

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

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 5850 OF 1991

Jitendra Nath Das being dead his heirs
1(a) Biman Kumar Roy and others
Plaintiffs-Respondents-Petitioners

Versus

Abdul Motaleb Khan and others
Defendants-Appellants-Opposite Parties

Mr. Sheikh Atiar Rahman, Advocate
for the plaintiffs-respondents-petitioners

None appears
for the defendants-appellants-opposite parties

Judgment on: 20.6.2023

This Rule was issued calling upon the opposite party Nos. 1-3 and 21-24 at the risk of the petitioners to show cause as to why the impugned Judgment and Decree dated 22.4.1985 passed by the learned Sub-ordinate Judge (Joint District Judge), Bagerhat in Title Appeal No. 245 of 1985 allowing the appeal and thereby reversing the Judgment and Decree dated 26.4.1985 passed by the learned Upa-zilla Munsif, Morrelgonj, Bagherhat in Title Suit No. 578 of 1984 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.

Mr. Sheikh Atiar Rahman, the learned Advocate for the plaintiffs-petitioners filed an application for abatement and submits that the suit of instant Civil Revision enlisted as vested property and release case is pending before the Vested Property Tribunal, Bagerhat and thus the present Civil Revision be abated according to the provision of Section 13(A) of the Restoration of Vested Property Act, 2001.

Heard the learned Advocate and perused the application. I find substance in this application and accordingly the application is allowed.

In the result, the Rule is discharged.

The order of stay granted earlier by this Court is hereby vacated.

Send down the lower Court's record with a copy of this judgment at once.

The petitioners as plaintiff filed Title Suit No. 330 of 1974 in Munsif's 2nd Court, Bagerhat which on transfer to the Court of the Upazilla Munsif, Morrelganj, Bagerhat was re-numbered as Title Suit No. 578 of 1984 and was disposed of and as such the Suit was for declaration to the effect that the enlistment of the suit property as vested and non-resident property was illegal, ultravires and without jurisdiction and also for permanent injunction.

The plaintiff's case, in short, is that the suit land originally belonged to Radhika Mohan and Rai Mohan to the extent of 6 annas share each and to Nagendra and Upendra to the extent of 4 annas share. Rai Mohan died leaving behind 4 sons namely Satyendra Nath, Burehdra and Atindra Nath as his heirs. Each of sons thus inherited to extent of 1 anna and 10 gonda share. There had been a family arrangement among the co-sharers with regard to their properties and a deed of Memorandum was executed by the

co-sharers on 02.7.1954. On the basis of this family arrangement the joint properties of the co-sharers situated in west Bengal and the then East Pakistan were mutually divided. The other co-sharers obtained the properties situated in West Bengal and the plaintiff got the suit land.

The further case of the plaintiff is that the S.A. Khatian in respect of the suit properties has been wrongly prepared and that subsequently the suit land has been wrongly and illegally enlisted as vested/non-resident property. During the War of liberation the plaintiff for fear of life went to India and returned to his home in the year 1972 and found that different persons are in possession of the suit land on the plea of settlement from the then Enemy Property Authorities. On enquiry the plaintiff came to know that defendant Nos. 1-10 took lease of the suit land along with other lands from defendant No. 11. The plaintiff thereafter on 30.7.1973 under compulsion prayed for taking lease of the suit land from defendant No. 11 and got lease of the same as a co-sharer and the previous annual lease given to defendant Nos. 1-10 was cancelled by the Vested Property Authorities. Thus the defendants surrendered possession of the suit land in favour of the plaintiff. But subsequently they filed a review petition to defendant No. 11

and started threatening the plaintiff to dispossess from the suit land. The plaintiff was therefore, constrained to file the suit.

The defendants Nos. 11-15, 16-20 and 28 contested the suit by filling written statements. The case of defendant Nos. 11-15 and 16-20 are in substance the same.

The learned Sub-ordinate Judge, Bagerhat dismissed the appeal by his Judgment and Decree dated 22.4.1985 in Title Appeal No. 245 of 1984.

Being aggrieved by and dissatisfied with the impugned Judgment and Decree Petitioner moved this application before this Court and obtained this Rule.

Mr. Sheikh Atiar Rahman learned Advocate for the plaintiffs-respondents-petitioners has filed an application for abatement in this instant case and also submits that the instant civil revision arose out of Title Suit No. 578 of 1984 is vested property and the same has been mentioned in the Gazette notification and challenging the same opposite party No. 1 of the present petitioner has filed a release case being Release Case No. 2233 of 2012 before the Restoration of Vested Property Tribunal, Bagerhat.

None appears on behalf of the defendants-appellants-opposite parties to oppose the Rule.

Heard the learned Advocate for the petitioner and perused the record.

Considering the facts and circumstances of the case, the instant Civil Revision is abated.

In the result, the Rule is discharged.

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