

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

Civil Revision No. 1321 of 2011

Md. Akbar Ali Howlader
(But actually Bijoy Krishna Roy)
Opposite Party No. 1-Respondent-Petitioner

Versus

Shailabala being dead her heirs:-
Nirmala Rani Bhadra and others
Petitioner-Appellants-Opposite Parties

Mr. Bivash Chandra Biswas, Advocate
for the petitioner

Mr. Selim Reja Chowdhury, Advocate
for the opposite parties

Judgment on: 04.8.2022

This Rule was issued calling upon the opposite parties Nos.1(a)-1(c) to show cause as to why the impugned Judgment and Order dated 30.8.2010 passed by the learned Joint District Judge, 1st Court, Bagerhat in Miscellaneous Appeal No. 27 of 2002 allowing the appeal and thereby reversing the Judgment and Order dated 26.2.2002 passed by the learned Assistant Judge, Morrelgonj, Begerhat in Miscellaneous Case No. 27 of 1994 rejecting the case under Order IX rule 13 of the Code of Civil Procedure should not be set aside and/ or such other or further order or orders passed as to this Court may seem fit and proper.

The mother of the opposite party Nos. 1(a)-1(c) Shailabala as petitioner instituted Miscellaneous Case No. 27 of 1994 under

Order IX rule 13 of the Code of Civil Procedure before the Court of learned Assistant Judge, Morrelgonj, Bagerhat implicating the petitioner and opposite party No. 2 as opposite parties for setting-aside the ex-parte Judgment and Decree dated 08.7.1976 passed by the learned Munsif, 2nd Court, Bagerhat in Title Suit No. 51 of 1976 alleging inter-alia that the husband of the petitioner died in 1971 and the petitioner acquired many properties by his own money. The husband of the petitioner died leaving behind his sons and daughters also. The opposite party No. 1 is the eldest son who brought Title Suit No. 51 of 1976 against the petitioner for declaration that the petitioner was Benamdar of his father and the suit was decreed ex-parte and the petitioner came to know about the decree on 31.5.1994 from Sushil Kumar Bepari as no summon of the suit was served upon the petitioner.

The opposite party No.1 Bijoy Krishna Roy (plaintiff of T.S. No. 51 of 1976) contested the said miscellaneous case by filing written objection contending, inter-alia that his father purchased the land in the name of the petitioner who is his wife and she was Benamdar. Father of the opposite party No.1 got decree in T. S. No. 50 of 1959 in which the petitioner was declared as Benamdar of her husband. The summon of the suit was duly served upon her. The son-in law of petitioner Sushil Bepari lives with family of the petitioner. Uttam Kumar kar is younger son-in-law of the petitioner

and he is a lawyer by profession. The petitioner did not file the instant case willingly but at the instigation of her younger son-in-law Uttam Kumar Kar aforesaid miscellaneous case was filed.

The learned Assistant Judge, Morrelgonj, Bagerhat by his Judgment and Order dated 26.02.2002 rejected the Miscellaneous Case No. 27 of 1994 and hence the predecessor of opposite party No. 1(1)-1(c) as appellant preferred Miscellaneous Appeal No. 27 of 2002 before the Court of learned District Judge, Bagerhat. The aforesaid Miscellaneous Appeal was transferred to the learned Joint District Judge, 1st Court, Bagerhat who allowed the appeal and thereby reversed the Judgment and Order dated 26.2.2002 passed by the learned Assistant Judge, Morrelgonj, Bagerhat in Miscellaneous Case No. 27 of 1994 and thus the opposite party No. 1 as petitioner moved this application under section 115 of the Code of Civil Procedure before this Court and obtained this Rule.

Heard the learned Advocates for both the parties and perused the record.

The opposite party No. 1 is the eldest son of the petitioner and he instituted Title Suit No. 51 of 1976 against the petitioner for declaration that the petitioner was Benamder of his father in the suit land; accordingly suit was decreed ex-parte. The petitioner claimed that no summon of the suit was served upon her and on the other hand, the opposite party No. 1 claimed that summon was duly served upon the petitioner. In such view of the matter, it is

incumbent upon the Court below to arrive his finding whether the summon was served upon the petitioner lawfully or not and it is necessary to determine the petitioner's case but the Courts below did not discuss the same and the parties have failed to discharge their respective onus in respect of the said issue in proving their case.

In view of the discussions, I hold that both the Judgment and Order passed in Miscellaneous Case No. 27 of 1994 and Miscellaneous Appeal No. 27 of 2002 are set-aside and therefore I am sending it back on remand to the Trial Court to decide the above question after framing issue whether summon was served upon the petitioner lawfully or not, if necessary by adducing evidences within 03 (three) months from the date of receipt of the judgment in the light of the above observation.

In the meantime, the parties are directed to maintain status-quo in respect of the suit land.

In the result, the Rule is made absolute on remand.

Communicate the judgment to the Court below at once.