

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

Present:

**Mr. Justice Md. Moinul Islam Chowdhury**

**Civil Revision No. 3443 of 2019**

IN THE MATTER OF:

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

And

IN THE MATTER OF:

The Government of the People's Republic of Bangladesh represented by the Deputy Commissioner, Chapainawabgonj

--- Defendant-Appellant-Petitioner.

-versus-

1(a). Md. Setatur Rahman and others

--- Plaintiff-Respondent-Opposite parties.

**Mrs. Kazi Shahanara Yeasmin, DAG with**

**Mr. Md. Humayun Kabir, AAG**

--- For the Defendant-Appellant-petitioner.

**Mr. Md. Abdur Rouf with**

**Mst. Suraya Aktar, Advocates**

--- For the Plaintiff-Respondent-opposite parties.

**Heard on: 23.02.2023 and 05.03.2023.**

**Date of Judgment: 05.03.2023.**

At the instance of the present defendant-appellant-petitioner, the Government of the People's Republic of Bangladesh, represented by the Deputy Commissioner, Chapainawabgonj this revisional application has been filed under section 115(1) of the Code of Civil Procedure and the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment

and decree dated 23.09.2009 passed by the learned Additional District Judge, Chapainawabgonj in the Title Appeal No. 124 of 2007 dismissing the same and thereby affirming the judgment and decree 01.06.2006 passed by the learned Senior Assistant Judge, Shibgonj, Chapainawabgonj in Other Class Suit No. 145 of 1998 decreeing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite parties as the plaintiffs filed the Title Suit No. 145 of 1998 in the Court of the learned Senior Assistant Judge, Shibgonj, Chapainwabgonj claiming that the suit land was originally owned by one Enatullah Mondal who died leaving behind a wife and a son Nesarat Ali alias Jhoru was possessing the suit land. Later on, Nesarat Ali alias Jhoru died leaving behind a wife Nosimon Bibi, 2 sons Fojor Ali and Sajjad Ali who are the plaintiffs of this suit and 2 daughters Saera Khatun and Momed Khatun. Thereafter, Fojor Ali died leaving behind mother Nosimon Bibi, a wife Jahirunnessa and only son Nojibor Rahman as his heirs. Later on, Nosimon Bibi died leaving behind only son plaintiff of this suit, Md. Sajjad Ali, 2 daughters Saera Khatun, Momed Khatun and a son's son Nojibor Rahman. The plaintiff got the suit land by way of an amicable family partition among the aforesaid heirs and S. A. Khatian No. 362 was rightly prepared and published

in the name of the plaintiffs and R. S. Khatian also prepared in the names of the plaintiffs. The plaintiffs paid the rent until 1998. However, in the year of 1998 when the plaintiff went to Tahshil Office to pay the rent but he was refused to accept the same for the reason of that the suit property has been recorded in the name of the Government in the R. S. Khatian, thus, he was compelled to file the suit. The defendant, the Government of Bangladesh contested the suit by filing a written statement contending, inter alia, that the suit land described in the schedule of the plaint measuring 3 decimals of land described as the residential housing property and the property has been vested upon the Government and an access land, as such, R. S. Record was rightly and correctly prepared and published. Eventually, the S. A. Record was erroneously prepared and published, as such, the plaintiff does not any have right upon the suit land.

The learned Senior Assistant Judge, Shibgonj, Chapai Nawabgonj heard the learned Advocates for the respective parties and concluded to decree the suit by his judgment and decree dated 01.06.2006. Being aggrieved the defendant-Government preferred the Title Appeal No. 124 of 2007 in the court of the learned District Judge, Chapai Nawabgonj which was subsequently heard by the learned Additional District Judge, Chapai Nawabgonj who after

hearing the parties dismissed the appeal by affirming the judgment of the learned trial court. Being aggrieved the Government filed this Revisional Application under section 115(1) of the Code of Civil Procedure and this Rule was issued thereupon.

Mrs. Kazi Shahanara Yeasmin, the learned Deputy Attorney General, appearing along with the learned Assistant Attorney General, Md. Humayun Kabir, submits that the impugned judgment and decree passed concurrently by both the courts below are not proper, as such, the same are liable to be set aside because both the courts below misconstrued the evidence on record in passing the impugned decision, thus, committed an error of law resulting in the impugned decision occasioning failure of justice.

The learned Deputy Attorney General also submits that after making queries with the Deputy Commissioner, Chapai Nawabgonj she obtained some information regarding the suit property, wherein, the Deputy Commissioner, Chapai Nawabgonj and Assistant Commissioner (Land), Shibgonj, Chapai Nawabgonj and also Municipality Land Assistant Officer, Shibganj, Chapai Nawabgonj commonly described that the suit property was recorded in the name of the Government in the Certificate Case No. 1218 of 75-76 stating that the suit land measuring 3 decimals has been recorded in the Khas Khatian No. 1 but all of them were unable to give any

information beyond the Certificate Case No. 1218 of 1975-76. Nevertheless, once a property is listed as a Khas Khatian it will remain as the Government Khas Property, as such, the Rule is liable to be made absolute.

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

Mr. Md. Abdur Rouf, the learned Advocate, appearing along with the learned Advocate, Ms. Mst. Suraya Aktar, for the plaintiff-opposite parties, submits that the plaintiff-opposite parties have been living in the suit land measuring 3 decimals in the dilapidated old building constructed much earlier as the C. S. Recorded owner's successors. At the time of S. A. Operation it was recorded in their names that they were continuing in possession but the Government as the defendant erroneously recorded the property in the R. S. Record of right with the malafide intention, as such, the Rule is liable to be discharged.

The learned Advocate further submits that after examining the evidence adduced and produced by the parties in the court below in support of the respective cases both the courts came to a concurrent finding in favour of the present plaintiff-opposite parties, as such, the petitioner obtained this Rule simply for formal

and misleading information, as such, the Rule is liable to be Discharged.

Considering the above submissions made by the learned Advocates, appearing for the parties and also considering the revisional application filed by the defendant as the Government under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the concurrent impugned judgment and decree passed by the learned appellate court below as well as perusing the relevant documents available in the lower courts records, it appears to me that the present opposite parties as the plaintiffs filed a title suit praying for declaration of title upon the suit land described in the plaint being C. S. Khatian No. 399 corresponding to S. A. Khatian No. 362 Dag No. 304 at present Dag No. 317 and a house was constructed on the suit land measuring .03 acres, Mouza- Shibgonj, Police Station- Shibgonj, District- Chapai Nawabgonj (earlier Nawabgonj). The suit was contested by the Government upon the Certificate Case No. 1218 of 1975-76 which was enlisted as the land recorded in Khas Khatian at the time of operation of R. S. Record of right. The learned trial court considered both the submissions of the learned Advocates of the respective parties and came to a conclusion to decree the suit in favour of the plaintiff-opposite parties. Being aggrieved an appeal

was filed in the court of the learned District Judge, Chapai Nawabgonj which was transferred to the learned Additional District Judge, Chapai Nawabgonj who after hearing the parties disallowed the appeal thereby affirmed the judgment of the learned trial court.

From the record of this case, it appears to me that the present opposite parties have been living in the present property along with the other adjacent properties for a long period of time without any interruption including the Government property and the S. A. Record was prepared and published in their names and Khajna accordingly was paid to the Government until 1998 but during the operation of other records of right the concerned Tahashil Office refused to accept Khajna of the plaintiff-opposite parties which caused to file this plaint. The defendant-Government-petitioner claimed that the concerned Municipal Land Assistant Officer, Shibgonj, Chapai Nawabgonj informed the Assistant Commissioner (Land) Shibgonj, Chapai Nawabgonj on 14.02.2023 which is described in the following manner:

...“অতপর মহামান্য হাই কোর্ট বিভা-গর ৩৪৪৩/২০১৯ নং সিভিল মামলার তথ্যাদি প্রেরণের পত্রখানা প্রাপ্তির পর সংশ্লিষ্ট এস. এ. ৩৬২ নং খতিয়া-নর রেজিস্টার II (জমাবন্দি বহি-ত) এ ১২১৮/৭৫-৭৬ নং সার্টিফিকট মামলার নোট লিপিবদ্ধ আ-ছ। অতপর সংশ্লিষ্ট অর্থ বহু-রর সার্টিফিকট মোকদ্দমার দাবীর টাকা আদায় সংক্রান্ত সার্টিফিকেট রেজিস্টার যাচাই অন্তে দেখা যায় উক্ত সার্টিফিকেট কেসের বিপরীতে দাবীর টাকা আদায়ের কোন

নিদর্শন পরিলক্ষিত হয় নাই। ইহা হ-ত সহ-জই অনু-ময় হয় যে, সার্টিফি-কট মামলার দাবীর টাকা অনাদা-য়র কার-ণ সরকার বাহাদু-রর অনুকু-ল আর. এস. রেকর্ড সম্পন্ন হ-য়-ছ। এখা-ন উ-ল্লখ্য যে, সংশ্লিষ্ট অর্থ বছ-রর সেল কেস রেজিস্টার শিবগঞ্জ উপজেলা ভূমি অফিসে রক্ষিত না থাকায় সেল কেস সংক্রান্ত কোন তথ্য প্রদান করা সম্ভব হ-লা না।”...

As per the said report from the concerned Officer of the Deputy Commissioner, Chapai Nawabgonj also described the claim of the defendant in the following manner:

...“তঁর প্রেরিত প্রতি-বদ-ন দেখা যায়, সংশ্লিষ্ট শিবগঞ্জ উপ-জলাধীন শিবগঞ্জ পৌর ভূমি অফিসে রক্ষিত নালিশী তফশীলের এস. এ. ৩০৪ নং দাগের এস. এ. ৩৬২ নং খতিয়া-নর জমাবন্দি (রেজিস্টার-II) বহির ৩৭৬ নং হোল্ডিং এর সংশ্লিষ্ট পাতায় সার্টিফি-কট কেস ১২১৮/৭৫-৭৬ নম্বর নোট লিপিবদ্ধ আছে। শিবগঞ্জ উপ-জলা ভূমি অফি-স সংশ্লিষ্ট অর্থ বছ-রর সেল কেস রেজিস্টার রক্ষিত না থাকায় সেল কে-সর কোন তথ্য দেয়া গেল না।”...

From the above 2 reports obtained by the Attorney General's Office and also considering the depositions made by the P. W. 1 and D. W. 1, it appears to the court that the Government-plaintiff-opposite party could not prove their entitlement upon the suit land measuring 3 decimals and the defendant could not describe their cause to enlist the property as a Khas to make the property in a Khas Khatian No. 1. Furthermore, the defendant-Government utterly failed to give any ground and reason for entering the property in the Khas Khatian No. 1, as such, the plaintiff could prove its own title upon the suit land by way of inheritance.



Now, I am examining the findings of the learned courts below:

The learned trial court came to a lawful conclusion on the basis of the following findings:

...“and the suit land was not leased out to anybody, P. W. 2 Md. Torab Ali, P. W. 3 Md. Dobiruddin and P. W. 4 Nojibar Rahman claimed in their examination-in-chief that the plaintiffs' house is situated over the suit land. The defendant side cross-examined all of them but failed to find out any major discrepancy between their statement. So, I have no hesitation in deciding that the plaintiffs' sides successfully proved their right to, title to interest in and possession over the suit land resultantly.”...

The learned appellate court below also concurrently found in favour of the present opposite parties on the basis of the following findings:

...“আপীল শুনানীকালে অন্যান্য পক্ষে নিয়োজিত বিজ্ঞ সরকারী কৌশলী স্বীকার করেন যে, এই মামলাটিতে যথাযথ ভাবে ডিক্রি প্রদান করা হ-য়-ছ। কারণ, নালিশী জমি সরকার-র না-ম রেকর্ড হওয়ায় কোন প্রমাণ নাই। বরং নালিশী জমির মালিক বাদীপক্ষ হওয়ায় সঠিক ভাবেই ডিক্রী প্রদান করা হ-য়-ছ ম-র্ম তিনি স্বীকার ক-রন। প্রদর্শনী ১/২ পর্যা-লাচনায় দেখা যায় যে, নালিশী জমি বাদীগণের পৌত্রিক সম্পত্তি। বিবাদী পক্ষের দাবী মতে এই জমি জমিদারের সম্পত্তি হিসাবে কোন সাক্ষ্য প্রদান আদালতে সামনে নাই। বাদীপক্ষ

নালিশী জমি বাবদ খাজনাদি প্রদান ক-র ভোগ দখল করায় তর্কিত রায় ও ডিক্রী রদ রহিত যোগ্য নয় বরং বহাল যোগ্য।”...

On the basis of the above discussions of the learned courts below and after examining the relevant documents filed in favour of the plaintiffs, I am of the opinion that the present plaintiff-opposite parties could prove their succession of the land, whereas, the Government-petitioner failed to mention any reason for entering the property in the year of 1996 as a khas land after a long period of time enactment of the State Acquisition And Tenancy Act or any other law regarding khas Khaitan, therefore, the Government is bound to record in R. S. Khatian to the present plaintiff-opposite parties.

In view of the above, I consider that this is not a proper case for interference by this court.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The Deputy Commissioner, Chapai Nawabgonj is hereby directed to give R. S. Record of right in favour of the plaintiff-opposite parties, namely, Md. Setatur Rahman and others within 1 (one) month from the date of the receipt of this judgment and order by withdrawing the record of right of the defendant-petitioner-the Government of Bangladesh from khas khatian.

The concerned section of this Court is hereby directed to send down the lower appellate court record as well as the trial court record along with a copy of this judgment and order to the concerned courts below immediately.