

**Present:**

**Mr. Justice Md. Kamrul Hossain Mollah**

**Civil Rule No. 589(Review) of 2016**

**IN THE MATTER OF:**

An application for review under Order 47 Rule 1 read with section 114 of the Code of Civil Procedure

- AND -

**IN THE MATTER OF:**

Md. Rafiqullah

.... Plaintiff-Petitioner

-Versus -

Md. Roustam Ali and others

....Defendant-Opposite Parties

Mr. A.K.M. Rezaul Karim Khandaker, Advocate

.... For the petitioner

No one appears

.... For the Opposite Parties

**Heard on 07.11.2023, 16.11.2023  
and Judgment on 20.11.2023**

**Md. Kamrul Hossain Mollah, J:**

On an application for review filed by the petitioner, under Order 47 Rule 1 read with section 114 of the Code of Civil Procedure, this Rule was issued in the following terms:

Let a Rule be issued calling upon the opposite party Nos.1 and 2 to show cause as to why the judgment and order dated 06.12.2015 passed by the another Bench of High Court Division in Civil Revision No.933 of 2003 discharging the Rule by abetting the Title Suit No.234 of 1993 should not be reviewed and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, are that the plaintiff opposite party brought Title Suit No.234 of 1993 in the Court of Senior Assistant Judge, Sadar, Noakhali for declaration of title in Kha schedule property described in the schedule of the plaint. The defendants No.2,3,4,5,9,10 and defendants No.15-18 contested the suit by filing separate written statement denying the material allegation contained therein. Subsequently, defendants No.4,5,9 and 10 compromised the suit with the plaintiff by filing a solenama. After hearing all the parties the learned Senior Assistant Judge in the 2<sup>nd</sup> Additional Court, Sadar, Noakhali passed the judgment and decree dated 23.11.1997 in Title Suit No.234 of 1993 decreeing the suit. Being aggrieved by and dissatisfied with the judgment and decree dated 23.11.1997 passed by the learned Senior Assistant Judge in the 2<sup>nd</sup> Additional Court, Sadar, Noakhali in Title Suit No.234 of 1993 decreeing the suit the petitioner filed Title Appeal No.6 of 1998 before the learned District Judge, Noakhali. Thereafter, it was transferred to the learned Joint District Judge, Artha Rin Adalat, Noakhali for disposal. After hearing both the parties and upon considering the materials on record the learned Joint District Judge, Artha Rin Adalat, Noakhali dismissed the said Appeal and thereby affirmed the judgment and decree dated 23.11.1997 passed by the learned Senior Assistant Judge in the 2<sup>nd</sup> Additional Court, Sadar, Noakhali in Title Suit No.234 of 1993 decreeing the suit by his judgment and decree dated 16.10.2002 (decree signed on 23.10.2002).

Being aggrieved by and dissatisfied with the judgment and decree dated 16.10.2002 (decree signed on 23.10.2002) passed by the learned Joint District Judge, Artha Rin Adalat, Noakhali in Title Appeal No.6 of 1998, the petitioner filed a revisional application before Hon'ble High Court Division under section 115(1) of the Code of Civil Procedure and obtained Rule and order of Stay.

Thereafter, Mr. A.K.M. Rezaul Karim Khandaker, the learned Advocate filed an application for abatement in Civil Revision No.933 of 2003. After hearing, the Hon'ble High Court Division allowed the application for abatement and abated the Title Suit No.234 of 1993 and discharged the Rule as being infructuous by its judgment and order dated 06.12.2015.

Further, being aggrieved by and dissatisfied with the judgment and order dated 06.12.2015 passed by the Hon'ble High Court Division the opposite party-petitioner filed an application for review under Order 47 Rule 1 read with section 114 of the Code of Civil Procedure.

Mr. A.K.M. Rezaul Karim Khandaker, the learned Advocate appearing on behalf of the opposite party No.1-petitioner submits that the petitioner was requested the learned Advocate to abate the Civil Revision regarding 2.66 decimals of land in plot Nos.2171, 2172 and 2173, which is included in the "Ka" scheduled of the Arpito Sampatti Prattarpon Ain and as per instruction of the petitioner the learned Advocate filed an application for abatement the Civil Revision No.933 of 2003, but after obtaining the certified copy of the judgment and order dated 06.12.2015, it is found that the learned Judge finds that suit property has been included in the gazette notification regarding Arpita Shampatti Prattarpan Ain, 2001 (amended 2011) including the suit land in item No.58 on 01.08.2012, which is wrong. Actually total suit land is 12.38 decimals, only 2.26 decimals land is included in the "Ka" schedule of the Arpito Sampatti Prattarpon Ain, and as such, the impugned judgment and order should be reviewed.

He further submits that the observation of the learned Single Bench of the High Court Division was an error apparent on the face of the record and that being influenced by that observation the Hon'ble Judge abated the Title Suit No.234 of 1993 instead of the Civil Revision No.933 of 2003, so for it relates to

2.66 decimals of land out of 12.38 decimals of land and the Courts below have committed no error of law in decreeing the suit on compromise, but a single Bench of the High Court Division has committed error of law in abetting the suit as a whole i.e. Title Suit No.234 of 1993 instead of Civil Revision No.933 of 2003.

The learned Advocate lastly submits that the Hon'ble Judge of the High Court Division has failed to consider that total suit land is 12.38 decimals, only 2.26 decimals of land is included in the "Ka" schedule of the Arpito Sampatti Prattarpon Ain. Section 13 of the Arpita Shampatti Prattarpon Ain, 2001 (amended 2011) speak that if the gazette notification published in respect of any property no Court shall have any jurisdiction to try the suit. As per said section the suit will be abated so far it relates to 2.66 decimals land, which is included in the "Ka" list, but the Hon'ble Judge of the High Court Division erroneously abated the suit as a whole i.e. total suit land 12.38 decimals land and as such, the impugned judgment and order should be reviewed. Accordingly, he prays to review the judgment and order dated 06.12.2015 and making the Rule absolute.

I have heard the submissions of the learned Advocate for the petitioner, perused the review application, judgment and order dated 06.12.2015 of the Hon'ble High Court Division, the papers and documents as available on the record.

On perusal of the record, it appears that as per instruction of the petitioner the learned Advocate filed an application for abatement the Civil Revision No.933 of 2003, but after obtaining the certified copy of the judgment and order dated 06.12.2015, it is found that the learned Judge finds that suit property has been included in the gazette notification regarding Arpita Shampatti Prattarpan Ain, 2001 (amended 2011) including the suit land in item No.58 on 01.08.2012,

which is wrong. Actually total suit land is 12.38 decimals, only 2.26 decimals land is included in the “Ka” schedule of the Arpito Sampatti Prattarpon Ain.

Considering the above facts, circumstances and materials on record, I think that the judgment and order dated 06.12.2015 was passed by the Hon’ble High Court Division inadvertently and it will be reviewed.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocate for the petitioner. Therefore, the instant Rule has merit.

In the Result, the Rule is made absolute.

The judgment and order dated 06.12.2015 passed by the Hon’ble High Court Division in Civil Revision No.933 of 2003 discharging the Rule and abetting the Title Suit No.234 of 1993 is hereby reviewed.

The petitioner is hereby directed to take necessary steps for hearing the Civil Revision NO.933 of 2003 before any appropriate Bench.

Let a copy of this judgment and order be sent to the concerned Court below at once.