Advocate Commissioner submitted a report which could not ascertain the land and record of a right claim by the plaintiff-petitioners, whereas, the defendants consistently contended that the suit land by way of purchase was not sold as the Advocate Commissioner was not conclusive as to the location of the Khatian presented by the present petitioners in the plaint as schedule No. 4 of the plaint.

In respect of the above-disputed facts, the learned trial court emphasized upon the 3 (three) deeds claimed to have been executed by the said Roju in favour of the petitioners in the year 1958, whereas, the learned appellate court below emphasized upon the question of the location of the suit land by examining the Exhibits- 1, 2 and 3 as mentioned in the 4th schedule of the plaint. In such a situation, the vital question is to be decided by this court whether the judgment and decree passed by the respective courts and the learned courts below successfully analyzed and considered the documents adduced and produced by the parties by way of documentary evidence and oral evidence by way of depositions.

In view of the above, I consider that the learned trial court committed an error of law regarding 3 (three) transfer deeds claimed to have been executed by Roju without considering and relating to the suit land but the learned appellate court below committed no error of law by focusing his consideration upon the land and Khatian thereof and then rightly rent paid by the parties.

Now, I am going to discuss about the findings of the learned courts below:

The learned trial court came to a wrongful conclusion on the basis of the following findings which read as follows:

...“DW-2 and DW-3 tried to establish the possession of the defendants with no avail as during cross-examination DW-2 and DW-3 said they do not

know whether the plaintiffs have purchased the land through three deeds defendants filed rent receipts viz Ext. Uma series, with an information slip, where A. Malek had paid rent on behalf of the recorded owner Mohammad Roju, whereas in the rent receipt of Mostakin Ali i.e. Ext. 10, he paid rent being an owner of the suit land, so these rent receipts of the defendants do not seem acceptable in support of their possession over the concrete evidence of title and possession adduced by plaintiffs.”...

On the other hand, the learned appellate court below considered the plaint and the evidence of the parties and thereby came to a lawful conclusion by the following findings:

...“Considering the above-mentioned facts and circumstances, it appears to this court that the plaintiffs framed this plaint with a fatal error of law and facts. Therefore, the plaintiffs/respondents are not entitled to get relief as prayed for.

It appears from the Exbt. Uma (series) that the defendants/appellants paid rents till 1405 BS which is the documents of possession. On the other hand, the plaintiff/respondent No. 4 paid rents for the years 1406-1419 on the basis of Khatian No. 1940, not upon their so-called mutation, Khatian and plaintiff/respondent Nos. 1-3 did not pay any rents that means they have no documentary evidence of possession. Therefore, this court is in view that the scale of possession of the suit lands bends to the appellant/defendant.”...

In view of the above discussions and conflicting findings of the judgment passed by the learned courts below I am of the

opinion that the learned trial court committed an error of law by decreeing the suit, whereas, the learned appellate court below properly considered and found the vital issue in the instant case and came to a lawful conclusion, therefore, I am not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below. As such, this Rule does not any further consideration.

Accordingly, I do not find merit in this Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 27.08.2017 passed by the learned Additional District Judge, Court No. 4, Sylhet in the Title Appeal No. 56 of 2014 reversing the judgment and decree dated 10.03.2014 passed by the learned Senior Assistant Judge, Additional Court, Sadar, Sylhet in the Title Suit No. 23 of 2013 is hereby upheld.

The interim order of stay passed by this court 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 department of this Court is hereby directed to send down the lower courts records along with a copy of this judgment and decision as soon as possible.