

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 2885 OF 2019

WITH

CIVIL REVISION NO. 2886 OF 2019

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Raju Bibi and others

---Plaintiff-Appellant-Petitioners.

-Versus-

Amir Ali Chowdhury and others

---Defendant-Respondent-Opposite Parties
(in both the cases).

Mr. Khandaker Md. Taufiqul Huq with

Mr. Md. Nazrul Islam, Advocates

---For the Petitioners
(in both the cases).

Mr. Md. Mostafizur Rahman, Advocate

---For the Opposite Parties
(in both the cases).

**Heard on: 10.05.2023, 15.05.2023,
20.05.2023 and 28.05.2023.**

Judgment on: 28.05.2023 & 29.05.2023.

These 2 (two) common types of Rules were issued by this court upon involving similar facts and law, thus, these 2 (two) Rules have been heard together and also taken up for delivering by the following common judgment.

At the instance of the defendant-appellant-petitioners, Razu Bibi and others, this Rule was issued upon a revisional application in the Civil Revision No. 2885 of 2019 filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1-3 to show cause as to why the impugned judgment and decree dated 06.05.2019 passed by the learned Additional District Judge, Court No. 1, Cumilla in the Civil/Title Appeal No. 67 of 2013 dismissing the appeal and thereby affirming the judgment and decree dated 12.03.2013 passed by the learned Joint District Judge, Court No. 3, Cumilla in the Civil/Title Suit No. 126 of 2006 (Title Suit No. 94 of 2006) should not be *set aside*.

Another Rule was issued in the Civil Revision No. 2886 of 2019 upon a revisional application filed by the same petitioners under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1-3 to show cause as to why the impugned judgment and decree dated 06.05.2019 passed by the learned Additional District Judge, Court No. 1, Cumilla in the Civil/Title Appeal No. 68 of 2013 dismissing the appeal and thereby affirming the judgment and decree dated 12.03.2013 passed by the learned Joint District Judge, Court No. 3, Cumilla

in the Civil/Title Suit No. 126 of 2006 (Title Suit No. 94 of 2006) should not be *set aside*.

The relevant facts for disposal of these 2 (two) Rules, *inter alia*, are that the petitioners as the plaintiffs, Raju Bibi and others, filed the Title Suit No. 126 of 2006 in the court of the learned Senior Assistant Judge, Sadar, Cumilla against the defendants for declaring the title of the plaintiffs by way of adverse possession in respect of .06 decimals of land in which the petitioners have been residing for more than 70 (seventy) years by constructing dwelling house and keeping water supply line, electricity and gas line as well as paying holding tax to the local municipality, now City Corporation. The present defendant-opposite parties, Amir Ali Chowdhury and others filed the Title Suit No. 94 of 2006 against the present petitioners in the court of the learned Senior Assistant Judge, Sadar, Cumilla for declaration of title with the recovery of khas (খাস) possession in respect of the same suits land and both the suits were taken up for hearing analogously by the same court.

The present petitioners state in the plaint that one Ashrobernessa Bibi and Sreemoti Khatiza Banu Bibi were the

tenants by paying rents in favour of the landlord who obtained rights, title and possession and Khatiza Banu sold the suit land to one Abdul Hakim on 14.03.1944. Thereafter, he sold 1.5 decimals of land to his mother Foyjun Nessa by a registered সাফ কবলা deed dated 09.07.1963 and on the same date sold 1.5 decimals land to the defendant No. 3 by another সাফ কবলা deed. Abdul Hakim sold 1.5 decimals of land to Amir Hossain and Monir Hossain by a registered সাফ কবলা deed dated 08.04.1969 and the purchaser Monir Hossain being owner sold 75 decimals of land to the petitioner Amir Hossain on 07.07.1992 by way of a registered সাফ কবলা deed who is the plaintiff-petitioner No. 2 and he is still in possession of his purchased land. Abul Hossain made a deed of gift in respect of his purchased land 1.5 decimals in favour of Amir Hossain on 07.07.1992 and he is in possession till now. Subsequently, Foyjunnessa died leaving behind her son Abdul Hakim and a daughter Charu Bibi who sold 1.5 decimals to the plaintiff No. 1, Raju Bibi on 11.09.1976 where the plaintiff No. 1 constructed a dwelling house with other structural things since then plaintiffs were in possession. During B. S. operation the record was not prepared by the surveyor in the name of the plaintiffs as an owner but the defendant- opposite parties in

connivance with the surveyor got the record of the B. S. Khatian in the name of the opposite parties which caused to file the suit for acquiring declaration of title, subsequently, the prayer was amended by claiming title through adverse possession.

The present opposite parties as the defendants filed a written statement contending that the Title Suit No. 94 of 2006 was filed for declaration of title and recovery of khas (খাস) possession. The present opposite parties also stated that they have filed both the suits being the Title Suit No. 126 of 2006 and the Title Suit No. 94 of 2006 which were heard by the learned trial court analogously.

After hearing the parties the learned Joint District Judge, Court No. 3, Cumilla dismissed the Title Suit No. 126 of 2006 but the Title Suit No. 94 of 2006 was allowed and decreed in favour of the present opposite parties. Being aggrieved by the said impugned judgment and decree the present petitioners filed the Title Appeal No. 67 of 2013 and also being aggrieved by the judgment and decree the present petitioners also filed an appeal being Title Appeal No. 68 of 2013 which were heard by the learned Additional District Judge, Court No. 1, Cumilla

analogously and disallowed the appeals and thereby affirming the judgment and decree dated 12.03.2013 passed by the learned Joint District Judge, Court No. 3, Cumilla. Being aggrieved the present plaintiff-petitioners preferred these 2 revisional applications under section 115(1) of the Code of Civil Procedure and these 2 (two) Rules were issued by this court thereupon.

Mr. Khandaker Md. Taufiqul Huq, the learned Advocate, appearing along with the learned Advocate, Mr. Md. Nazrul Islam, for the plaintiff-petitioners in both the Rules, submits that the impugned judgment wrongly concluded against the plaintiff-petitioners, thereby, committed an error of law occasioning failure of justice, therefore, the Rules should be made absolute.

The learned Advocate further submits that the learned Additional District Judge failed to assess the evidence of the PWs and it is evident that the plaintiff sought for declaration of title by way of adverse possession and in this regard all other PWs admitted the possession of the plaintiffs but the learned Additional District Judge, Court No. 1, Cumilla passed a follow-up judgment without applying his independent judicial discretion for which it resulted an error and occasioned a failure of justice.

Both the Rules have been opposed by the present defendant-opposite parties.

Mr. Md. Mostafizur Rahman, the learned Advocate, appearing for the opposite parties in both the Rules submitted that the learned trial court after hearing and obtaining the evidence of both the title suits have been concluded analogously against the present petitioners, therefore, the learned trial court committed no error of law by disallowing the right of the present petitioners but obtained the present Rules from this court by misleading the court, as such, the learned trial court committed no error of law.

The learned Advocate further submits that the learned Additional District Judge, Court No. 1, Cumilla also came to a conclusion against the present petitioners as the petitioners could not prove their own case, therefore, the learned appellate court below by passing the single impugned judgment and decree dismissed both the appeals and thereby affirming the judgment and decree of the learned trial court concurrently in favour of the present opposite parties, as such, the Rules should be discharged.

The learned Advocate also submits that the present opposite parties filed the Title Suit No. 94 of 2006 praying for a

declaration of title and recovery of the khas (খাস) possession. On the other hand, the present petitioners' case was dismissed by the learned trial court and also concurrently found in favour of the present opposite parties against the claims made by the petitioners who prayed for declaration of title by way of adverse possession which they could not prove in the learned trial court as well as in the learned appellate court below, as such, the present 2 (two) Rules are liable to be discharged and this court should not interfere upon the impugned judgment and decree passed by the learned appellate court below.

Considering the above submissions made by the learned Advocates for the respective parties and also considering the revisional applications filed by the present petitioners, Raju Bibi and others under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned and decree and also perusing the important materials available in the lower courts record, it appears to this court that the present petitioners as the plaintiffs filed a suit praying for title upon the suit land measuring 06 decimals and also claiming the title for acquiring a right on the suit land described in the plaint by amending the prayer to acquire title on the basis of adverse

possession under the provisions of law. Similarly, the present opposite parties as the defendants filed the title suit praying for title by way of inheritance and also praying for recovery of khas (খাস) possession upon the suit land. It further appears that both the suits filed by the respective parties which were heard by the learned Joint District Judge, Court No. 3, Cumilla who dismissed the Title Suit No. 126 of 2006 and decreeing the Title Suit No. 94 of 2006 filed by the present opposite parties.

Being aggrieved the present petitioners as plaintiff-appellants preferred the Title Appeal No. 67 of 2013 and also preferred the Title Appeal No. 68 of 2013 before the learned Additional District Judge, Court No. 1, Kumilla. On the other hand, the present opposite parties contested the appeals which were decreed in favour of the defendant-opposite parties and also disallowed both the appeals by a single judgment and decree passed by the learned appellate court below.

The present opposite parties claimed that the suit land measuring 06 decimals got by way of inheritance from the original owner Ashrobernessa Bibi who was the C. S. and S. A. recorded owner. The present plaintiff-petitioners prayed to get their right and title only at the initial stage, subsequently,

amended the prayer for acquiring title through adverse possession against the present opposite parties.

In the above claims from the respective parties, this court has to take a decision regarding the title which are conflicting to each other.

In order to take a decision I have carefully examined the judgments of the learned courts below and relevant materials in the lower courts record, I found that the present plaintiff-petitioners case is that the plaintiff of the Title Suit No. 126 of 2006 the petitioners are in possession for a long period of 70 (seventy) years, therefore, who has created a right of title by adverse possession of the suit land described in the suit land measuring 06 decimals by possessing the land and possession of the land against the opposite parties and acquiring right which became adverse against the present opposite parties who claimed that the suit land has been in possession by way of claiming title by inheritance and record of rights was published in the C. S. and S. A. Record with the names of defendants instead of the names of the petitioners as an adverse possessor since 1350 B.S. The plaintiff-respondent-opposite parties as the defendants filed a written statement contested the suit and they further filed another

Title Suit No. 94 of 2006 against the petitioners for declaration of title with recovery of khas (খাস) possession. In this regard, under the provision of the Evidence Act, the documentary evidence is more valuable than the claim of title by way of adverse possession against the defendant which is not enough to prove their title. Both the parties adduced and produced sufficient documents as well as PWs and DWs upon the suit land measuring 06 decimals. The settled principle of law is that the plaintiffs must prove its own case by giving sufficient evidence but the oral evidence only by the PWs and DWs in both the cases cannot give title only on depositions without any supporting documents.

I have perused the plaint of the respective parties filed in respect of the title and I found that the present petitioners as the plaintiffs claimed title on the basis of the adverse possession which could not be proved in their own case as to the possession. Even though, the plaintiff-petitioners the Title Suit No. 126 of 2006 and the plaintiffs originally filed the suit only upon claiming title but subsequently by amending the prayer for right under the provision of adverse possession against the present opposite parties on the basis of possession for a long period of

time which made a confusion about the present petitioners' case for acquiring any right, as such, both the courts below decided against the present petitioners. The learned trial court dismissed the suit filed by the present petitioners as being Title/Civil Appeal No. 126 of 2006 as well as also decreeing the suit filed by the defendants as being in the Title Suit No. 94 of 2006. The petitioners as the appellants could not adduce sufficient documents against the right of the present defendant- opposite parties, as such, both the courts below came to a concurrent finding in favour of the present opposite parties by examining the documentary evidence and by adducing defense witnesses which could not be deviated by cross-examination to DWs.

In view of the above, I consider that the learned appellate court below disallowed the appeals preferred by the present petitioners but decreeing the suit in favour of the present opposite parties.

Now, I am going to examine the impugned judgment passed by the learned appellate court below and I consider that the learned appellate court below committed no error of law in deciding the title upon the suit land measuring 06 decimals.

The learned trial court lawfully came to a conclusion that the opposite parties in the Title Suit No. 94 of 2006 could successfully prove their title by way of inheritance and S. A. and R. S. Record of right which was published in their names.

The learned trial court also came to a lawful conclusion to the above 2 (two) suits on the basis of the following findings:

...“উপ-রর আ-লাচনা থে-ক প্রতীয়মাণ হয় যে বাদীপক্ষ নালিশী ভূমি-ত স্বীকৃত ম-ত দীর্ঘকাল যাবৎ দখলে থাকলেও উক্ত দখলটি মূল মালি-কর বিরূ-দ্ধ দখল ম-র্ম বাদীপক্ষ এই মামলায় প্রমা-ণ ব্যর্থ হ-য়-ছেন। ফ-ল নালিশী ভূমির স্বীকৃত সি. এস. এবং এস. এ. রেকর্ডীয় মূল মালিক বিবাদীপক্ষ নালিশী ভূমিতে বাদীগণকে পূর্ববর্তীক্রমে অনুমতি সূত্রে দখলে থাক-ত দি-য়-ছেন ম-র্ম সার্বিক সাক্ষ্য প্রমাণ এবং পারিপার্শ্বিক সাক্ষ্য দ্বারা প্রমাণিত হয়।”...

The learned appellate court below concurrently found in favour of the defendant-respondent- opposite parties on the basis of the following findings:

...“বিবাদীপক্ষ প্রমাণ কর-ত সক্ষম হ-য়-ছ যে- বাদীপক্ষ নালিশী ভূমিতে অনুমতিসূত্রে দখলকার। রেসপনডেন্ট বিবাদীপক্ষ তথা দেওয়ানী ৯৪/২০০৬ নং মামলার বাদীপক্ষ কর্তৃক উপস্থাপিত রায়ে উল্লেখিত উপরোক্ত সিদ্ধান্ত সঠিক ম-র্ম প্রতীয়মাণ হয়। অত্র আপীল মামলায় আপীল্যান্ট বাদীপক্ষ Adverse Possession বিষ-য় ১১.১১.২০১৪ খ্রি. তারি-খ আরজি সং-শোধন কর-লও মূল মামলার আরজি-ত ও উপস্থাপিত সাক্ষ্য-প্রমা-ণ থাকা দ্বৈত দাবীর বিষ-য় কোন পদ-ক্ষপ গ্রহণ ক-রনি কিংবা নতুন কোন সাক্ষ্য-প্রমাণ উপস্থাপন ক-রনি।”...

After examining the impugned judgments passed by the learned appellate court below and also the learned trial court in both the suits, I found that they committed no error of law by passing the concurrent judgments and decrees. As such, I do not find merit in the Rules in favour of the present plaintiff-appellate-petitioners, therefore, those are not the proper cases for interference from this court.

Accordingly, the Rules issued by this court in the Civil Revision No. 2885 of 2019 and Civil Revision No. 2886 of 2019 do not have merit.

In the result, the Rules issued by this court in the Civil Revision No. 2885 of 2019 and also Civil Revision No. 2886 of 2019 are hereby discharged.

The interim order of *status quo* passed at the time of issuance of the Rule being in the Civil Revision No. 2885 of 2019 for maintaining the *status quo* in respect of the possession and position of the suit land by the parties and subsequently the same was extended till disposal of the Rule are hereby recalled and vacated.

As well as the interim order of stay passed at the time of issuance of the Rule being in the Civil Revision No. 2886 of

2019 staying the operation of the impugned judgment and decree dated 06.05.2019 passed by the learned Additional District Judge, Court No. 1, Cumilla in the Title Appeal No. 68 of 2013 and subsequently the same was extended from time to time are hereby recalled and vacated.

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