

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz
Civil Revision No. 314 of 2015

Bangladesh Railway,
represented by the Executive Engineer,
Komlapur, Diversion Division,
Motijheel, Dhaka.
Defendant-Appellant- Petitioner

Versus

Md. Mohiuddin and another
Plaintiffs-Respondents-Opposite Parties

The Government of Bangladesh,
represented by the Deputy
Commissioner, Dhaka
Defendant-Respondent-Opposite Party

Mr. Shaheed Alam, Advocate
for the defendant-appellant- petitioner

Mr. S. M. Abul Hossain, Advocate
Ms. Sharia Hossain, Advocate
Ms. Jamia Akter, Advocate
for the added opposite party No. 4

Judgment on: 16.11.2023

This Rule was issued calling upon the opposite party Nos. 1-2 to show cause as to why the impugned Judgment and Decree dated 27.7.2014 passed by the learned Additional District Judge, 1st Court, Dhaka in Title Appeal No. 516 of 2006 disallowing the appeal and thereby affirming the Judgment and Decree dated 24.9.2006 passed by the learned Senior Assistant Judge, Dohar Court, Dhaka in Title Suit No. 80 of 2005 decreeing 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 opposite party Nos. 1-2 as plaintiffs instituted Title Suit No. 80 of 2005 for declaration of Title in the suit land.

The Case of the plaintiffs, in short, is that Ramjan Sheikh was the C. S. recorded owner. After his death his two daughters Mofizan Nessa and Hasna Khatun were in need of money sold the suit land to Nurul Islam. Nurul Islam while in possession of the suit land by two registered kabala sold $6\frac{1}{2}$ kathas of the suit land to Jamila Khatun who recorded her name and possessed the said land. By L.A. Case No. 63/59-60 Government acquired some land of Jamila Khatun. Thereafter said Jamila Khatun constructed building in the suit land and got water, gas, electricity connection and uses to possess the suit land. On 20.10.1988 Jamila Khatun died and that the plaintiffs as heirs are possessing the suit land. It was further contended that on 02.8.2000 the defendant No. 2 informed them that they will take possession of the suit land as the suit land has been recorded in R.S. record in the name of defendant No. 2. So the plaintiffs instituted the instant suit for correction of R.S. record.

The petitioner as defendant No. 2 contested the suit by filing written statement. The defendant-petitioner's Case is that through

L.A. Case No. 63/59-60 Government acquired .20 acre land of C.S. Plot No. 1158 and transferred to the Bangladesh Railway and the same was published in the Government Gazette Notification. Railway Staff Quarter was constructed on the suit land. The Plaintiffs' have no right, title and possession in the suit land. On 22.8.2001 and 11.8.2001 plaintiffs and others unauthorized occupiers were evicted from the suit land. The plaintiffs instituted the suit to grab the said Railway land and that the plaintiffs suit is liable to be dismissed.

The learned Senior Assistant Judge, Dohar Court, Dhaka decreed the suit by his judgment and decree dated 24.9.2006. Against the aforesaid judgment and decree the defendant as appellant preferred Title Appeal No. 516 of 2006 before the learned District Judge, Dhaka which was transferred before the learned Additional District Judge, 1st Court, Dhaka who dismissed the appeal by his judgment and decree dated 27.7.2014 and hence the defendant-appellant as petitioner moved this application under Section 115(1) of Civil Procedure before this Court and obtained this Rule.

Mr. Shaheed Alam, learned Advocate for the defendant-appellant- petitioner, submits that the learned Additional District Judge, Dhaka held that both the parties have their land in the plot

No. 1158 and in the facts and circumstances of the case simple declaration suit is not maintainable without partition and thus the Appellate Court below should have allowed the appeal. He further submits that the suit land along with other land were acquired for Railway by L.A. Case No. 63/59-60 as such plaintiffs suit for simple declaration is not maintainable.

Mr. S. M. Abul Hossain, learned Advocate for the added opposite party No. 4, submits that the grounds set forth in the revisional application being not cogent those are not tenable in the eye of law. The Courts below considered all the aspects of the case and passed the impugned Judgment and Decree upon discussing the points raised by the parties which never suffers from any legal infirmity and as such the revisional application is liable to be discharged. He further submits that in the instant case the plaintiffs-respondents-opposite parties being in possession of the suit land instituted another suit for perpetual injunction wherein the learned Court below was pleased to pass an order of perpetual injunction. In such circumstances the instant Title Suit for declaration of title is quite maintainable and therefore the Rule is liable to be discharged.

Heard the learned Advocates for the both parties and perused the record.

This is a suit for declaration of title. In this suit, the plaintiffs-respondents-opposite parties prove their title in the suit land. Both the Courts below upon proper discussion and appreciation of factual and legal aspects passed the impugned judgment and decree and the plaintiffs-respondents-opposite parties could not show any ground to interfere with the impugned judgment and decree.

Considering the facts and circumstances of the Case, I find no substance in this Rule.

Accordingly, the Rule is discharged.

The impugned Judgment and Decree dated 27.7.2014 passed by the learned Additional District Judge, 1st Court, Dhaka in Title Appeal No. 516 of 2006 disallowing the appeal and thereby affirming the Judgment and Decree dated 24.9.2006 passed by the learned Senior Assistant Judge, Dohar Court, Dhaka in Title Suit No. 80 of 2005 decreeing the suit is hereby up-held.

Send down the lower Courts record with a copy of the Judgment to the Courts below at once.