

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 3903 OF 2009

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Golam Rabbani

--- Defendant-Petitioner.

-Versus-

Md. Fokruddin

---Plaintiff-Opposite Party.

Mr. Md. Dawood Khan Zubair with

Mr. Md. Mahabubur Rashid, Advocates

--- For the Defendant-Petitioner.

Mr. Uzzal Kumar Bhowmick with

Mr. A. Z. M. Morshed Al Mamun and

Ms. Salina Akter, Advocates

---For the Plaintiff-Opposite Party.

Heard on: 28.05.2023, 21.06.2023,
24.07.2023 and 30.07.2023.

Judgment on: 30.07.2023.

At the instance of the present defendant-petitioner, Md. Golam Rabbani, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party to show cause as to why the judgment and decree in the petition moved in Court should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party as the plaintiff filed Other Class Suit No. 90 of 2006 in the court of the learned Assistant Judge, Gouripur, Mymensingh under section 9 of the Specific Relief Act claiming that the present defendant-petitioner on 20.05.2006 dispossessed him from the plot No. 90 and 142 land measuring 18 decimals at Mouza- Beheratola, Police Station- Gouripur, District- Mymensingh praying for the recovery of khas possession.

After receiving the above plaint, the learned Assistant Judge, Gouripur, Mymensingh passed the impugned judgment and decree on 17.09.2009 by allowing the application filed under section 9 of the Specific Relief Act for recovery of khas possession. Being aggrieved the present defendant-petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure challenging the legality of the judgment passed by the learned Assistant Judge, Gouripur, Mymensingh and the Rule was issued thereupon.

Mr. Md. Dawood Khan Zubair, the learned Advocate, appearing along with the learned Advocate Mr. Md. Mahabubur Rashid for the defendant-petitioner, submits that the learned trial

court committed an error of law by misreading and non-considering the evidence and statement of the witnesses of the defendant and the plaintiff failed to prove his claim of dispossessing from the land because there was no matter of dispossessing under section 9 of the Specific Relief Act but the learned trial court committed an error of law by decreeing the title suit, therefore, the Rule should be made absolute because there was sufficient evidence produced by the defendant-petitioner that the suit land in question was inherited and purchased long before the alleged day of dispossessing and the learned trial court committed an error to consider the Exhibit- "Ka" being C. S. Record of Right and also Exhibit- "Kha" being R. S. Record of Right as well as Exhibit- "Cha-1" dated 30.07.2006 as to the alleged dispossession, thus, the Rule is valid in the eye of law.

The Rule has been opposed by the present plaintiff-opposite party.

Mr. Uzzal Kumar Bhowmick, the learned Advocate, appearing along with the learned Advocate Mr. A. Z. M. Morshed Al Mamun on behalf of the plaintiff-opposite party, submits that the learned trial court being the learned Assistant

Judge, Gouripur, Mymensingh properly examined the documents, in particular, regarding the alleged dispossession and thereby came to a lawful conclusion which the plaintiff-opposite party could prove that the plaintiff without any legal proceeding dispossessed the plaintiff on 20.05.2006 from the suit land measuring total 18 decimals of land.

The learned Advocate also submits that there were sufficient reasons for filing the case under section 9 of the Specific Relief Act, as such, the learned trial court allowed the case and decreed the suit in favour of the plaintiff-opposite party. After examining the evidence it was approved that there was dispossession by the defendant and the suit was filed within 6 (six) months by the plaintiff under the required law.

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 present defendant-petitioner 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 trial court decreeing the suit and directed the defendant-petitioner to hand over the possession of the suit land to the plaintiff as well as

perusing the essential documents available in the lower court records, it appears to me that the plaintiff-opposite party filed a suit against the present defendant-petitioner for dispossessing from the paddy field on 30.07.2006 land measuring $16 + 2 = 18$ decimals. It further appears that the plaintiff filed the suit under section 9 of the Specific Relief Act which requires a dispossession from the land without lawful authority. The law also requires that a suit must be filed within 6 (six) months from the date of dispossession. The law further requires that no appeal can be filed against the said dispossession.

In the instant case, the plaintiff could prove that he was dispossessed from the paddy field by cutting paddy situated in the said land described in the plaint of the suit measuring 18 decimals of land.

I have carefully examined the evidence adduced and produced by the parties, in particular, the depositions of DWs- 2 and 3, namely, Abu Sayed and Shamsul Hoque who consistently deposed that the defendant-petitioner took possession by the decision of local Salish (শালিস). Any dispossession from land other than in due course of law dispossession from any

immovable property attracts section 9 of the Specific Relief Act in due course of law.

The learned trial court has considered the evidence and came to a conclusion to decree the suit in favour of the present plaintiff-opposite party on the basis of the following findings:

...“বিবাদী পক্ষের বিজ্ঞ কৌশলী বেদখলের ছয় মাসের মধ্যে মামলা করেননি বলে দাবী করে তামাদিতে অত্র মোকদ্দমা বারিত বলে দাবী করলেও তার প্রমাণ উপস্থাপন বিশ্বাসযোগ্যভাবে করতে না পারায় অত্র মোকদ্দমা তামাদিতেও বারিত নয় মর্মে প্রতীয়মাণ হয়। উপরোক্ত আলোচনার প্রেক্ষিতে উভয় পক্ষ উপস্থাপিত সকল দালিলিকও মৌখিক সাক্ষ্যাদি ও নথি পর্যালোচনায় এ মর্মে স্থির সিদ্ধান্ত গৃহিত হল যে, বাদী নালিশী ভূমি হতে বিবাদী কর্তৃক বেদখল হয়েছিল।”...

The learned trial court clearly mentioned about the requirement of filing a suit within a period of 6 (six) months from the date of dispossession. The defendant-petitioner raised questions about the limitation period but could not prove that the plaintiff-opposite party filed the suit within 6 (six) months. As such, the learned trial court properly considered the facts of the case and came to a lawful decision to decree the suit. As such, the learned trial court committed no error of law. So, I do not

consider that this is a proper case for interference by this court anymore.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The order passed by this court on 31.05.2016 staying the proceeding of the Decree Execution Case No. 1 of 2010 which is now pending before the learned Assistant Judge, Gouripur, Mymensingh and also a direction passed by this court on 07.09.2016 for maintaining *status quo* by the respective parties concerning the possession and position of the suit land till disposal of this Rule are hereby recalled and vacated.

The judgment and decree dated 17.09.2009 passed by the learned Assistant Judge, Gouripur, Mymensingh in the Other Class Suit No. 90 of 2006 decreed the suit and directed the defendant-petitioner to hand over the possession of the suit land to the plaintiff is hereby affirmed.

The concerned section of this court is hereby directed to send down the lower court records along with a copy of this judgment and order to the learned Assistant Judge, Gouripur, Mymensingh immediately.