

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

CIVIL REVISION No. 4056 OF 2018

In the matter of:

Mosammat Morjina Begum and others.
...Petitioners.

Present
Mr. Justice Mamnoon Rahman

-Vs-
Haji Md. Fazlul Haque Matbor alias Fazal Meah
and others
....Opposite parties.

Mr. Abdul Wadud Bhuiyan, Sr. Adv. with
Mr. Syed Mukaddas Ali, Adv.
...For the petitioners.
Mr. Md. Ikram Hossain, Adv.
...For the opposite parties.

Heard & Judgment on: **The 27th January, 2025**

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite party Nos. 1-11 to show cause as to why the impugned judgment and decree dated 11.10.2018 (decree signed on 11.10.2018) passed by the Additional District Judge, First Court, Narayanganj in Title Appeal No. 99 of 2015 sending the suit back on remand to the trial court and reversed the judgment and decree dated 12.08.2015(decree signed on 16.08.2015) passed by the Joint District Judge and Artha Rin Adalat, Narayanganj in Title Suit No. 228 of 2006 decreeing the suit, should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

I have perused the impugned judgment and decree passed by the lower appellate court, judgment and decree passed by the trial court,

revisional application and grounds taken thereon as well as necessary papers and documents annexed herewith. I have also heard the learned Advocates for the petitioners as well as opposite parties.

On perusal of the same, it transpires that the petitioner being the plaintiffs filed a suit in the court of Joint District Judge, Narayanganj being Title Suit No. 228 of 2006 impleading the present opposite parties as defendants for certain reliefs. During trial both the parties adduced evidence both oral and documentary. The trial court framed Issues and proceeded with the suit. Subsequently, the trial court after hearing the parties and considering the facts and circumstances, materials on records, evidence both oral and documentary, decreed the suit. The present opposite party-defendants being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the trial court preferred appeal before the learned District Judge, Narayanganj being Title Appeal No. 99 of 2015 and the same was heard and disposed of by the learned Additional District Judge, 1st Court, Narayanganj who vide the impugned judgment and decree dated 11.10.2018 allowed the appeal and thereby sent the case back on remand to the trial court to hear afresh by setting aside the judgment and decree. Being aggrieved and dissatisfied with the said judgment and decree the petitioners moved before this court and obtained the present rule.

On meticulous perusal of the papers and documents as well as the judgment and decree passed by both the courts below, it transpires that the lower appellate court while allowing the appeal and sending back the

case on remand and came to a conclusion that though the trial court discussed and settled an Issues relating to title of the suit property, but the trial court failed to frame an specific Issues to that effect and on that count the lower appellate court sent the case back on remand. It is the consistent view of this court as well as our apex court that the lower appellate court being a final court of fact and law can apply all its power to adjudicate the real question in controversy and the appellate court enjoys ample power even to take additional evidence allowing amendment or any other inspection. As such, the lower appellate court is fully competent to frame the Issues and decide the matter in its entirety.

In such circumstances, I am of the view that justice would be done if a direction be given upon the lower appellate court to hear and dispose of the appeal within a fixed period. Accordingly, the lower appellate court is directed to hear and dispose of the appeal by framing Issues as well as by giving full opportunity to the parties strictly in accordance with law within 4(four) months from the date of receipt of the instant judgment and order without fail. Consequently, the instant rule is made absolute and the impugned judgment and decree passed by the court below is hereby set aside.

Send down the L.C. Records to the concerned court below with a copy of the judgment, at once.

(Mamnoon Rahman,J:)

Emdad. B.O.