

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam

First Appeal No. 167 of 2020

In the Matter of:

Memorandum of appeal from the original order.

-and-

In the Matter of:

Gopendra Kumar Das being dead his heirs
Dulan Kumar Talukder and others

.....Plaintiff-appellants.

-Versus-

Dharoni Das and others

.....Defendant-respondents.

Mr. Syed Khalequzzaman, Advocate

..... For the appellants.

Mr. Md. Alamgir Mostafiz with

Mr. Md. Jahangir Hossain, Advocates.

.....For the respondents.

Heard on 27.11.2024 and Judgment on 03.12.2024.

Sheikh Abdul Awal, J:

This appeal at the instance of the defendant-appellant is directed against the judgment and decree dated 24.09.2019 (decree signed on 30.09.2019) passed by the learned Joint District Judge, 1st Court, Sunamgonj in Title Suit No. 25 of 2006 dismissing the suit.

To cut short the matter at the very outset Mr. Syed Khalequzzaman, the learned Advocate appearing for the

appellants after placing an application for sending back the case on remand to the trial Court submits that during trial the plaintiffs could not produce all the relevant documents before the trial Court as the same were lying with the record of Civil Revision No. 48 of 2001 before the High Court Division of the Supreme Court of Bangladesh and consequently, the trial Court arrived at a finding that the plaintiffs could not produce any reliable evidence to prove that Gayanath Das and Taranath Das was the same person or the plaintiffs could not adduce sufficient evidence in support of their possession and title and on this finding the learned trial Judge dismissed the suit. The learned Advocate further submits that in the facts and circumstances of the case the learned trial Judge ought to have allowed time in favour of the plaintiffs for producing those relevant papers and in failing to do so committed an error of law resulting in error in the impugned decision occasioning a failure of justice. Finally, the learned Advocate submits that all the relevant papers are now in the hands of the plaintiffs and as such, the case may kindly be sent back on remand for proper adjudication of the matter and to that effect the plaintiff-appellants will, however, deposit a cost of Taka 20,000/- (twenty thousand) in favour of the defendant-respondents.

Mr. Md. Alamgir Mostafiz, the learned Advocate appearing for the defendant-respondents, on the other hand, in his usual frankness concedes the submission of the learned Advocate for the appellants. He did not dispute the proposal advanced by Mr. Syed Khalequzzaman. Rather he also submits that he has no objection if the case is sent back on open remand.

Since both the parties have agreed that they have no objection if the case is sent back on open remand to the trial Court by giving an opportunity to the parties to adduce fresh evidence in support of their respective cases, we inclined to send back the case to the trial Court on open remand for re-trial.

In the result, the appeal is allowed. The judgment and decree dated 24.09.2019 (decree signed on 30.09.2019) passed by the learned Joint District Judge, 1st Court, Sunamgonj in Title Suit No. 25 of 2006 are set-aside and the suit is sent back to the trial Court for fresh trial and both the parties will be at liberty to adduce fresh evidence in support of their respective cases and thereafter the learned trial Court shall dispose of the suit on merit in accordance with law.

However, in view of the submissions of the learned Advocate, the plaintiff-appellants shall deposit a cost Taka 20,000/- (twenty thousand) in favour of the defendants within 30 days from the date of receipt of this judgment.

The defendants will be at liberty to withdraw that amount.

In the facts and circumstances of the case there will be no order as to costs.

Send down the LC Records at once.

Md. Mansur Alam, J:

I agree.