

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 2316 OF 2020.

IN THE MATTER OF:

An application under Section 115 (1) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Md. Ayub Ali and others.

.... Plaintiffs-Appellants-Petitioners

-Versus-

Government of the People's Republic of Bangladesh,
represented by the Deputy Commissioner, Cumilla
and others.

..... Opposite party.

Mr. Sherder Abul Hossain, Advocate

..... For the petitioners.

Mr. Muhammad Salahuddin, Advocate

..... For the opposite party Nos.6-9.

Mr. Abu Naser (Swapon), A.A.G

..... For the opposite party Nos.1-5.

Heard and Judgment on: 01.02.2024.

On an application of the petitioner Md. Ayub Ali and others under section 115 (1) of the Code of Civil Procedure the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 27.09.2020 (decree signed on 01.10.2020) passed by the learned Joint District Judge, 3rd Court, Cumilla in dismissing the Title Appeal No.329 of 2009 and thereby affirming the judgment and decree dated 14.07.2009 (decree signed on 21.07.2009) passed by the Assistant Judge, Laksham, Cumilla in

dismissing the title Suit No.19 of 2002 should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, is that the petitioners as plaintiffs instituted Title Suit No.19 of 2002 in the Court of Assistant Judge, Laksham, Cumilla praying for declaration of title in 2nd schedule property.

The defendant opposite party contested the suit by filing written statements but the Government did not file any written statement.

The trial Court after hearing the parties and considering the evidence on record dismissed the suit by its judgment and decree dated 21.07.2009.

Against the said judgment and decree of the trial Court the plaintiff petitioners preferred Title Appeal No.239 of 2009 before the learned District Judge, Cumilla. The appeal was sent to the Joint District Judge, 3rd Court, Cumilla for disposal of the appeal.

The appellate Court after hearing the parties and considering the evidence on record dismissed the appeal and thereby affirming the judgment and decree of the trial Court by its judgment and decree dated 01.10.2020.

Being aggrieved by and dissatisfied with the impugned judgment and decree of the Courts below the plaintiffs as petitioners filed this

revisional application under Section 115(1) of the Code of Civil Procedure and obtained the Rule.

Mr. Muhammad Salahuddin, the learned Advocate filed power on behalf of the opposite party Nos. 6-9 to oppose the Rule and the learned Assistant Attorney General also appears on behalf of the Government opposite party Nos.1-5.

At the time of hearing of the revisional application the learned Advocate of the petitioner Mr. Sherder Abul Hossain filed an application for withdrawal of the suit by setting-aside the judgment and decree of the Courts below.

The learned Advocate submits that the petitioner with ill-advice of the local Advocate filed Title suit but his remedy was in otherwise thus the petitioner is willing to withdraw the suit. The learned Advocate stated the facts in paragraph Nos.2-6.

The learned Advocate of the opposite party and the learned Assistant Attorney General raised no objection.

Considering the submission of the learned Advocate and the application specially the paragraph Nos.2-6 we are inclined to dispose of the Rule permitting the plaintiff petitioner to withdraw the suit.

This is settled principle that when the suit has been withdrawn then all the impugned judgment and decree passed by the Courts below should be set-aside.

In the result, the Rule is disposed of. The Civil Revision No.2316 of 2020 is hereby withdrawn. The impugned judgment and decree dated 27.09.2020 (decree signed on 01.10.2020) passed by the learned Joint District Judge, 3rd Court, Cumilla dismissing the Title Appeal No.329 of 2009 and thereby affirming the judgment and decree dated 14.07.2009 (decree signed on 21.07.2009) passed by the Assistant Judge, Laksham, Cumilla dismissing the title Suit No.19 of 2002 both are hereby set-aside.

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

Send down the lower Court records at once.