

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3270 OF 2014

In the matter of:

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

And

Abdul Wahid and others

... Petitioners

-Versus-

Moklisuddin and others

.... Opposite parties

Mr. Md. Tamij Uddin, Advocate

....For the petitioners.

Mr. Mr. Sheikh Habib ul Alam, Advocate

.... for the opposite party Nos.1, 2, 4,
3(a)-3(j), 5(a) and 5(c)-5(h) .

Heard on 03.03.2025.

Judgment on 04.03.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-5 to show cause as to why the impugned judgment and decree dated 29.05.2014 passed by the learned Joint District Judge, 3rd Court, Sylhet in Title Appeal No.172 of 1994 affirming the judgment and decree dated 30.06.1994 passed by the learned Senior Assistant Judge, Gopalganj in Title Suit No.106 of 1993 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 in short are that the opposite party as plaintiffs instituted Title Suit No.106 of 1993 for declaration of title and for further declaration that the judgment and decree obtained by the defendant in Title Suit No.99 of 1983 was fraudulent, illegal and not binding upon the plaintiff alleging that the plaintiffs as poor and landless peasants submitted petition to the Government in 1977 and 1978 for settlement of disputed 7.50 acres land for cultivation and the Government on conclusion of necessary inquiry gave settlement of above land to five plaintiffs and they got their names mutated and possessed the same by paying rents to the Government. Defendant Nos.1-6 or the inhabitants of above village did not have any right, title and possession in above land but they filed Title Suit No.112 of 1981 for declaration of Easement Right and permanent injunction against the Government and others. Above suit was renumbered as Title Suit No.99 of 1983 and decreed on 26.01.1985 on contest but this plaintiffs were not impleaded as defendants in above suit. On the basis of above judgment and decree defendant Nos.1-6 most illegally cancelled the settlement of the plaintiffs.

Defendant Nos.1-6 contested above suit by filling a joint written statement alleging that disputed land was being utilized by the inhabitants of above village as grazing land (গোচারণভূমি). But the Local Tohsilder took an initiative for giving settlement of above land to several persons and the people of above village as plaintiffs instituted Title Suit No.112 of 1981 for declaration of right of easement and

permanent injunction restraining the Government from giving settlement of above land. Above suit was subsequently renumbered as Title Suit No.99 of 1983 and decreed on contest on 26.01.1985 and the Government did not prefer any appeal against above judgment and decree. On the basis of above judgment and decree defendant No.7 initiated L. S. Appeal Case No.5 of 1988 and the plaintiffs filed written objection in above appeal and defendant No.7 rightly cancelled the lease deeds of the plaintiffs by order dated 30.08.1988.

At trial plaintiffs examined five witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-8. On the other hand defendants examined three witnesses and documents of the defendants were marked Exhibit Nos."Ka" to "Ga" series.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge decreed above suit.

Being aggrieved by above judgment and decree of the trial Court above defendants as appellants preferred Title Appeal No.172 of 1994 to the District Judge, Sylhet which was heard by the learned Joint District Judge who allowed above appeal, set aside the judgment and decree of the trial Court and dismissed the suit.

Being aggrieved by above judgment and decree of the Court of Appeal below above respondents as petitioners preferred Civil Revision No.4254 of 2000 to the High Court Division and this Court vide judgment and order dated 03.02.2013 allowed above revision, set aside

the judgment and decree of the Court of Appeal below and remanded above appeal to the Court of Appellate for re hearing with following directions:-

“The Appellate Court opined that the plaintiffs did not make the authority of the forest as defendants though the revisional Court can consider the same but this court has taken a view that for ends of justice the Appellate Court should consider the matter afresh and should consider whether the schedule land has been declared reserve forest through Gazette Notification (Exhibit Nos.6 and 8). The Appellate Court is empowered to adduce additional evidence or evidence if requires, can frame issue or issues and can dispose of the same under Section 107 of the Code of Civil Procedure. So considering the procedure of law I am inclined to send back the case on remand to the Appellate Court for considering above matters afresh.”

On receipt of above judgment and order of this Court alongwith the lower court record the learned Joint District Judge disposed of above appeal with following observation :-

“উক্ত আদেশ সম্বলিত Civil Revision এর নথি বিগত ০৯/০৬/২০১৩ ইং তারিখে অত্রাদালতে গৃহিত হবার পর বিগত ০৪/০৭/২০১৩ তারিখ হতে ২৭/০৫/২০১৪ ইং তারিখ পর্যন্ত উভয় পক্ষকে Civil Revision

মোকদ্দমার প্রদত্ত আদেশের আলোকে পদক্ষেপ গ্রহণের জন্য ১০ বারের অধিক সুযোগ দেয়া সত্ত্বেও কোনপক্ষই মাননীয় হাইকোর্ট বিভাগের নির্দেশনা অনুযায়ী পক্ষভুক্তি ও অতিরিক্ত সাক্ষ্য প্রদানের বিষয়ে কোনরূপ পদক্ষেপ গ্রহণ করেননি। মাননীয় হাইকোর্ট বিভাগের নির্দেশনা অনুসরণ না করায় অত্র আপীল মোকদ্দমাটি অত্রাদালতের মাননীয় হাইকোর্ট বিভাগের নির্দেশনার বাইরে গিয়ে কোনরূপ আদেশ প্রদানের সুযোগ নেই। কাজেই অত্র আপীল মোকদ্দমায় পক্ষগণ কোনরূপ প্রতিকার পেতে পারেন না। এই বিবেচ্য বিষয়গুলি আপীলকারীপক্ষের প্রতিকূলে সিদ্ধান্ত হলো।

আপিলের মেমোতে প্রদত্ত কোর্ট ফি সঠিক।

অতএব আদেশ হলো যে,

এই স্বত্ব আপীল মোকদ্দমায় Civil Revision No.8২৫৪/২০০০

মোকদ্দমায় মাননীয় হাইকোর্ট বিভাগের প্রদত্ত নির্দেশনা পক্ষগণ প্রতিপালন না করায় আপীল মোকদ্দমাটি ১-৫ নং রেসপনডেন্ট এর বিরুদ্ধে দোতরফা সূত্রে এবং অন্যান্য রেসপনডেন্ট এর বিরুদ্ধে এরতরফা সূত্রে খারিজ করা হলো।

অত্র রায়ে অনুলিপিসহ এল, সি, আর সংশ্লিষ্ট নিম্ন আদালতে অবিলম্বে ফেরত পাঠানো হোক। আমার কথামত লিখিত ও সংশোধিত।”

Being aggrieved by and the dissatisfied with above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this court and obtained this Rule.

Mr. Md. Tamiz Uddin, learned Advocate for the petitioners submits that this Court while sending the appeal back to the Court of appeal below for rehearing directed the Court below to reexamine whether the disputed property was declared reserved forest by the Government and reassess the evidence on record and pass a fresh judgment on merit. The Appellant Court was also authorized to frame

new issues and receive further evidence. But the learned Judge of the Court of Appeal below failed to comprehend the spirit and meaning of the order of remand of this Court and without reassessment of the evidence on record and impleading the forest authority as defendant has dismissed the appeal which is misconceived, unlawful and not tenable in law.

On the other hand Mr. Sheikh Habib ul Alam, learned Advocate for the opposite party Nos.1, 2, 4, 3(a)-3(j), 5(a) and 5(c)-5(h) submits that on consideration of facts and circumstance of the case and direction of this Court the learned Judge of the Court of Appeal below has rightly dismissed the appeal which calls for no interference. But if the appeal is again remanded to the Court of Appeal below for rehearing then this plaintiff should be given an opportunity to amend the plaint and adduce further evidence.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

As mentioned above this Court in course of hearing of Civil Revision No.4254 of 2000 found that the plaintiff claimed the disputed land as reserve forest by the Government and in support of above claim produced two documents which were marked as Exhibit Nos.6 and 8 but those documents were not considered by the Court of Appeal below. If any land is declared reserve forest then that property cannot be given settlement for cultivation nor the same can be used as grazing land. In above view of the materials on record this court remanded the

appeal for rehearing after impleading the Department of Forest as defendant. The parties were given liberty to adduce further evidence and frame new issues and dispose of the appeal on reassessment of the evidence on record by a fresh judgment.

The learned Judge of the Court of Appeal below has mentioned that despite granting 10 adjournments the plaintiff or defendant did not take any initiative for amendment of the pleadings or adducing further evidence. Instead of dismissing the appeal for default the learned Judge dismissed the appeal for non-compliance of direction of this Court. But the High Court Division did not pass any direction for dismissing the appeal due to inaction of the parties in amending the pleadings or adducing further evidence. The learned Judge dismissed the appeal but did not affirm the judgment and decree of the trial Court. It turns out that the learned Judge of the Court of Appeal below has failed to appreciate the spirit and meaning of the directions of this Court passed in above order of remand.

The learned Advocate for the petitioner submits that the appeal may be remanded to the Court of Appeal below again for rehearing and passing of a new judgment on reassessment of the evidence on record. On the other hand the learned Advocate for the opposite parties submits that the Court of Appeal be directed to give the plaintiff be given an opportunity to amend the plaint and adduce further evidence.

On consideration of above facts and circumstances of the case and submissions made by the learned Advocates for the respective parties I

hold that the ends of justice will be met if the impugned judgment and decree passed by learned Judge of the Court of Appeal below is set aside and above appeal is again remanded to the Court of Appeal below for rehearing and passing a new judgment on reassessment of the evidence on record. The learned Judge shall grant an opportunity to both the parties to amend their respective pleadings and adduce further evidence and then proceed with the rehearing of the appeal.

In the result, the Rule is hereby made absolute. The impugned judgment and decree dated 29.05.2014 passed by the learned Joint District Judge, 3rd Court, Sylhet in Title Appeal No.172 of 1994 dismissing above appeal is set aside. Above appeal is again remanded to the Court of Appeal below for rehearing after giving both parties an opportunity to amend the pleadings and adduce further evidence.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER