

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

Present:

**Mr. Justice Muhammad Abdul Hafiz**

**CIVIL REVISION NO. 550 OF 2018**

Shreemoti Biva Rani Bosu  
Defendant-Appellant-Petitioner

Versus

A. Haque Hawlader and others  
Plaintiffs-Respondents-Opposite Parties

Mr. Khondker Gulzar Hossain, Advocate  
for the defendant-appellant-petitioner

Mr. Md. Ensan Uddin Sheikh, Advocate  
for the plaintiffs-respondents-opposite parties

**Judgment on: 29.5.2023**

This Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and Decree dated 17.1.2018 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Gopalganj in Title Appeal No. 150 of 2015 dismissing the appeal and thereby affirming the Judgment and Decree dated 08.7.2015 passed by the learned Assistant Judge, Kotalipara, Gopalganj in Title Suit No. 77 of 2006 decreeing the suit 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 opposite parties as plaintiffs filed Title Suit No.77 of 2006 before the Court of Assistant Judge, Kotalipara, Gopalganj for declaration of title in the Suit land.

The Case of the plaintiffs, in short, is that the suit land in R.S Khatian No.63 area of land 26.50 decimal originally belonged to Sochindra Nath Kor and Autol Chandra Kor and on 01.12.1980 they sold out the same to Sheshu Bala Dam. Rakhil Chandra Kor and two others sold 60 decimal of land on 04.12.1980 to Sheshu Bala Dam. On 24.08.1981 Sheshu Bala Dam sold out 86.50 decimal of land to A. Haque. A. Haque on 05.10.1981 transferred 39 decimal of land to his 3 paternal aunt (Maju Bibi, Saju Bibi and Soto Bibi) and they (Maju Bibi, Saju Bibi and Soto Bibi) transferred the said 39 decimal land to the plaintiffs. On 25.07.2006 the defendant denied the title of the plaintiffs and threatened them to dispossess from the suit land and hence the Suit.

The defendant contested the Suit by filing written statement. The Case of the defendant is that the plaintiffs have no cause of action to file the suit. The further Case of the defendant is that in R.S Khatian No.689 and R.S. Kahtian No.640 area of land 1.42 acres belonged to Monohor and Krisnokanto Kor. In 1351 B.S, Togor Bala mother of the defendant gave rent to them took Pattan and at the time of R.S operation, initially the land was recorded in the name of mother of the defendant (Togor Bala) but finally R.S record was published in the name of Monohor and Krisnokanto Kor. Togor Bala came to know about the wrong record in the year

1965 and she instituted Title Suit No. 389 of 1965 against the heirs of Monohor and Krisnokanto Kor. The suit was decreed on compromise. Togor Bala mutated the land in her name and paid rent to the Government. A. Haque Howlader instituted Title Suit No. 376 of 1982 against Togor Bala and Togor Bala filed written statement in that suit. There after A. Haque Howlader gave Solenama admitting the mutation case of Togor Bala and he has no claim in the suit land. On 16.02.1985 Togor Bala gifted 1.42 acres of land to her daughter (present defendant). The defendant mutated the land in her name and paid rent to the Government vide Miscellaneous Case No. IX-P (II) 423 -06-07. She possesses the suit land peacefully. The predecessor of the plaintiffs has no right and title in the suit land and he never possesses the suit land. As such the deeds of Sheshu Bala Dam, A. Haque Howlader, Maju Bibi and others as well as the plaintiffs did not create any right and title as because all the deeds are only paper transaction.

The learned Assistant Judge, Kotalipara, Gopalganj decreed the suit on 08.7.2015. Against which the defendant as appellant preferred Title Appeal No. 150 of 2015 before the learned Joint District Judge, 1<sup>st</sup> Court, Gopalganj who dismissed the appeal on 17.1.2018 and hence the defendant-appellant as petitioner moved this application under section 115 (1) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Khondker Gulzar Hossain, learned Advocate for the defendant-petitioner, submits that the Courts below came to a wrongful findings that the defendant did not prove her case by filing documentary evidence and the plaintiffs are possessing the suit land; but from the evidence of record it appears that the plaintiffs never possess the suit land. Mr. Hossain further submits that the Trial Court did not consider the documents submitted by the defendant and Appellate Court below also failed to consider the documents filed by the defendant before affirming the Judgment, as such committed an error of law resulting in an error in the decision occasioning failure of justice and it is liable to be set-aside. He lastly submits that the present defendant-petitioner has possessed the suit land since 1351 B.S when her mother has taken Pattan from the original owner. She had two mutations and B.R.S. record which means that she has possessed the suit land for more than 12 years. The deeds of Sheshu Bala Dam, A. Haque Howlader, Maju Bibi and others are paper transaction only which did not create any right and title as because from 1980-2006 i.e. for 26 years no body mutated his name in the suit land.

Mr. Md. Ensan Uddin Sheikh, learned Advocate for the plaintiffs-opposite parties, submits that the defendant stated in her written statement that the suit land was given Pattan by way of Amolnama to the mother of defendant Togor Bala by the owners

of the land Monohor and Krishnakanta Kor on 10th Magh, 1351 B.S. and gave Dhakhila by accepting proper Salami. Togor Bala was in possession of the land measuring 1.42 acres for more than 12 years. The land was finally recorded in the name of original owner Monohor and Krishnakanta Kor. Togor Bala came to know about wrong record of the land on 31.08.1965 and filed Civil Suit No. 369 of 1965 against the heirs of the owners as original owners were not alive. There was a Solenama on 15.06.1969 in Civil Suit No. 369 of 1965 and obtained decree for declaration of Title for land measuring 1.42 acres. But the defendant could not show any Amolnama before the Court. But the Trial Court in its findings stated that on the prayer of the plaintiffs the suit volume of 1965 was called and brought before the Trial Court. It is found that only 162 cases were filed in the year 1965 and as such the claim of the petitioner by way of Solenama decree of Suit No. 369 of 1965 is baseless. The defendant could not prove anything else. Togor Bala could not prove her Title in the suit land and thus the subsequent transfer of the suit land by Togor Bala to her daughters by way of gift is totally illegal. Togor Bala did not acquire any title in the suit land, all subsequent acts done by Togor Bala regarding the suit land is totally illegal as such the Rule may kindly be discharged for ends of justice. Mr. Ensan Uddin Sheikh further submits that the plaintiffs-respondents-opposite parties case is that the original

owner Sachindra Kor and Anil Chandra Kor sold 0.2650 acres of land to Shishu Bala Dam by registered deed No. 5431 dated 01.12.1980 Exhibit-1 getting the land by way of inheritance. Rakhal Chandra Kor, Narendra Nath Kor, Harendra Nath Kor sold 0.600 acres of land to Shishu Bala Dam by registered Deed No. 5430 dated 04.12.1980 (Exhibit-2). Shishu Bala Dam sold the said land to Abdul Hoque Howlader by registered Deed No. 4104, 410 dated 24.08.1981 [Exhibit 3, 3(ka)]. Abdul Hoque Howlader out of his purchased land sold 39 decimals land to Maju Bibi, Saju Bibi and Soto Bibi by registered Kabala deed No. .4722 dated 05.10.1981. He next submits that Maju Bibi and others sold their purchased land measuring 39 decimals by registered deed No. 1822 dated 14.05.2002 to the plaintiff Nur Mohammad Howlader (predecessor of the opposite parties). In the above way the opposite parties have acquired title of the suit land and are enjoying and possessing the suit land as such the Rule is liable to be discharged for the ends of justice. He next submits that Abdul Hoque Howlader sold 39 decimals land to Maju Bibi and others by registered deed No. 4722 dated 05.10.1981 and handed over possession to the purchasers. But the defendant petitioner claimed that Abdul Hoque Howlader executed alleged Solenama regarding the same land in Title Suit No. 376 of 1982 filed by Abdul Hoque Howlader accepting the claims of the petitioner. As Abdul Hoque

Howlader sold the land in 1981 he had no right to execute a Solenama regarding the same land in 1982. Moreover, Abdul Hoque Howlader flatly denied the alleged Solenama in his evidences as DW-4. He next submits that the learned Advocate for the defendant-petitioner submitted before this Court that the last three record of rights were prepared in the name of the petitioner which is not true. The fact is that S.A. and R.S. records were prepared in the name of the original owner of the land and by mistake B.R.S. record has been prepared in the name of the defendant petitioner. The opposite parties as plaintiff No. 1 Abdul Hoque Howlader 2. Shahanoor Begum 3. Fatima Tania filed Land Survey Tribunal Case No. 644/2018 before the land Survey Tribunal, Gopalganj for correction of B.R.S. record in their names which are now pending before the Tribunal, Gopalganj. The defendants are consequently praying and taking time for submission of her written statement. He next submits that P.W.1 Nur Mohammad Howlader, P.W.2 A. Rahim, P.W.3 A. Sattar Gazi, P.W.4 Abdul Hoque Howlader, P.W.5, Soto Bibi, P.W.6 Fatima Tania supported the plaintiff's case and proved the possession of the plaintiffs of the suit property. P.W.-8 Shawkat Ali (employee of record room of the Court) stated in evidence that at the direction of the Court he has produced the suit volume in the Court. The last number of suit in the year of 1965 was 162. There

was no Suit No. 389 of 1965. This proves that there is no existence of Suit No. 389 of 1965. The defendant-petitioner created this false suit and decree with malafide intention as such the Rule is liable to be discharged.

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

The opposite parties as plaintiffs instituted the instant suit for declaration of title in the suit land. As per plaintiffs Sheshu Bala Dam purchased the suit land from original owner Sochindra Nath Kor, Autol Chandra Kor, Rakhal Chandra Kor Narandra Nath Kor and Harundra Nath Kor. Thereafter Sheshu Bala Dam sold the suit land to A. Haque and A. Haque transferred the same to Maju Bibi, Saju Bibi, Soto Bibi and they transferred the same to the plaintiffs. The plaintiffs witnesses successfully proved the title of the plaintiffs in the suit land. On the other hand the defendant claimed that the suit land was given Pattan by way of Amolnama to the mother of the defendant Togor Bala but the defendant could not show any Amolnama before the Court. Both the Courts below upon proper discussion and appreciation of factual and legal aspects passed the impugned judgment and decree and the defendant-petitioner could not show any ground to interfere with the impugned judgment and decree.



Considering the facts and circumstances of the Case, I find no substance in this Rule, rather I find substance in the submissions of the learned Advocate for the plaintiffs-opposite parties.

**In the result, the Rule is discharged.**

The impugned Judgment and Decree dated 17.1.2018 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Gopalganj in Title Appeal No. 150 of 2015 dismissing the appeal and thereby affirming the Judgment and Decree dated 08.7.2015 passed by the learned Assistant Judge, Kotalipara, Gopalganj in Title Suit No. 77 of 2006 decreeing the suit is hereby up-held.

The order of status-quo granted earlier by this Court is hereby vacated.

Send down the lower Court's record with a copy of the Judgment to the Courts below at once.