

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 937 of 2018

Md. Abu Bokkor Pramanik

... Petitioner

-Versus-

Md. Abdur Rashid and others

...Opposite-parties

Mr. Bon-e-Amin, Advocate for

Mr. Md. Tajul Islam, Advocate

...For the petitioner

Mr. Sheikh Habib-ul-Alam, Advocate

...For the opposite-party Nos. 2-18.

Judgment on 14th January, 2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party No. 1-50 to show cause as to why the impugned judgment and decree dated 23.10.2017 passed by the learned Joint District Judge, 1st Court, Gaibandha in Other Appeal No. 18 of 2015 disallowing the appeal and thereby affirming the judgment and decree dated 25.11.2014 passed by the learned Assistant Judge, Fulchari in Other Suit No. 67 of 2012 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compass. The petitioner along with others, as plaintiff, filed Other Suit No. 67 of 2012 in the Court of Assistant Judge, Fulchari, Gaibandha against the opposite-parties, as defendant, for declaration that decree passed in Other Suit No. 38 of 2006 is illegal, invalid collusive and not binding upon the plaintiffs. Stating that Rahmatullah and others obtained settlement of the suit land in 1359 B.S. by way of Dakhila and they owned and possessed the same for more than 50 years. In the last revisional survey the suit land wrongly recorded in the name of government in khas Khatian No. 1. The predecessor of the plaintiff Nos. 1-7, 8 and 9 and defendant No. 40 filed Other Suit No. 63 of 1977 in the Court of 2nd Munsif, Gaibandha against the government challenging said S.A. khatian. The said suit was decreed on 11.08.1987 and accordingly, the predecessor of plaintiff Nos. 1 to 7 and others have been possessing the same by paying rents and R.S. khatian correctly prepared in their names. The defendant Nos. 38 and 39 purchased 1.5 acres of land by Deed No. 805 dated 10.01.1989. Fazlul Haq and others transferred 1.00 acre land to the father of defendant Nos. 40, 42, Abdul Goni by Deed No. 8320 dated

09.04.1989. Defendant No. 42 Ansar Ali purchased 66 decimals of land in 1981 from Rahmatullah. Present Diyara Khatian No. 963 stands recorded in the name of the plaintiffs along with defendant Nos. 38-43 who have been possessing the suit land. Defendant Nos. 1-8 instituted Other Suit No. 38 of 2006 against the predecessor of plaintiffs Rahmatullah as defendant No. 20 and plaintiff Nos. 8 and 9 as defendant Nos. 21 and 23 along with others, but no summon was served upon them. The plaintiffs in Other Suit No. 38 of 2006 fraudulently obtained the decree in the said suit on 17.11.2008 behind the back of the present plaintiffs showing false report that the summons was duly served upon the defendants. The defendant Nos. 2 and 9 filed Other Suit No. 64 of 2012 against the present plaintiffs and threatened the plaintiffs with dispossession from the suit land and for the first time disclosed about the judgment and decree passed in Other Suit No. 38 of 2006 on 03.09.2012. The plaintiffs upon obtaining the certified copy of the judgment and decree came to know that the defendant Nos. 2-9 managed to get a decree fraudulently in the said suit. The defendant Nos. 1-8 have no title and possession in the suit land and they obtained the said decree at the

back of the plaintiffs showing that the defendant Nos. 20-23 filed written statement and contested the suit. The judgment and decree obtained in Other Suit No. 38 of 2006 is illegal, fraudulent and not binding upon the plaintiffs.

The defendant Nos. 1-8 contested the suit by filing written statement contending inter alia, that their predecessors obtained settlement of 2.31 acres of land in Plot No. 1663 from the government by registered kabuliyat dated 10.09.1988 and also obtained 4.35 acres of land in Plot No. 1664 by way of permanent settlement on 10.09.1988. The predecessors of the defendants died leaving these defendants who inherited the total 6.66 acres of land and have been possessing the same, but Diyara Khatian Nos. 1282, 108 and 96 wrongly prepared in the name of Ismail, Taher and Jahor Uddin, consequently, they instituted Other Suit No. 38 of 2006 in which summons were duly served upon all the defendants. The defendants contested the suit by filing written statement, and after hearing the suit was decreed. Defendants Shahid Ali and others preferred Other Appeal No. 36 of 2009 before the learned District Judge against the said judgment and decree. Ultimately the appeal

was summarily rejected being barred by limitation. The predecessor of the plaintiffs did not get pattan of the suit land. The plaintiffs predecessor obtained ex parte decree in Other Suit No. 63 of 1977 against the government, challenging which the government filed Other Suit No. 64 of 2008 for setting aside the said ex parte decree which is now pending for disposal. The Diyara khatian prepared in the name of Rahmatullah with regard to Plot No. 1664 is not correct. They got no title in the suit land by alleged title deeds and hence, the suit is liable to be dismissed.

The trial court framed three issues for adjudication of the matter in dispute. In course of hearing both the parties examined witnesses and submitted documents in support of their respective claim and got them marked exhibits. The trial court after hearing by a short judgment dismissed the suit.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiffs preferred Other Appeal No. 18 of 2015 before the Court of learned District Judge, Gaibandha. Eventually, the said appeal was transferred to the Court of learned Joint District Judge, 1st Court, Gaibandha for hearing and disposal

who after hearing by the impugned judgment and decree dated 23.10.2017 disallowed the appeal affirming the judgment and decree passed by the trial court. At this juncture, the plaintiff-petitioner, moved this Court by filing this application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Bon-e-Amin, learned Advocate appearing for Mr. Md. Tajul Islam, learned Advocate for the petitioner submits that predecessor of the present petitioner Rahmatullah Pramanik and others obtained pattan of the suit property from the Jamindar and continued in possession for 50 years, but S.A. khatian wrongly recorded in the name of the government as khas land without any basis. Consequently, the predecessor of the plaintiffs filed Other Suit Nos. 63 and 112 of 1977 in the Court of 2nd Munsif, Gaibandha for declaration of their title in the suit property and S.A. khatian wrongly recorded in the name of the government. Both the suits were decreed in favour of the plaintiffs. The government did not agitate the decree passed in both the suits before any higher court, rather, admitting the predecessor of the petitioner as tenant under the government mutated their names in Diyara khatian and recorded their names in

subsequent R.S. and B.R.S. khatians and also accepted rent. Therefore, the government again cannot claim that the property is khas land of the government and cannot lease out the same to any other persons.

He submits that when the opposite-parties, as plaintiff, filed Other Suit No. 64 of 2012 against the present petitioner for a decree of permanent injunction they for the first time came to know that the opposite-parties, as plaintiff, filed Other Suit No. 38 of 2006 against the predecessor of the petitioner along with others which was decreed in their favour. But to their knowledge no notice of that suit was served upon the predecessor of the petitioner and other defendants in suit, but the opposite-party collusively managed to get a decree showing the predecessor of the present petitioner as contesting defendant by filing written statement and also showing that the predecessor of the petitioner preferred appeal which was rejected being barred by limitation. Knowing all those fictitious activities of the present opposite-parties they hurriedly filed Other Suit No. 67 of 2012 for a declaration that the decree in Other Suit No. 38 of 2006 was obtained by practicing fraud upon the court and

that decree is not binding upon the present petitioner and also contested Other Suit No. 64 of 2012 by filing written statement. He submits that both the suits simultaneously heard by the trial court, but the trial court after hearing decreed the suit of the plaintiff for injunction and dismissed the suit of the present petitioner for declaration. Thereafter, preferred Other Appeal Nos. 18 and 19 of 2015 against the judgment and decree passed by the trial court. The appellate court also dismissed both the appeals affirming the judgment and decree passed by the trial court.

He submits that in a suit for injunction the plaintiffs have to prove exclusive possession along with *prima facie* title in the property, but neither the trial court nor the appellate court in their judgments even discussed a single witness and evidences both oral and documentary in respect of possession of the plaintiffs in Other Suit No. 64 of 2012. For want of discussion of evidences by the trial court as well as the appellate court, the judgments passed by both the courts below are absolutely violative of provisions in Order 20 Rules 4 and 5 of the Code, as such, both the judgments are liable to be set

aside and the suit is required to be sent back to the trial court for fresh hearing.

He submits that both the courts below while dismissing the suit failed to consider the legality of the decree passed in Other Suit Nos. 63 of 1977 and 112 of 1977 in favour of the predecessor of the present petitioner declaring their title in the suit property against the government and failed to appreciate the fact that when 2(two) decrees in 2(two) separate suits exist against the government declaring the property to be their own property not khas land, the government cannot further deal with the property leasing the same to the defendants treating the same as khas land in the year 1988.

He argued that had the trial court and the appellate court taken both the decree passed in earlier suit in favour of the predecessor of the present petitioner into consideration they ought not to have dismissed the suit and the appeal. He submits that both the courts below ought to have given specific findings and observations regarding 2(two) decree passed in Other Suit Nos. 63 of 1977 and 112 of 1977, but nowhere in the judgment even a single word uttered regarding validity or invalidity of both the decree passed in favour of

the predecessor of the present petitioner. He submits that the opposite-parties failed to prove their possession in the suit property. Though they claim settlement from government in the year 1988, but both the courts below failed to find that the petitioner right from their predecessor have been in continuous possession of the suit property for more than statutory period of limitation. The courts below did not discuss about validity and legal effect of decree passed in Other Suit No. 38 of 2006 and the judgment and order passed in Other Appeal No. 36 of 2009 rejecting the appeal summarily, as such, both the courts below committed illegality and error of law in the decision occasioning failure of justice.

Mr. Sheikh Habib-ul-Alam, learned Advocate appearing for the opposite-party Nos. 2-18 submits that the decree passed in Other Suit Nos. 63 and 112 of 1977 was ex parte wherein, present opposite-parties were not parties. He submits that the predecessor of present petitioner, Rahmahullah Pramanik and others by filing written statement in earlier Other Suit No. 38 of 2006 contested the suit raising objection and stating that they obtained 2(two) decrees against the government in Other Suit Nos. 63 of 1977 and 112 of

1977. The trial court while decreeing the said suit took into consideration the earlier decree passed in favour of the predecessor of the present petitioner and after hearing decreed Other Suit No. 38 of 2006 on contest. Predecessor of the petitioner rightly preferred Other Appeal No. 36 of 2009 before the learned District Judge at a delay of 58 days, but could not satisfy the court by giving sufficient cause for such delay. Consequently, the appellate court did not admit the appeal and rejected the same summarily. However, their predecessor had ample scope to move this Court against the judgment and decree of the learned District Judge, but they did not agitate the matter anymore, as such, filing of present suit is barred by law and both the courts below committed no illegality or error of law in the decision in dismissing the suit and as well as dismissing the appeal.

Heard the learned Advocates of both the parties, have gone through the application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree passed by both the courts below.

The plaintiffs in Other Suit No. 64 of 2012 claimed that they obtained lease of the property from the government at the first instance year to year from 1962 and have been in continuous possession on payment of salami to the government. The process of leasing out the property ended in the year 1988 when the plaintiffs executed 2(two) Kabuliyats in favour of the government excepting lease for 99 years, but the Diyara khatian, R.S. and B.R.S khatians wrongly recorded in the name of the predecessors of present petitioner, consequently, filed Other Suit No. 38 of 2006 for declaration of title in the property and the record of right to be declared wrongly prepared in the name of the defendants.

It appears that the predecessor of the present petitioner named Rahmatullah Pramanik was defendant No. 20 and one Altab Hossain was defendant No. 24 in Other Suit No. 38 of 2006 who contested the suit by filing written statement and after hearing the trial court decreed the suit. Thereafter, defendant No. 20, Rahmatullah Pramanik and others preferred Other Appeal No. 36 of 2009 before the learned District Judge, Gaibandha at a delay of 58 days. When the appellate court took up the matter for condonation of delay

observed that the appellant could not satisfy the court about cause of such delay giving sufficient cause. Consequently, the appeal was summarily rejected being barred by limitation by its judgment and order dated 07.05.2009. Thereafter, none of the appellants moved before higher court against the judgment and decree of the appellate court, meaning thereby, the defendants in Other Suit No. 38 of 2006 and appellant in Other Appeal No. 36 of 2009 had abandoned their claim in the suit property.

It is also found that defendant No. 24 in Other Suit No. 38 of 2006 named Altab Hossain and others subsequently, filed Other Suit No. 80 of 2010 challenging the decree passed in Other Suit No. 38 of 2006, but at a point of time on 12.07.2012 the suit was dismissed for default. Thereafter, plaintiffs in suit also abandoned their claim admitting dismissal of the same. After termination of aforesaid proceedings, plaintiff in Other Suit No. 64 of 2012 while in possession and enjoyment of the property the heirs of Rahmatullah Pramanik threatened the plaintiffs with dispossession, consequently, they filed the said suit for a decree of permanent injunction against the present plaintiffs in the instant suit.

From perusal of plaint and the evidences it appears that the plaintiff claimed that their predecessor as raiyat under Jaminder continued in possession of the suit property and after State Acquisition and Tenancy Act came into force S.A. khatian wrongly recorded in the name of the government treating the property as khas land instead of recording the same in the name of Rahmatullah Pramanik and others. Predecessor of the present petitioner Rahmatullah Pramanik filed Other Suit No. 63 of 1977 and Ismail Hossain and others also filed Other Suit No. 112 of 1977 in the court of Munsif against the government challenging the record of right which were decreed ex parte. Against the decree, the government did not move before the higher court, meaning thereby, the government also admitted the predecessor of the present petitioner as tenant and received rents from them. It is true that when the government admitting some persons as tenant under them accepted rents and allowed them to get their names mutated in the khatian and published diyara khatian in their names cannot take different stand subsequently, claiming the property as khas land. The present petitioner's predecessor by the decree passed in Other Suit No. 63 of

1977 and Other Suit No. 112 of 1977 acquired title by declaration through court and subsequent R.S. and B.R.S. khatians also recorded in their names admitting them tenants under the government. But the government without seeking any relief against the decree passed in Other Suit Nos. 63 and 112 of 1977 and cancelling or rectifying the record of right prepared in the name of the predecessor of the present petitioner settled the property permanently in favour of the present petitioner in the year 1988. Challenging those record of right present opposite-parties, as plaintiff, filed Other Suit No. 38 of 2006 against the predecessor of present petitioner along with others which was decreed on contest. Therefore, though predecessor of the present petitioner got a decree of title in the suit property in Other Suit Nos. 63 and 112 of 1977, by subsequent decree in Other Suit No. 38 of 2006 against them all the earlier decree have become clouded. However, predecessor of the present petitioner preferred Other Appeal No. 36 of 2009 before the learned District Judge against the judgment and decree passed in Other Suit No. 38 of 2006 rightly, that was rejected on the ground of limitation. Thereafter, the predecessor of the present petitioner ought to have moved before this

Court by filing revision, but he refrained himself from moving before higher court, the reason has not been stated by the present plaintiff in suit.

Moreover, keeping the decree intact, after 3(three) years of rejection of appeal came with another independent suit being Other Suit No. 67 of 2012 challenging the decree passed in Other Suit No. 38 of 2006 to be illegal, collusive and not binding upon the plaintiffs. As such, both the courts below rightly observed that right, title and interest whatever the petitioner or their predecessor have had in the suit property has become interrupted and intervened by the decree passed in Other Suit No. 38 of 2006, consequently, decreed the suit for permanent injunction against the present petitioner.

In view of the observations made hereinabove, I find that both the courts below though unhappily written both the judgments without discussing evidences both oral and documentary in its true perspective have not committed any illegality in dismissing the suit calling for interference.

However, to get the proper relief the plaintiffs in suit can move in revision against the judgment and decree dated 07.05.2009 passed in Other Appeal No. 36 of 2009 seeking condonation of delay giving sufficient cause for such delay if so advised.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioner.

In the result, the Rule is discharged, however, without any order as to costs.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.