

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.1305 of 2018

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Delal Ahmed Member and others

... Plaintiff-Petitioners

-Versus –

Lela Bala Chowdhury and others

...Defendant-Opposite Parties

Mr. Md. Shahidul Islam, Advocate

....For the petitioners

Mr. Muhammad Rejaul Hussain, Advocate

...For the Opposite Parties

Heard on 08.11.2023, 031.12.2023
and Judgment on 06.12.2023

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioner, under section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 17.09.2017 (decree signed on 26.09.2017) passed by the learned Additional District Judge, 1st Court, Chattogram in Other Class Appeal No.08 of 2017 disallowing the appeal and affirming the judgment and decree dated 24.08.2011 (decree signed on 29.08.2011) in Other Class Suit No.39 of

1995 passed by the learned Joint District Judge, Potia, Chattogram dismissing 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 necessary for disposal of the Rule, in short, are that the predecessors of Appellant-Petitioners were instituted Other Class Suit No. 39/1995 before the learned Joint District Judge, Potia, Chittagong, for declaration of title stating inter alia that original owner of the three schedule land property measuring 9.60 decimals or 1 Dron or 8 Kani was Chandicharon Chowdhury, son of Tripura Charon Chowdhury, Girindro Lal Chowdhury, Dherendro Lal Chowdhury, Nirendro Lal Chowdhury and son of Roshik Chandro Chowdhury namely Motilal Chowdhury and 4 sons of Bioshambor Chowdhury namely Duhanno Kumar, Mohendro Lal and Shudhansu Lal Chowdhury and two son of Petan Ali named Keramot Ali and Samod Ali which was recorded in R.S. khatian and then the land of Tripura Charon Chowdhury, Girindro Lal Chowdhury, Dherendro Lal Chowdhury, Durgakinkor, Porshnno Kumer & Mohendro Lal Lilam sold to the husband of defendant opposite party No. 1, Grish Chandro Chowdhury and up to 1944 they were in possession of the suit land. Thereafter, predecessor of the plaintiff-petitioners named Ijjot Ali entered into the suit land on 1945 and possessing the suit land by declared his title and he constructed home estate upon the R.S. Dag No.5226 and by possessing the same he died in the year 1962 and it was recorded in the local union porishad and paid the rent of the home estate and Auction Purchaser Girish Chandra Chowdhury died on 1965 and the petitioners have been peacefully living in the suit land without any hindrance, but unfortunately the opposite

parties threatened to petitioners to enter into the suit land forcefully and to dispossess them from the land and then the petitioners filed the Other Class Suit No.39 of 1995. The Defendants-Respondents-Opposite parties contested in the suit by filing a joint written statement denying all material facts disclosed in the plaint is not maintainable in that form and forum and the suit is barred by waiver, estoppels and acquiescence and limitation and asserted that the Plaintiff- Appellants – Petitioners never possessors of the suit land and they have no right and title over the suit land and the suit property under their possession after handed over the one after another. After hearing the learned Joint District Judge, Potia, Chattogram dismissed the said suit by his judgment and decree dated 24.08.2011 (decree signed on 29.08.2011).

Being aggrieved by and dissatisfied with the judgment and decree dated 24.08.2011 the plaintiff –petitioner filed the Other Class Appeal No.08 of 2017 before the learned District Judge, Chattogram. Thereafter, the same was transferred to the learned Additional District Judge, 1st Court, Chattogram for disposal. After hearing the parties the learned Additional District Judge, 1st Court, Chattogram dismissed the said appeal and affirmed the judgment and decree dated 24.08.2011 passed by the learned Joint District Judge, Potia, Chattogram in Other Class Suit No.39 of 1995 by his judgment and decree dated 17.09.2017 (decree signed on 26.09.2017).

Being aggrieved by and dissatisfied with the judgment and decree dated 17.09.2017 (decree signed on 26.09.2017) passed by the learned Additional District Judge, 1st Court, Chattogram in Other Class Appeal

No.08 of 2017, the petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Md. Shahidul Islam, the learned Advocate appearing for the petitioners submits that the plaintiff-petitioners submitted before the learned lower appellate Court during arguments that the documents adduced by the defendants-opposite parties before the trial Court was fictitious and forged and also created by false personification. So, title will not accrue in favour of the opposite parties. The defendant-opposite parties have been failed to show their title, but they were own the suit by false and fabricated story and for this the impugned judgment and decree shall not be sustained in law as because they were never active possession, control and management over the suit land and they are not entitled to obtain any decree of title without possession which ought to have taken cognizance by the learned lower appellate Court and the appellate Court below committed an error of law resulting in an error in the decision occasioning failure of justice in not considering the above facts and circumstances as such the impugned judgment and decree is liable to be set-aside.

He further submits that the trial Court wrongly passed his judgment and decree as because the opposite parties had given D.W. and asserted that part of the land was under possession of the plaintiff, but nothing was produced by the petitioners before the Court and it is crystal clear that the possession and control of the suit land was in favour of the present petitioners. The opposite parties were failed to show that they were in possession in the suit land by producing any documents or exhibit to the trial Court.

He next submits that the appellate Court in violation of the specific provision of relating law and in not complying the observation of the decision of the Hon'ble Supreme Court of Bangladesh in the same matter has illegally dismissed the appeal.

The learned Advocate lastly submits that the impugned judgment and decree dated 17.09.2017 (decree signed on 26.09.2017) passed by the learned Additional District Judge, 1st Court, Chattogram in Other Class Appeal No.08 of 2017 dismissing the appeal and affirming the judgment and decree dated 24.08.2011 (decree signed on 29.08.2011) in Other Class Suit No.39 of 1995 passed by the learned Joint District Judge, Potia, Chattogram amounts to failure to exercise jurisdiction and thus committed an error of law resulting an error in the decision occasioning failure of justice. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Muhammad Rejaul Hussain, the learned Advocate appearing for the opposite parties submits that the P.S. Khatian and R.S. Khatian have been made in the name of opposite parties. They have paid rent for the suit land till the present year. The petitioners are Barga cultivator in the suit land. All D.Ws. in their deposition stated that the suit land is the occupied land owned by the opposite parties. The petitioners did not mentioned in their plaint that the 8/9 Kani land of suit land has acquired by the government. The petitioners is not in possession of the suit land which is proved by the evidence of the petitioner's witnesses. So, the plaintiff-petitioners' case dismissed rightly. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and decree of the Courts' below, the submissions of the learned Advocate for the petitioners and the submissions of the learned Advocate for the opposite parties, the papers and documents as available on the record.

It appears from the record that, the P.S. Khatian and R.S. Khatian have been made in the name of opposite parties. They have paid rent for the suit land till the present year. The petitioners are Barga cultivator in the suit land. All D.Ws. in their deposition stated that the suit land is the occupied land owned by the opposite parties. The petitioners did not mentioned in their plaint that the 8/9 Kani land of suit land has acquired by the government. The petitioners is not in possession of the suit land which is proved by the evidence of the petitioners' witnesses. Moreover PW3 stated in his deposition that , নালিশী ভূমিস্থ ৬/৭ কানি ভূমিতে ওয়াপদার বেড়ীবাঁধ আছে। PW 3 also admitted in his cross that “নালিশী ভূমিস্থ ৬/৭ কানি ভূমিতে ওয়াপদার বেড়ীবাঁধ আছে” and DW 2 (1) also stated in his cross that "নালিশী ভূমির কিছু অংশ সরকারী খাস হয়ে গেছে। তাতে বেঁড়ীবাঁধ আছে"।

But plaintiff filed this suit seeking relief including the land who is already acquired by the Government Suits found that the petitioner did not disclose that the Government acquired about 8/9 kani land from the suit land . That is plaintiff –petitioner did not come with clean hand, he who seeks equity must come with clean hand.

Considering the above facts and circumstances, I find that the learned Additional District Judge, 1st Court, Chattogram rightly passed the judgment and decree dated 17.09.2017 (decree signed on 26.09.2017) in Other Class Appeal No.08 of 2017 dismissing the appeal and thereby affirming the judgment and decree dated 24.08.2011 (decree signed on 29.08.2011) passed by the learned Joint District Judge, Potia, Chattogram in Other Class Suit No.39 of 1995 is maintainable in the eye of law and I do not find any substance to interference into the said judgment and decree and I find substance in the submission of the learned Advocate for the opposite parties.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and decree dated 17.09.2017 (decree signed on 26.09.2017) passed by the learned Additional District Judge, 1st Court, Chattogram in Other Class Appeal No.08 of 2017 dismissing the appeal is hereby upheld and confirmed.

Send down the L.C.R. with a copy of this judgment and order to the concerned Court below at once.