

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 1391 OF 2016

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Ekramul Haque

--- Plaintiff-Appellant-Petitioner.

-Versus-

Nijam Uddin and others

--- Defendant-Respondent-Opposite Parties.

No one appears

--- For the Plaintiff-Appellant-Petitioner.

Mr. Md. Ahia, Advocate

---For the Def.-Respondent-O. P. No. 53.

**Heard on: 02.05.2023, 09.07.2023,
16.07.2023 and 17.07.2023.**

Judgment on: 17.07.2023 and 18.07.2023.

At the instance of the present plaintiff-appellant-petitioner,
Md. Ekramul Haque, this Rule was issued upon a revisional
application filed under section 115(1) of the Code of Civil
Procedure calling upon the defendant-respondent-opposite party
Nos. 17 and 53 to show cause as to why the impugned judgment
and decree dated 18.10.2015 passed by the learned Additional
District Judge, Court No. 3, Dinajpur dismissing the appeal in
the Other Appeal No. 80 of 2004 affirming those of the judgment

and decree dated 31.03.2004 passed by the learned Joint District Judge, Court No. 1, Dinajpurin dismissing the suit in the Other Suit No. 04 of 1998 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioner as the plaintiff filed the Other Suit No. 04 of 1998 in the court of the learned Joint District Judge, Court No. 1, Dinajpur claiming title over the suit land described in the plaint. The present petitioner claimed that the suit land originally was belonged to Moharaja Jogodish Nath Roy Bahadur who purchased the suit land from one Surendra Nath on 03.05.1937 by a registered deed. Thereafter, Moharaja Jogodish Nath Roy Bahadur made a settlement/pattan of the land measuring .3850 acres in favour of Surendra Nath and his brother Radha Gobinda Dey by a registered deed dated 06.05.1942. Radha Gobinda Dey died without any issues/heirs, thus, Surendra Nath became the owner of the above land and who sold the same land to Afaj Uddin Ahmed on 05.10.1950 by a registered deed. Afaj Uddin Ahmed died leaving behind a son, namely, Mohammad Hossain and 2 daughters, namely, Anisa Begum- plaintiff No. 1 and Rahima Begum. Thereafter, Mohammad Hossain died leaving behind his wife and eight sons and eight daughters (proforma-

defendant Nos. 14-30). The land was subsequently left behind to the successors. Then Rahima Begum died leaving behind her husband, namely, Tabarak Ali Talukder, with 5 sons and 3 daughters. Tabarak Ali Talukder died leaving behind 5 sons and 3 daughters. Abdul Sattar Talukder died leaving behind defendant Nos. 38-88. Afaj Uddin Ahmed died leaving behind plaintiff No. 1, Anisa Begum, who got entire the suit land measuring .38 acres and out of which she sold .745 acres to plaintiff No. 2, namely, Md. Ekramul Haque on 28.01.1997 by a registered Heba-Bill-Ewaj deed. In fact, plaintiff No. 2 is the grandson of plaintiff No. 1, wife of Abul Kashem. Abul Kashem died leaving behind a son and 3 daughters. Plaintiff No. 2 went to the local Tahshil Office to pay Khajna (খাজনা) and the Tahshil Office declined to receive Khajna (খাজনা) because the land was not recorded in the name of Afaj Uddin Ahmed who is the father of plaintiff No. 1. Plaintiff No. 2, applied an application to the Deputy Commissioner, Dinajpur who referred the same to the Assistant Commissioner (Land), Sadar, Dinajpur for taking necessary action and then the land was recorded in the name of Afaj Uddin Ahmed. However, the land measuring .3850 acres was untraced.

The present opposite party No. 53 as the defendant contested the suit by filing a written statement contending, *inter alia*, that Jogodish Nath Roy Bahadur settled the land measuring .38 acres to Surendra Nath and also admitting the case presented by the petitioner. The defendant opposite party No. 53 also described that the said Afaj Uddin Ahmed died leaving behind his legal heirs a son, Mohammad Hossain, and two daughters, plaintiff No. 1, Anisa Begum and Rahima Begum. The plaintiff No. 1, Anisa Begum, settled the land in favour of Md. Ekramul Haque and he transferred the land measuring .06050 acres to Jahirul Haque and Abdul Based on 03.09.1976. Thereafter, Jahirul Haque sold .03 acres to Azizul Haque on 14.07.1978 and Abdul Based sold .0375 acres to Ahad Ali on 06.11.1978. Azizul Haque sold .03 acres to Ahad Ali on 29.08.1984. As such, defendant Ahad Ali got/became total land measuring $.3 + .3 \frac{1}{4} = .6 \frac{1}{4}$ acres. The father of plaintiff No. 2 (Md. Ekramul Haque), namely, Monir Uddin Ahmed, transferred $.01 \frac{1}{2}$ acres to Abdul Wahed on 29.05.1977 and Abdul Wahed sold the same to Ahad Ali on 07.06.1978. There are other transfer of the suit land. Mainly, Ahad Ali remains in possession of total land measuring

$8\frac{1}{4}$ decimals but he transferred $8\frac{3}{4}$ decimals to defendant No. 53 on 20.08.1985 and he remains in possession.

The government of Bangladesh as the defendant No. 17 represented by the Deputy Commissioner, Dinajpur contested the suit by filing a separate written statement contending, *inter alia*, that the land of plot No. 902 is a property under C. S. Khatian No. 1546 land measuring 2.68 acres which was recorded in the name of Surendra Nath. Thereafter, Khatina No. 20, Dag No. 922 along with Dag No. 902 land measuring 14 decimals was recorded in the name of Arob Ali and over time there were other transfers in the name of different persons and different measurements of the land. However, in the suit plots rest 54 decimals of land were not recorded in the names of any persons and the same remained unrecorded. As such, the said suit land had remained as into the Khas Khatian and the Government settled the land to different persons but the plaintiff has no possession and right of the suit land. S. A. Khatian No. 1660, land measuring 1.32 acres remained in the list of vested property where the plaintiff has no right or title but the Government has given leases to different persons.

After receiving the suit the learned Joint District Judge, Court No. 1, Dinajpur heard the parties and dismissed the suit by his judgment and decree dated 31.03.2004.

Being aggrieved the plaintiff preferred an appeal before the learned District Judge, Dinajpur who transferred the same to the learned Additional District Judge, Court No. 3, Dinajpur for hearing who heard and dismissed the appeal and thereby affirming the judgment and decree passed by the learned trial court by his judgment and decree dated 18.10.2015. Being aggrieved the plaintiff-appellant filed this revisional application before this court under section 115(1) of the Code of Civil Procedure and the Rule was issued thereupon.

This matter has been appearing in the daily cause list for a long period of time but no one appears to hear or support the Rule on behalf of the plaintiff-appellant-petitioner. However, the plaintiff-petitioner has taken the ground that the judgment and decree passed by the learned trial court has not been based on mere conjecture and surmises and not based on materials on record and thereby came to a decision occasioning failure of justice. The learned appellate court below failed to comply with the provision of Order 41 rule 31 of the Code of Civil Procedure,

as such, without discussing the oral and documentary evidence on record came to a wrongful decision occasioning failure of justice, as such, the Rule should be made absolute.

Mr. Md. Ahia, the learned Advocate, appearing on behalf of the present opposite party No. 53 submits that the present petitioner as the plaintiff filed the suit without ascertaining and identifying the suit land itself and making the suit in a complicated manner of facts and actual ownership as well as possession, thus, both the courts considered the plaintiff's case and passed the impugned judgment and decree against the plaintiff without committing any error of law, as such, this Rule is liable to be discharged.

He also submits that most of the related parties are not made parties, as such, the suit is a defect of parties as the learned trial court and the learned appellate court below concurrently found that the suit is barred by defect of parties. Moreover, he submits that the plaintiff should have filed a suit for partition to ascertain the ownership of the suit land.

Considering the above submissions made by the learned Advocate appearing for the opposite party No. 53 and also considering the revisional application filed by the present

plaintiff-petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below and also perusing the assencial materials available in the lower courts records, it appears to this court that the present petitioner as the plaintiff filed a title suit claiming that the suit land was originally belonged to Moharaja Jogodish Nath Roy Bahadur who purchased the suit land on 03.05.1937 from Surendra Nath and subsequently the suit land transferred to the different persons and different measurements of land. The plaintiff further claims that the suit land is situated in S. A. Khatian No. 902 land measuring .3850 acres but the plaintiff adduced and produced some documents of land without any specific description of land and without giving any boundary of the suit land. In the plaint of the suit, the plaintiff was confused as to his ownership, as such, the learned trial court came to a conclusion by dismissing the suit on the basis of the following grounds and in the following terms:

...“বাদীপক্ষে ২ নং সাক্ষী জয়নাল আ-বদীন প্রদঃ ১০ সম্প-র্ক সাক্ষ্য দি-লও তিনি জেরা-ত স্বীকার ক-রন যে, তাহার আনীত সকল কাগজই ফ-টাকপি এবং সত্যায়িতও ন-হ। এবং নালিশী ৪০১৪ নং দলিলটি

সঠিক কিনা সেই সম্পর্কে তাহার কোন জ্ঞান নাই। নালিশী সম্পত্তির ২০৯ দা-গর মোট জমির পরিমাণ ২.৬৮ একর ইহার ম-ধ্য বাদীর .৩৮৫০ শতক -কান অংশ তাহা নির্দিষ্ট ভা-ব উ-ল্লেখ নাই। নালিশী সম্পত্তি নির্দিষ্ট না হওয়ায় বাদী কোন সম্পত্তি বাবদ প্রতিকার চাহিয়াছেন তাহা পরিষ্কার নহে। ২.৬৮ শতক ম-ধ্য .৩৮৫০ শতক সম্পত্তিতে যে স্বত্বের ঘোষণা মোকদ্দমা আনয়ন করা হইয়া-ছ তাহার তপশী-ল $\frac{902}{1}$ নম্বর দা-গর .২২ ও $\frac{902}{2}$ দা-গ .১৬৫০ শতক সম্পত্তি উল্লেখ রহিয়াছে। বাদীপক্ষ সি. এস. ১৫৪৬ নং খতিয়ান দাখিল করিয়া-ছেন। সি. এস. খতিয়ান ও ম্যা-প $\frac{902}{1}$ ও $\frac{902}{2}$ নম্বর বলিয়া কোন দাগ নম্বর নাই। বাদী তাহার শে-ষর দি-ক স্বীকার ক-রন যে, নালিশী জমির উত্তরে মোসলেম ও আব্বাস আলী বাড়ী-ঘর করিয়া বসবাস করি-ত-ছেন। তাহা-দর মামলায় পক্ষ করা হয় নাই।”...

The learned appellate court below concurrently found against the plaintiff-petitioner that the suit land is unspecified and other necessary parties should have been made parties in the suit for taking a decision lawfully, as such, the learned appellate court below dismissed the appeal by affirming the judgment and decree of the learned trial court in the following findings and manners:

...“আনিসা বেগ-মর নালিশী দা-গ ওয়ারিশ সূত্রে প্রাপ্ত $৯\frac{1}{2}$ শতক জমির ম-ধ্য থে-ক আনিসা বেগম নি-জর $৬\frac{1}{2}$ শতক এবং তার ওয়ারিশ ২ নং বাদী $১\frac{1}{2}$ শতক মোট ০৮ শতক জমি হস্তান্তর ক-র-ছেন। ফ-ল নালিশী

জমিতে ওয়ারিশ হিসেবে তার মাত্র $১\frac{1}{2}$ শতক জমি অবশিষ্ট থা-ক। বাদী-
 আপীলকারী পক্ষ নালিশী জমি-ত বিভাগ-বন্টন চান না। স্বত্ব ঘোষণার
 প্রার্থনায় বাদী-আপীলকারী পক্ষ মোকদ্দমাটি আনয়ন করেছেন। কিন্তু নালিশী
 দা-গর কোন দিক থে-ক তিনি নালিশী জমি দখল ক-রন তা আরজীর
 তপশী-ল উ-ল্লখ ক-রননি। তাছাড়া $১৬\frac{1}{2}$ শতক জমি দাবী কর-লও নালিশী
 দা-গ বাদী আনিসার $১\frac{1}{2}$ শতক জমি অবশিষ্ট র-য়-ছ। বাদী-আপীলকারী
 তার জেরা-ত স্বীকার ক-র-ছন নালিশী জমির উপর মোস-লম ও আব্বাস
 আলী বাড়ী-ঘর ক-র-র বসবাস করেছেন। কিন্তু তাদেরকে অত্র মোকদ্দমায় পক্ষ
 করা হয়নি। ফলে দেখা যায় যে, মোকদ্দমাটি পক্ষ দোষে অচল হচ্ছে।”...

In view of the above discussions and concurrent findings of both the courts below, I am of the opinion that the present plaintiff-petitioner failed to prove its own case, as such, the present petitioner's application does not merit any further consideration. So, in light of that I am not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below, as such, the Rule does not merit any further consideration.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 18.10.2015 passed by the learned Additional District Judge, Court No. 3,

Dinajpur dismissing the appeal in the Other Appeal No. 80 of 2004 affirming those of the judgment and decree dated 31.03.2004 passed by the learned Joint District Judge, Court No. 1, Dinajpur dismissing the suit in the Other Suit No. 04 of 1998 is hereby affirmed.

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