

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 2170 OF 2019

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Falik Uddin Chowdhury being died his legal
heirs: petitioner Nos. 1-8.

--- Defendant-Appellant-Petitioners.

-Versus-

Fazlur Rahman Chowdhury and another

---Plaintiff-Respondent-Opposite Parties.

Golam Nurani Chowdhury and others

--- Defendant-Respondent-Opposite Parties.

Mr. Nirmalendu Deb with

Mr. Didar Alam Kallol,

Ms. Rawshanara Akter and

Ms. Sharmin Rubayat Islam, Advocates

--- For the Defendant-Appellant-Petitioners.

Mr. Uzzal Kumar Bhowmick with

Mr. Monoj Kumar Kirtania, Advocates

---For the Plaintiff-Res- O. P. Nos. 1 and 2.

Heard on: 23.07.2023, 25.07.2023,
31.07.2023 and 01.08.2023.

Judgment on: 28.08.2023.

At the instance of the present defendant-appellant-petitioners, Falik Uddin Chowdhury died leaving behind his legal heirs: Ehsan Ahmed Chowdhury and others, this Rule was issued upon a revisional application filed under section 115(1) of

the Code of Civil Procedure calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and decree dated 27.03.2019 passed by the learned Additional District Judge, Court No. 3, Sylhet in the Title Appeal No. 192 of 2014 dismissing the appeal and thereby affirming the judgment and decree dated 31.08.2014 passed by the learned Joint District Judge, Court No. 3, Sylhet in the Title Suit No. 72 of 2006 decreeing the suit in favour of the plaintiffs should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party Nos. 1 and 2 as the plaintiffs instituted the Title Suit No. 72 of 2006 in the court of the learned Joint District Judge, Court No. 2, Sylhet against the present petitioners as the defendants over the suit praying for a declaration of title of the land described in the schedule 2 in the plaint. The plaint contains that Korom Mohammad and Bokkor Mohammad were the owners of the scheduled land along with other land. During the land survey of the settlement the land was recorded in the names of one Noki and others under Chok No. 110 of Taluk No. 2043/30 of Korom Mohammad and he died unmarried leaving behind his legal sole heir full-brother Bokkor

Mohammad who thereafter died leaving behind his legal heirs: 5 sons being namely, Md. Zakir, Md. Danis, Md. Muslim, Md. Noki and Golam Nob. Thereafter Golam Nob. died unmarried leaving behind his brothers as his heirs. Md. Noki got the land mentioned in Schedule 2 by way of amicable partition. He died leaving behind his 3 sons, namely, Ismail Ali, Akbor Ali and Md. Musa. Thereafter, Akbor Ali died issueless leaving behind his two brothers and Ismail Ali got Schedule 2 land mentioned in the plaints and other land got into amicable partition. In the course of the long period of succession of the suit land, there was a wrong record of right in the name of the defendants and their predecessors even though the defendants never had any title and possession of the suit land. The settlement officials declined to correct the names of the proper owners as the plaintiffs. In the meantime, 1 decimal of suit land was recorded in the name of the Government for the requirement of the road of Golapgonj Pouroshova. During the operation of S. A. Khatian 61 decimals of land under Dag No. 2868 and 33 decimals of land under Dag No. 2904 were owned by the plaintiffs and proforma defendant Nos. 177-178 and predecessor of the defendant Nos. 1-129 who relinquished their claim but the suit land was wrongly recorded

in their names and also in the names of the defendant Nos. 130-176 had never any title and possession.

The defendant Nos. 15, 17, 18, 20, 26, 30, 31, 37, 39, 41, 51, 88 and 104 contested the suit by filing a written statement contending *inter alia* that the land within the Taluk No. 2043/30 was owned by Korom Mohammad who died leaving behind his brother Bokkor Mohammad as his legal heirs. The said Bokkor Mohammad died leaving behind his 5 sons who owned the suit land and their names were recorded in S. A. Khatian under Chok No. 110 Dag/Thak (থাক) No. 3913 but 16 decimals of land under Plot No. 2904 were wrongly recorded in the names of the some of predecessors of the defendants. Title Suit No. 170 of 1986 was filed in the court of the then Sadar Munsif, Court No. 1, Sylhet and thereafter they made pucca houses and got electric connections over the suit land and profit over the Plot Nos. 2861 and 2886 are being spent on constructing and maintaining of the Jame Mosque (জা-ম মসজিদ) upon the suit land on behalf of the co-sharer through borgader (বর্গাদার). Therefore, the plaintiffs are not the sole owners and possessors of the suit land.

The defendant Nos. 171-176 contested the suit by filing a separate statement contending, *inter alia*, that 1 decimal of land

was recorded as Khas Khatian No. 1 of the suit Dag, thus, 1 decimal was recorded in the name of the Government within the knowledge of all the parties concerned. None of the parties have any rights over the said 1 decimal land. The learned Joint District Judge, Court No. 3, Sylhet as the trial court heard the parties and exhibited the documents adduced and produced by both the parties in support of their respective cases and the learned trial court decreed the suit by the judgment and decree dated 31.08.2014.

Being aggrieved the contesting defendants as the appellants preferred the Title Appeal No. 192 of 2014 in the court of the learned District Judge, Sylhet which was subsequently heard by the learned Additional District Judge, Court No. 3, Sylhet who after hearing dismissed the appeal by his judgment and decree dated 27.03.2019 by affirming the judgment of the learned trial court.

This revisional application has been filed against the said impugned judgment passed by the learned appellate court below under section 115(1) of the Code of Civil Procedure and the Rule was issued thereupon.

Mr. Nirmalendu Deb, the learned Advocate, appearing along with the learned Advocates Mr. Didar Alam Kallol, Ms. Rowshanara Akter and Ms. Sharmin Rubayat Islam for the defendants as the petitioners, submits that the plaintiffs and the defendants are the co-sharer by inheritance upon the suit land and admittedly there is no partition of the 1st schedule land amongst them, as such, without seeking partition of the 2nd schedule of the land within the 1st schedule land a simple suit for declaration of title was not maintainable but both the courts below failed to appreciate that the vital legal aspect of the case which caused a serious miscarriage of justice, as such, the Rule should be made absolute.

The learned Advocate by filing a supplementary affidavit today on behalf of the defendant-petitioners made another ground and submitted that the plaintiffs knew fully well about the record of right in the names of the defendants as evident from the assertion made in the plaint of the earlier suit has filed the instant suit after long 20 years, as such, the instant suit is clearly barred by limitation but both the courts below failed to appreciate that the vital legal aspect of the case and erroneously decreed the suit which caused failure of justice.

The learned Advocate also submits that there is no document adduced and produced by the parties as to the amicable partition of the suit land between the concerned parties which is against Order 7 rule 3 of the Code of Civil Procedure as there was no specific identification of the land, as such, the Rule is made absolute.

The Rule has been opposed by the present plaintiff-opposite party Nos. 1 and 2.

Mr. Uzzal Kumar Bhowmick, the learned Advocate, appearing along with the learned Advocate Mr. Monoj Kumar Kirtania on behalf of the plaintiff-opposite party Nos. 1 and 2, submits that the learned trial court properly examined the exhibits adduced and produced by the parties regarding the amicable partition among the parties and the suit land has properly distributed which is described in the schedules of the plaint, as such, the learned appellate court below concurrently found in favour of the present plaintiff-opposite parties and they could prove their title and possession by producing required document and evidence, as such, the Rule is liable to be discharged.

The learned Advocate further submits that the matter of limitation in filing the present suit was not in front of the trial court by adducing and producing evidence as they got an opportunity to examine the documents and which are not also part of the lower court records. Moreover, he submits that the predecessor of the plaintiff Nos. 1 and 2 used to live abroad who did not have any knowledge of the earlier suit but they were made a party beyond his knowledge, thus, the suit is not barred by limitation under Article 120 of the Limitation Act, therefore, the suit is liable to be discharged.

The learned Advocate also submits that the plaintiffs could produce their evidence and prove their right of the suit land but the suit was filed challenging the wrong record of right in the names and they are some of the defendants and both the courts concurrently found that the plaintiffs could prove their own case as to the title and possession upon the suit land but the present petitioners obtained the Rule by misleading the court as to the possession of the suit land and record of right, thus, the Rule is liable to be discharged.

Considering the above submissions made by the learned Advocates appearing on behalf of the respective parties and also

considering the revisional application filed by the present defendant-petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein as well as the supplementary affidavit filed today by the petitioners along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below disallowing the appeal and thereby affirming the judgment and decree of the learned trial court as well as perusing the essential documents available in the lower courts records, it appears to this court that the present opposite party Nos. 1 and 2 as the plaintiffs filed the title suit praying for correction of the wrong record of right. The present plaintiff- opposite parties adduced relevant documents to prove their own case by producing Exhibit-5 being a tenancy agreement with the plaintiffs and the tenants, Exhibit-6 obtaining electric connection in their names and payment of the bills consumed by them, Exhibit-7 payment of local Golapgonj Powroshova holding TAX. The plaintiff witnesses produced more evidence to prove their entitlement upon the suit land and possession thereon. On the other hand, the present defendant-petitioners produced evidence as to the title and record of right in their names and also the construction of a Mosque upon the suit

land which was registered as Waqf Property and a Motwalli has been available thereof.

In a civil suit, parties bear the burden of proof on the balance of probability and also bear the burden of its own assertion as in the pleadings.

I have carefully examined the exhibits adduced and produced by the parties as well as the depositions of the PWs and DWs, in particular, DW-2 claimed that he used to cultivate the land but failed to make any statements to prove as the Borgadar (বর্গাদার), whereas, the plaintiffs could produce sufficient documents in favour of their entitlement and possession.

Regarding the above matters, the plaintiffs could prove their entitlement by constructing a structure as to the title and possession of the suit land. I have also carefully examined the exhibits produced by the present defendant-petitioners including Exhibit- "Ga" which is a summon (সমন) issued upon the defendants regarding the Title Suit No. 170 of 1986 but this document could not establish. The saumon (সমন) was properly served or not upon the defendants wherein both the present plaintiff-opposite parties and defendant-petitioners claiming correction of the record of right. This matter was examined by

the learned trial court and the learned appellate court below as to the period of limitation provided under Article 120 of the Limitation Act.

I consider that this is not an official evidence as to any earlier decision which can the present suit made barred by limitation and the learned appellate court below concurrently found and took the decision as there is no bar of the period of limitation upon the said Exhibit- “Ga” by finding concurrent decision of the learned trial court. Now, I will be considering the findings of the learned courts below. The learned trial court came to a conclusion to decree the suit filed by the present plaintiff-opposite parties on the basis of the following findings:

...“বাদীপ-ক্ষর পূর্বাধিকারী মরহুম আব্দুল বারী চৌধুরী পূর্বতন স্বত্ব ১৭০/৮৬ নং মামলায় অপরাপর বিবাদী-দর সা-থ ৪ নং বাদী ছি-লন ম-র্ম লিখিত বিবৃতির স্বীকৃতিই বাদীর স্ব-ত্বর উৎকৃষ্ট প্রমাণ। পাশাপাশি বর্তমান মামলায় স্থানীয় পরিদর্শন প্রতি-বদন প্রদর্শনী-৫ চিহ্নিত ভাড়াটিয়া চুক্তিপত্র, প্রদর্শনী-৬ সিরিজ চিহ্নিত বিদ্যুৎ বিল, প্রদর্শনী-৭ চিহ্নিত স্থানীয় গোলাপগঞ্জ পৌরসভার হোল্ডিং ট্যাক্স রশিদ প্রভৃতি নালিশী সম্পত্তিতে বাদীপ-ক্ষর দখ-লর দালিলিক প্রমাণ। এমনকি ডি.ডব্লিউ. ১ তার জেরায় স্বীকার ক-রন যে, বাদীরা তা-দর অংশর বিদ্যুৎ বিল দি-য়-ছ। আবার, বিবাদীপ-ক্ষর লিখিত বিবৃতি-ত স্বীকৃত যে, জনৈক ক-য়ছ আহমদ নালিশী সম্পত্তিতে অবস্থিত ঘরে ভাড়াটিয়া হি-স-ব মিষ্টির কার্টুন তৈরীর ব্যবসা শুরু করেন। উক্ত ব্যক্তি নিজে তার নাম কয়েছ উদ্দিন চৌধুরী মর্মে প্রকাশ করেন

এবং তার নাম ক-য়ছ আহমদ নয়। তিনি পি.ডব্লিউ. ২ হি-স-ব বর্তমান মামলায় সাক্ষ্য প্রদান ক-রন। যেখা-ন জেরায় তিনি দ্ব্যর্থহীনভা-ব ব-লন যে, নালিশী সম্পত্তির ঘরখানা তিনি ১ নং বাদী ফজলুর রহমানের ঘর জেনে ভাড়া নিয়েছেন। অর্থাৎ নালিশী সম্পত্তিতে বাদীপ-ক্ষর দখল প্রমাণিত হয়।”...

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

...“স্বীকৃত ম-ত নালিশা ভূমি বাবদ লিপিকৃত খতিয়ান সমূহ বাদীগ-ণর পূর্ববর্তীগ-ণর সা-থ বিবাদীগ-ণর এবং তা-দর পূর্ববর্তীর নাম যৌথভা-ব লিপিবদ্ধ আ-ছ। বাদী--রসপ-ন্ট প-ক্ষর দাবী ম-ত তারা নালিশা ভূমি-ত একক স্বত্ববান দখলকার। বিবাদীগণের পূর্ববর্তীর নাম ভুলক্রমে খতিয়া-ন লিপি হ-য়-ছ। নালিশা ভূমি-ত বিবাদীগ-ণর কোন দখল -নই। বাদীগণ নালিশা ভূমি এককভা-ব দখল ক-রন। বাদীপ-ক্ষ উপস্থাপিত সাক্ষ্য পর্যা-লাচনায় নালিশা ভূমি-ত বাদীগ-ণর একক দখল প্রমাণিত হয়। বিবাদীপ-ক্ষর দাবী ম-ত তারাও বাদীপ-ক্ষর সা-থ যৌথভা-ব নালিশা ভূমি দখল ক-রন ম-র্ম বিবাদীপক্ষ প্রমাণ কর-ত পা-রননি। বিবাদীপক্ষ নালিশা খতিয়ান সমূ-হ তা-দর এবং তা-দর পূর্ববর্তীগ-ণর নাম লিপি হওয়ার সু-যা-গ নালিশা ভূমি বাবদ বাদীগ-ণর স্বত্ব অস্বীকার ক-রন। ”...

In view of the above decisions by the learned courts below as to the plaintiffs' case, I do not find that the learned appellate court below committed any error of law or non-considered any evidence or non-application of judicial mind in decreeing the suit concurrently finding the decision of the learned trial court.

In such a situation, I do not consider that this is a proper case for interference by this court in this jurisdiction at this stage.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The interim order of stay passed at the time of issuance of this Rule and subsequently the same was extended till disposal of the Rule are hereby recalled and vacated.

The impugned judgment and decree dated 27.03.2019 passed by the learned Additional District Judge, Court No. 3, Sylhet in the Title Appeal No. 192 of 2014 by disallowing the appeal and thereby affirming the judgment and decree dated 31.08.2014 passed by the learned Joint District Judge, Court No. 3, Sylhet in the Title Suit No. 72 of 2006 decreeing the suit in favour of the plaintiffs is hereby upheld.

The concerned section of this court is hereby directed to send down the lower courts records along with a copy of this judgment and order to the learned courts below immediately.