

Present:

Mr. Justice Sheikh Abdul Awal

Civil Revision No. 3783 of 2018

Golemon Bewa and others.

..... Plaintiff-petitioners.

Versus

Sabina Yasmin and others

.....Defendant -Opposite Parties.

Mr. Mohammad Zahangir Alam, Advocate.

....For the Plaintiff-petitioners.

Mr. B.M. Mamunur Rashid, Advocate.

...For the Defendant-opposite-party Nos. 1-3.

Heard and Judgment on 22.08.2024

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 22.05.2018 passed by the learned District Judge, Rajshahi in Title Appeal No. 39 of 2018 dismissing the appeal summarily on the ground of limitation and thereby affirming the judgment and decree dated 31.10.2016 (decree signed on 06.11.2016) passed by the learned Senior Assistant Judge, Sadar, Rajshahi in Other Class Suit No. 84 of 2012 dismissing the suit should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The relevant facts briefly are that the Petitioners as plaintiffs filed Other Class Suit No. 84 of 2012 in the Court of the learned Senior Assistant Judge, Sadar, Rajshahi impleading opposite parties as defendants praying the following reliefs:

(ক) বাদীর আরজির (ক) তফসিল অন্তর্গত নালিশী (খ) তফসিল বর্ণিত হাত নকশার লাল চিহ্নিত .৩৩ শতক সম্পত্তি অংশ বাদীগণের অনকূলে ও বিবাদীগণের বিরুদ্ধে যোল আনা স্বত্ব প্রচারের যথা ডিক্রী দিতে;

(খ) বাদীগণের অনকূলে ও বিবাদীগণের বিরুদ্ধে মোকদ্দমার যথা ডিক্রী দিতে;

(গ) আইন ও ইকুইটি মূলে বাদীগণ আর যে যে প্রতিকার পাইতে হকদার তাহারও ডিক্রী মর্জি হয়।

Ultimately the suit was dismissed on contest by the judgment and decree dated 31.10.2016 (decree signed on 06.11.2016) passed by the learned Senior Assistant Judge, Sadar, Rajshahi.

Aggrieved thereby the plaintiffs preferred Title Appeal No. 39 of 2018 with an application for delay of 473 days before the learned District Judge, Rajshahi who dismissed the appeal summarily on the ground of limitation by his judgment and order dated 22.05.2018.

Being aggrieved by and dissatisfied with the aforesaid impugned judgment and order dated 22.05.2018, the plaintiff-petitioners preferred this revision application and obtained the present rule.

Mr. Mohammad Zahangir Alam, the learned Advocate appearing for the plaintiff-petitioners in the course of his arguments takes me through the impugned judgment and order dated 22.05.2018 and other materials on record including the application for condonation of delay and then submits that the delay has been explained properly although the learned judge of the appellate Court below without considering the same dismissed

the appeal summarily on the ground of limitation which occasioned a failure of justice. He next submits that in the facts and circumstances of the case unless the appeal is heard and disposed of on merit, the plaintiff-petitioners shall suffer irreparable loss and injury.

Mr. B.M. Mamunur Rashid, the learned Advocate appearing for the defendant -opposite parties, on the other hand, opposes the Rule and supports the impugned judgment and order as well as judgment of the trial Court below, which were according to him just, correct and proper. He submits that there is no merit in the suit inasmuch as plaintiffs has no right, title and possession over suit land, PW-2 admitted in his deposition that the defendants are in possession over the suit land. He adds that all the records of rights are recorded in the name of the predecessors of the defendants. Besides on top of that the reasons for delay of 473 days as given in the application are vague in nature and unspecific and that the learned District Judge, Rajshahi justly rejected the same.

Having heard the learned Advocates for both the parties, perused the revision application and having gone through the application for delay filed by the petitioners as evidenced by “Annexure-A” to the supplementary affidavit dated 21.08.2024, judgments of 2 (two) Courts below, deposition of witnesses and other materials on record including the exhibits, the only question calls for consideration in this Rule whether the learned District Judge committed any error in dismissing the appeal summarily on the ground of limitation.

On scrutiny of the record, it appears that the plaintiffs' suit for declaration of title was heard and disposed of on merit by the judgment and decree dated 31.10.2016 on contest and thereafter the plaintiffs preferred Title Appeal No. 39 of 2018 before the learned District Judge, Rajshahi with an application for condonation of delay of 473 days in filing the appeal. The reasons for delay as stated in the application appears to be vague in nature and not satisfactory in any manner whatsoever. Besides, it appears that PW-2, Md. Mota Kalam stated in his deposition that-
 “বাদীগণকে ও বিবাদীগণকে চিনি। নাঃ জমি চিনি। ১ বিঘার অধিক জমি নিয়ে মামলা। নাঃ জমি বর্তমানে বিবাদীরা দখল করে।”

This shows that the defendants admittedly are in possession over the suit land. The learned Judge of the trial Court below on due consideration of the entire evidence and materials on record rightly came to the conclusion that the plaintiffs having failed to prove their right, title and possession in the suit land.

The reasons for delay as given in the application for condonation filed the plaintiff-petitioners before the learned District Judge together with the facts of the case it appear that in the instant case the plaintiff petitioners acted in the gross negligent way in dealing with this case which clearly established that they have failed to explain the delay and they are guilty of gross negligence and inaction in preparing and moving appeal and thus, the learned District Judge committed no illegality in rejecting the application summarily on the ground of limitation.

On an analysis of the impugned judgment and order dated 22.05.2018 passed by the learned District Judge, Rajshahi, I find

no flaw in the reasonings of the learned District Judge. The impugned Judgment and order is well founded in law and fact.

On a reading of the judgment of the trial Court, it appears that the trial Court below considered the material points and taking into consideration all the evidence and materials on record rightly dismissed the suit.

In view of my discussions made in the foregoing paragraphs it is by now clear, that the instant Rule must fail.

In the result, the Rule is discharged without any order as to costs.

Let a copy of this judgment along with lower Courts' record be sent down at once.