

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION No. 4086 OF 2020

In the matter of:

An application under article 102 of the
Constitution of the People's Republic of
Bangladesh.

AND

In the matter of:

Rozy Akter Banu (wife) and others

....Petitioners

-Versus-

Land Survey Tribunal, Gaibandha and others

..... Respondents

Mr. Tanzila Ferdouse, Advocate

..... For the Petitioners

Mr. M.M. Zulfiker Ali Hayder, Advocate

..... For the Respondent Nos. 8-18.

Judgment on: 1st February, 2022

Present:

Mr. Justice Md. Khasruzzaman

and

Mr. Justice Md. Mahmud Hassan Talukder

Md. Khasruzzaman, J:

On an application under article 102 of the Constitution, the
Rule Nisi was issued calling upon the respondents to show cause
as to why the impugned order No. 74 dated 30.07.2019 and also
order No. 80 dated 15.03.2020 passed by the Land Survey

Tribunal, Gaibandha in Land Survey Tribunal Suit No. 01 of 2013 dismissing the suit and rejecting the application for time for filing C.P. cost (Annexures- C and C-1) should not be declared to have been passed without lawful authority and is of no legal effect.

The predecessor of the petitioner and others as plaintiffs filed Land Survey Tribunal Suit No. 01 of 2013 before the Land Survey Tribunal, Gaibandha against the respondents as defendants for correction of the B. S. record which has been described in the schedule of the plaint.

The defendants contested the suit by filing written statement. The plaintiff examined 2 witnesses as P.W. 1 and P.W. 2 and they were cross-examined by the defendants side. The defendants examined 2 witnesses. Then the plaintiff filed an application for amendment of the plaint which was allowed and the defendants submitted an additional written statement, and the suit was fixed for argument hearing and argument hearing was concluded and then the suit was fixed for judgment.

At this stage, the petitioners (heirs of the plaintiff) filed an application for re-calling the witnesses and the Court directed the plaintiffs to submit the plaint, written statement and last order of

Partition Suit No. 09 of 2013 pending before the Assistant Judge Court, Fulchhori, Gaibandha. The plaintiffs were allowed time to produce the witnesses and submit the documents as directed by the Court. The plaintiffs failed to submit the documents and then it was placed for judgment on 08.07.2018.

Then the plaintiffs filed an application for examining of the witnesses and after hearing, the application was allowed with a cost of Taka 200/- on 16.06.2019 and fixed on 30.07.2019 for examination of the witnesses with C.P. Cost of Taka 200/- and on that date i.e. 30.07.2019 the plaintiffs prayed for time without depositing CP cost of Taka 200/- and then the suit was dismissed on the same day.

In the present case, on going through the order sheets annexed in the supplementary affidavit dated 31.07.2020, it appears that one Md. Ali Azam Mondol filed an application for setting aside the order dated 30.07.2019 by depositing C. P. Cost of Taka 200/-. The learned Judge set aside the order dated 30.07.2019 and restored the suit. Subsequently, it was revealed that said Md. Ali Azam Mondol is neither plaintiff nor a power of attorney holder of the plaintiff and as such a show cause notice

was issued to Md. Ali Azam Mondol and proceeding was started and the dismissal order dated 30.07.2019 was affirmed.

Against the aforesaid 2(two) orders, the heirs of the plaintiff No. 1, Md. Abdul Mamun Sarker, filed this writ petition and obtained the above Rule Nisi and an order of status quo.

Mrs. Tanzila Ferdouse, the learned Advocate for the petitioners submits that due to miscommunication with the learned Advocate, the C.P. cost was not deposited within time and they were ready to furnish the C.P. cost. She further submits that Md. Ali Azam Mondol who filed the application for restoration of the suit is close relative of the petitioners, and as such on good faith he filed an application for restoration which was a bonafide mistake of the petitioners as well as Md. Ali Azam Mondol.

On the other hand, Mr. M.M. Zulfiker Ali Hayder, the learned Advocate for the respondent Nos. 8-18 submits that it is admitted that plaintiff-petitioner did not deposite the C.P. cost and Md. Ali Azam Mondol is not the Tadbirker of the suit but he has no objection, if the Rule is made absolute subject to depositing the CP cost. He also submits that no proceeding was started against Md. Ali Azam Mondol for disregarding law of this country.

Heard the learned Advocates for both the sides, perused the application and the annexures annexed thereto.

It appears from the order No. 71 dated 13.03.2019 (Annexure-E series from the supplementary affidavit) that the plaintiff filed an application to produce the witnesses and said application was fixed for hearing on 02.04.2019 and on an application filed by the plaintiff the hearing of the said application was adjourned till 16.06.2019. Again on 16.06.2019 the plaintiff filed an application to adjourn the hearing of the application for recalling the witnesses, and thereafter, the Court allowed the petition for time with a C. P. cost of Taka 200/- and fixed on 30.07.2019 for hearing of the said application for recalling the witnesses after depositing the said C.P. cost. But on 30.07.2019 the plaintiff did not deposit the C.P. cost rather he filed an application to adjourn the matter and then the Court dismissed the suit. Thereafter, on 05.08.2019 one Md. Ali Azam Mondol filed an application for setting aside the order dated 30.07.2019 by depositing C.P. cost of Tk. 200/- and the same was fixed for hearing on 25.08.2019 and on 25.08.2019 the order dated 30.07.2019 was set aside, and the suit was restored. The date 18.09.2019 was fixed for filing requisites and the plaintiff side

deposited the said requisites. On 06.11.2019 the defendant No. 1 filed an application for cancelation of the order dated 25.08.2019 stating that the applicant Md. Ali Azam Mondal is not a party to the suit and the said application was not served upon the defendants. They have also stated that the restoration order was obtained by practising fraud upon the Court only to harass the defendants and after hearing the application the tribunal found the genuineness of the statements made in the application filed by the defendants. Then the order dated 25.08.2019 was set aside on 06.11.2019 and a show case notice was served upon Md. Ali Azam as to why a fine under section 35 of the Code of Civil Procedure should not be imposed for filing an application for setting aside the order dated 30.07.2019 in the suit claiming himself as plaintiff without any proper power from the plaintiff's side. The plaintiff replied to the said show cause notice and on 15.03.2020 Md. Ali Azam was restrained by taking any step in the suit and order No. 74 dated 30.07.2019 was set aside.

It appears from Order No. 78 dated 06.11.2019 that the plaintiffs deposited C. P. cost of Taka 200/-.

Since the plaintiffs have already furnished the C.P. cost and the mistake was committed unintentionally claimed by the

plaintiffs, we find substance of the application and merit of the Rule.

In the result, the Rule Nisi is made absolute in part without any order as to costs. The application filed by the plaintiff petitioners depositing the C.P. cost is accepted and allowed. The order No. 74 dated 30.07.2019 and the Order No. 80 dated 15.03.2020 passed by the Land Survey Tribunal, Gaibandha in Land Survey Suit No. 01 of 2013 so far it relates to affirming the dismissal order are set aside and the Land Survey Suit No. 01 of 2013 is restored to its file and number.

The order of statusquo is hereby recalled and vacated.

The tribunal shall proceed the suit in accordance with law.

Communicate the order.

Md. Mahmud Hassan Talukder, J:

I agree.