

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2182 OF 2019

In the matter of:

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

And

Abdul Motaleb Sardar and another
... Petitioners

-Versus-

Md. Jahangir Hossain Howlader and others
... Opposite parties

Mr. A. B. M. Bayezid with
Mr. Md. Shahariar Bhuiyan, Advocates
...For the petitioners.

Mr. Mohammad Eunus, Advocate
... For the opposite party No.1.

Heard on 14.01.2025 and Judgment on 22.01.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and decree dated 17.07.2019 passed by the learned Joint District Judge, 3rd Court, Patuakhali, in Title Appeal No.21 of 2015 and affirming the judgment and decree dated 01.12.2014 passed by the learned Assistant Judge, Golachipa, Patuakhali in Title Suit No.91 of 2005 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.

Facts in short are that the opposite parties as plaintiffs instituted above suit for declaration of title for 2.19 acres land alleging that

6.56 acres land including above 2.19 acres belonged to Shadhon Mallick and same was rightly recorded in C. S. Khatian No.236. Above Shadhon Mollick died leaving one son Taher Ali Mollick and one daughter Bhulujan Bibi. They had no child. As such above Taher Ali Mallick and Bhulujan Bibi 6.56 acres land by registered deed of Wakf No.6960 dated 30.01.2029. In R. S. Khatian No.435 corresponding to S. A. Khatian No.53 2.19 acres of above land was erroneously recorded in the name of Hajera and Sharupjan and on the basis of above erroneous record defendants claimed title in above suit.

Defendant No.1, 6 and 10 contested above suit by filing separate written statements. It was alleged by defendant No.1 that R. S. Khatian No.435 and S. A. Khatian No.53 was rightly recorded in the name of Sharupjan and Hajera Khatun Above Hajera Khatun and Sharupjan had their dwelling house in the disputed land and the same was correctly recorded in the above khatians. Defendant No.1 inherited 2.50 acres land of Sharupjan and Hajera and possessing the same by paying rent to the Government.

Defendant Nos.6, 7 and 9 also claims that R. S. Khatian No.435 and S. A. Khatian No.53 were correctly recorded and they claims title in the disputed land on the basis of successive purchase from the heirs of Hajera Bibi and Sharupjan Bibi.

At trial plaintiffs examined 2 witnesses and defendants examined 6 witnesses and both the parties produced a bounce of documents which were marked as exhibits.

On consideration of the facts and circumstances of the case and evidence on record the learned Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree of the trial Court above defendants preferred Title Appeal Nos.21 of 2015 and 25 of 2015 to the District Judge, Patuakhali which were heard by the learned Joint District Judge, 3rd Court analogously who dismissed both the appeals and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this Court with this petition under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. A. B. M. Bayezid, learned Advocate for the petitioners submits that in this suit plaintiffs have examined two witnesses PW1 Abdul Jabber Howlader and PW2 Faruque Hossain and both of above witnesses have stated in their respective evidence that the quantity of land of disputed joma was 6.56 acres. In the impugned deed of wakf (Exhibit No.2) $\frac{2}{3}$ rd of the property of Taher and Bhulujan Bibi were transferred. As such above land has been rightly

recorded in the name of above waqf in R. S. Khatian No.435 and S. A. Khatian No.53 and remaining 2.19 acres land has been rightly recorded in the name of the predecessors of defendants, namely Hajera Bibi and Shorupjan Bibi. In above R. S. Khatian and S. A. Khatian there is specific mention that the dwelling house, tank and graveyard of Hajera Bibi and Shorupjan Bibi are situated in above land. In the plaint the plaintiff did not mention the nature of the land or the mode of their possession in above land. On the other hand defendants are possessing above land by paying rent to the Government. Since the plaintiffs do not have possession in disputed 2.19 acres land the instant suit for simple declaration of title is not tenable in law. On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge should have allowed the appeal and set aside the flawed judgment and decree of the trial Court and dismissed the suit. But the learned Joint District Judge most illegally dismissed the appeal and affirmed the flawed the judgment and decree of the trial Court which is not tenable in law.

On the other hand Mr. Mohammad Eunos, learned Advocate for the opposite party No.1 submits that Shadhan Mollick had 3 kani 5 gonda 3 kana 1 kranti and 10 til share in C.S. Khatian No.236 which was inherited by his son Taher and daughter Bhulujan and

they transferred only 6.34 acres land by above waqf deed and remaining land was wrongly recorded in the name of the defendant in above R. S. and S. A. Khatians. The defendants could not show any lawful basis of above erroneous records in R. S. and S. A. Khatians in the name of Hajera Bibi and Shorupjan Bibi. On consideration of above materials on record the learned Judges of both the Courts below have rightly decreed the suit and dismissed the appeal respectively which calls for no interference. As far as possession of the plaintiffs is concerned both the Courts below have concurrently held that the plaintiffs have succeeded to prove their possession in the disputed land and above concurrent findings of both the Courts below being based on evidence on record this Court cannot in its revisional jurisdiction interfere with above findings of fact.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence adduced by the parties.

It is admitted that Shadhon Mollick was a tenant of C.S. Khatian No.236 and he died leaving one son Taher Ali Mollick and one daughter Bhulujan Bibi who were issueless and they transferred one third share of their total property by a registered deed of waqf dated 30.01.1929 (Exhibit No.2). It is also admitted that land of C. S.

Khatian No.236 was subsequently recorded in R.S. Khatian No.435 and S.A. Khatian No.53 and in above khatians 2.24 acres land was recorded in the name of Hajera Bibi and Shorupjan Bibi predecessor of the defendants and 4.32 acres land was recorded in the name of the plaintiff. The plaintiff claims title on the basis of above deed of Waqf (Exhibit No.2) and the learned Advocate for the opposite party claims that the quantity of land which was transferred by above deed of Waqf (Exhibit No.2) is 6.34 acre. In this suit for declaration of title the plaintiff claims that 2.19 acres land have been erroneously recorded in the name of the defendants which in fact belongs to the plaintiff. Admittedly 4.35 acres land has been recorded in the name of the plaintiff on the basis of Exhibit No.2. So, further claim of 2.19 acres land makes the total land of the plaintiff to 6.51 acres which exceeds 6.34 acres the quantity of land of above deed of Waqf (Exhibit No.2). The source of claim of title of the plaintiff above deed of waqf (plaintiff No.2) so the plaintiff cannot claim any land which exceeds the total quantity of land of above deed. As such there is no lawful basis of the plaintiff's claim of title in disputed 2.19 acres of land. The learned Advocate for the opposite parties submit that after the land survey the total land of above khatian was increased by 20 decimals. But above increased land cannot be claimed by the plaintiff whose source of title comes out of a

registered deed of transfer and any increment of land shall go to the successive heirs of above Taher Ali and Bhulujan.

In the plaint the in the plaintiff did not mention the total quantity of land in C. S. Khatian No.236 but PW1 Jahangir Howlader has stated that C. S. Khatian No.236 comprised total 6.56 acres land which belonged to Shadhon Mollick and after his demise the same was inherited by Taher Ali and Bhulujan Bibi. In the schedule of the plaint the plaintiff has sought declaration of title for 2.19 acres land out of R. S. Khatian No.435 and S. A. Khatian No.53 which comprises 17 separate plots. The plaintiff did not mention the location of 2.19 acres land in above plots nor they have provided any boundary of disputed 2.19 acres land. As mentioned above Taher Ali Mollick and Bhulujan did not transfer their total property by above deed of waqf but they transferred two third share of their property leaving the remaining one third for their heirs. As such the plaintiffs should have made specific mention in the plaint as to what was the total land of Taher Ali Mollick and Bhulujan. The learned Advocate for the opposite party claims that they had more than 10 acres land but above claim has not been substantiated by any evidence oral or documentary.

In view of above position of the case the learned Advocates for the petitioners and the opposite party No.1 jointly submitted that

there are deficiencies in the pleadings of both the parties and all relevant documents were not produced at trial. As such the learned Advocates for both the parties submits that the ends of Justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

On consideration of above facts and circumstances of the case and evidence on record and submissions of the learned Advocates for both the parties I hold that the ends of Justice will be met if the impugned judgment and decree is set aside and the suit is remanded to the trial Court for retrial.

In above view of the materials on record I find substance in this Civil Revision under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute. The impugned judgment and decree dated 17.07.2019 passed by the learned Joint District Judge, 3rd Court, Patuakhali in Title Appeal No.21 of 2015 dismissing the appeal and affirming the judgment and decree dated 01.12.2014 passed by the learned Assistant Judge, Golachipa, Patuakhali in Title Suit No.91 of 2005 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an

opportunity to amend their respective pleadings and adduce further evidence.

Both the parties shall maintain status-quo with regard to the possession and position of above property until the trial Court takes of the suit for retrial.

The learned Assistant Judge is directed to conclude the retrial of above suit expeditiously within a period of 6(six) months from the date of receipt of this judgment.

However, there will be no order as to cost.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER