

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

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 1672 OF 2020

Md. Jalal Uddin and others
Defendants-Petitioners

Versus

Md. Sabed Ali and others
Plaintiffs-Opposite Parties

Mr. Mohammad Noor Hossain, Advocate
for the defendants-petitioners

Mr. Motahar Hossain, Advocate with
Mr. Rashed Ahmed Rishat, Advocate
for the plaintiffs-opposite party Nos. 1-2

Judgment on: 21.11.2023

Leave was granted and the Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned Judgment and Order dated 16.2.2020 passed by the learned District Judge, Jamalpur in Civil Revision No. 25 of 2018 rejecting the same and thereby affirming the Judgment and Order dated 22.7.2018 passed by the learned Senior Assistant Judge, Sadar, Jamalpur in Other Class Decree Execution Case No. 9 of 2017 arising out of Other Class Title Suit No. 143 of 2014 allowing the application of the plaintiffs-opposite parties which was filed under Order 21 rule 97 and 98 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 opposite parties as plaintiffs instituted the suit before the Trial Court praying for recovery of khas possession of the suit land under Section 9 of the Specific Relief Act, 1877. The suit land of 16 decimals and other lands originally belonged to two brothers, namely Mamud Jan Sheik and Miazan Sheik as recorded in C.S. Khatian No. 90 and by family compromise, Miazan Sheik became the owner of the suit land and other lands. Thereafter, Miazan Sheik died leaving behind his two sons, namely Rojob Ali and Rahmat Ullah who became the owners of the suit land and other lands. By amicable settlement, Rojob Ali became the owner of the suit land and other lands as recorded in R.O.R. Khatian No. 156. Subsequently, Rojob Ali died leaving behind his six daughters and one full brother, namely Rahmat Ullah who became the owners of the suit land and other lands. Thereafter, Rahmat Ullah got the suit land by amicable settlement since it is adjacent to his house. Finally, Rahmat Ullah died leaving behind his 03 sons (i.e., the plaintiffs-opposite parties) and his wife who became the owners of the suit land by way of inheritance as recorded in B.R.S. Khatian and subsequently, the opposite parties' mother died leaving behind the opposite parties as her legal heirs. On 07.02.2014 the

defendants-petitioners being armed entered into the suit land and threatened the plaintiffs-opposite parties to kill them and dispossessed the plaintiffs-opposite parties and took possession of the suit land. Hence, the plaintiffs-opposite parties were constrained to institute this suit.

The defendants-petitioners' case in short, is that the petitioner No. 1 purchased the suit land vide the Deed of Sale No.1715 dated 16.01.1969 from aforesaid Rojob Ali. The suit land was wrongly recorded in the names of the plaintiffs-opposite parties and thus the suit is liable to be dismissed.

On 08.6.2017 the judgment was delivered ex-parte and decree was signed on 14.6.2017 and the plaintiffs filed an application for execution of the decree.

After being aware, the defendants made an application i.e. Miscellaneous Case before the aforesaid Court under Order 9 rule 13 of the Code of Civil Procedure, praying for setting aside the ex-parte decree. The said case was registered being Miscellaneous Case No. 44 of 2017 (Sani). The Case is now pending before the Court below. On the other hand, the petitioners filed an application for praying stay of the further proceeding of execution case.

After hearing the aforesaid application under Order 21 rule 97 and 98 of the Code of Civil Procedure, 1908 and also the

written objection, the learned Senior Assistant Judge, Sadar, Jamalpur rejected the same on 17.5.2016 vide Order No. 19.

Being aggrieved by and dissatisfied with the impugned Judgment and Order the defendant petitioner moved this application under Section 115(4) of the Code of Civil Procedure before this Court and the leave was granted and the Rule was issued.

Mr. Mohammad Noor Hossain, the learned Advocate for the defendants-petitioners, submits that they did not get the notice of the case and were not aware of the suit. By practicing fraud upon the Court the plaintiffs-opposite parties obtained the decree. If the defendants-petitioners had received the summons they must have appeared and contested the suit but the plaintiffs by practicing fraud upon the Court and hiding the summons of fraudulently showing received those, obtained the decree. And as such the impugned Judgment and Order of the Courts below are not sustainable in law and therefore, the same are liable to be set aside. He further submits that the petitioners No. 1 Md. Jalal Uddin purchased the land on 16.1.1969 vide registered deed No. 1715 from Md. Rojob Ali and got the physical possession of the suit land. The plaintiffs also admitted that the suit land belonged to Md. Rojob Ali. The suit land was wrongly recorded in the name of

defendants (BRS record). Thereafter the petitioner Md. Jalal Uddin filed a case before the Land Survey Tribunal Jamalpur being Land Survey Tribunal Case No. 6176 of 2014 for correction of record. The said case is pending before the Tribunal below. In the Civil Revision No. 25 of 2018 the petitioner submitted the deed before the Court below as firisti. But in passing the impugned judgment the learned Judge did not make any comment in this regard. He lastly submits that the Court below ought to have considered the matter that the petitioners have been possessing the suit land since 1969 and in support of that they produced deeds and the plaintiffs did not produce their deeds in question except the ROR only was challenged in the Tribunal below vide record correction case and as such both the Courts below committed an error of law due to misconception of law and misleading of material evidence on records and as such has occasioned failure of justice.

Mr. Motahar Hossain, the learned Advocate appearing with Mr. Rashed Ahmed Rishat learned Advocate for the plaintiffs-opposite parties, submits that the opposite parties as plaintiffs instituted the instant suit for recovery of khas possession of the suit land under Section 9 of the Specific Relief Act, 1877 which was decreed and thereafter, the decree was executed in the said Decree Execution Case and consequently the plaintiffs-opposite parties

recovered khas possession of the suit land on 16.05.2018 through the Court but on 17.5.2018 the defendants-petitioners contumaciously disregarded the Orders of the learned Court below again dispossessed the plaintiffs-opposite parties from the suit land and thereafter, the plaintiffs-opposite parties filed an application for restoration of possession of the suit land under Order 21 rules 97 and 98 of the Code of Civil Procedure, 1908, whereupon the learned Trial Court by Order No. 19 dated 22.07.2018 allowed the said application and being aggrieved by Order No. 19 dated 22.07.2018 passed by the learned Trial Court the defendants-petitioners filed the Civil Revision No. 25 of 2018 before the Court of learned District Judge, Jamalpur whereupon the Court of learned District Judge, Jamalpur by its Judgment and Order dated 16.02.2020 rejected the same and finally, the defendants-petitioners filed the present Civil Revisional Application before this Court impugning the said Judgment and Order passed by the learned Revisional Court below and hence, the present Civil Revisional Application is tantamount to abuse of the process of the Court and as such, the Rule is liable to be discharged.

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

From the record it appears that the opposite parties as plaintiffs instituted the instant suit for recovery of khas possession of the suit land under Section 9 of the Specific Relief Act, 1877 which was decreed and the decree was executed in Other Class Decree Execution Case No. 9 of 2017 and the possession was recovered on 16.5.2018 and the defendant-petitioners again dispossessed the plaintiffs-opposite parties on 17.5.2018 and the plaintiffs-opposite parties filed an application for restoration of possession of the suit land under Order 21 rules 97 and 98 of the Code of Civil Procedure which was allowed by the Courts below correctly.

Considering the facts and circumstances of the case I find no substance in the Rule rather I find substance in the submission of the learned Advocate for the plaintiffs-opposite parties.

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

The impugned Judgment and Order dated 16.2.2020 passed by the learned District Judge, Jamalpur in Civil Revision No. 25 of 2018 rejecting the same and thereby affirming the Judgment and Order dated 22.7.2018 passed by the learned Senior Assistant Judge, Sadar, Jamalpur in Other Class Decree Execution Case No. 9 of 2017 arising out of Other Class Title Suit No. 143 of 2014

allowing the application of the opposite parties which was filed under Order 21 rule 97 and 98 of the Code of Civil Procedure is hereby up-held.

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

Communicate the Judgment to the Courts below at once.