

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 1331 of 2022

Md. Zahirul Islam and another

.....petitioners

-Versus-

Md. Afaz Uddin and others

.....opposite parties

Mr. Md. Selim Reja Chowdhury, Advocate

.....for the petitioners

No one appears for the opposite parties

Heard on: 19.11.2025 and 24.11.2025

Judgment on: 10.12.2025

In the instant revision rule was issued calling upon the opposite party 1 to show cause as to why the judgment and decree dated 18.06.2014 passed by the learned Additional District Judge, 2nd Court, Dhaka in Title Appeal Number 39 of 2013 allowing the appeal thereby decreeing the suit *ex parte* by reversing the judgment and decree dated 10.02.2013 passed by the Assistant Judge, Nowabgonj, Dhaka in Title Suit Number 227 of 2011 (239 of 2008) dismissing the suit *ex parte* should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The opposite party as plaintiff filed Title Suit Number 239 of 2008 on 25.03.2008 before the Sherestader to the court

of District Judge, Dhaka and the suit was subsequently transferred to the court of Assistant Judge, Nowabgonj, Dhaka and renumbered as instant Title Suit Number 227 of 2011 and the suit was filed for declaration of title over the accreted land through oral settlement from the government and also for declaration that the R.S. record is wrong.

The case of the plaintiff in short is that the land measuring 2.13 acres appertaining to C.S. plot numbers 354, 363, 364 of C.S. khatian number of 60 of Mouza Baherchar under Police Station Keranigonj of District Dhaka belonged to Tozumuddin who is the father of the plaintiff along with others. Thereafter by amicable partition Tozumuddin, Kodam Ali and Hozrat Ali became owners of the said land. Accordingly S.A. khatian number 161 was prepared in their names in respect of S.A. plot numbers 687, 679 and 680. During their possession the suit land accreted beside the said land and the survey staffs found the father of the plaintiff in actual possession and noted his name. During R.S. operation Tozumuddin died leaving behind only son Md. Afazuddin. Thus the plaintiff became owner of the suit land and has been in possession by demarcating the same and living therein with his family members. At that time government made a verbal

declaration to settle the said land. Accordingly 36 decimals of land were correctly recorded in R.S. khatian number 227 appertaining to R.S. plot number 492 for an area of 991.76 decimals along with the accreted land. The settlement staffs assured the plaintiff that the accreted land would be recorded in the name of the plaintiff and for such reason plaintiff had been waiting but lastly on 30.03.2004 plaintiff obtained certified copy of R.S. khatian number 218 corresponding to plot number 694 and found that 46 decimals of land has been finally published in the name of his father Tozumuddin but R.S. khatian number 24 of Mouza Pachulia containing plot numbers 493, $\frac{489}{649}$ and $\frac{489}{650}$ measuring an area of 14 decimals has been recorded in the name of defendant 1 in 8 annas share and the rest 8 annas in the name of the predecessor of defendant numbers 2-4.

Plaintiff has been maintaining title and possession in the suit land as accreted land since acquisition of the same by his father Tozumuddin but the defendant numbers 1-6 are claiming title over it. For such reason plaintiff wanted to see their title documents but defendants denied to show the same. Then plaintiff took the certified copy of R.S. khatian on

30.04.2004 and came to learn for the first time that the R.S. record has been prepared erroneously in the name of defendants.

Defendant numbers 1-6 have got no title and possession in the suit land. The plaintiff or his predecessor never transferred any land to the defendants nor delivered possession to them. The defendants collusively recorded their names in R.S. khatian despite actual physical possession of the plaintiff. Plaintiff tried to resolve the controversy locally but the defendants denied it. The cause of action arose on 30.04.2004 when the plaintiff took the certified copy of the R.S. khatian. Hence the suit.

Defendants did not appear in the suit and the suit was heard *ex parte* by the trial court who dismissed the suit *ex parte* by judgment and decree dated 10.02.2013 on the finding that the suit is hit by President's Order Number 137 of 1972. As against the same the plaintiffs preferred Title Appeal Number 39 of 2013 before the District Judge, Dhaka which on transfer was heard by the Additional District Judge, 2nd Court, Dhaka who was pleased to allow the appeal by judgment and decree dated 18.04.2014 and set aside the judgment and decree of the trial court.

Learned Advocate Mr. Selim Reja Chowdhury appearing on behalf of the petitioners submits that the judgment passed by the appellate court is not a proper judgment of reversal according to order 41 rule 31 of the Code of Civil Procedure and the judgment being perverse and misconceived is liable to be set aside outright. He further submits that the court of appeal below failed to appreciate the pleadings and the provisions of section 87 of the State Acquisition and Tenancy Act read with the President's Order Number 137 of 1972 and arrived at a wrong conclusion which cannot be sustained in the eye of law thus the court of appeal committed error of law resulting in an error in such decree occasioning failure of justice. He then submits that the court of appeal below did not consider that there is no statement on the date of accretion in the plaint and there is also no evidence on such date of accretion and there is also no statement on approval granted by the authority and as such the suit is not maintainable but the appellate court wrongly allowed the appeal and decreed the suit thus the court committed error of law resulting in an error in such decree occasioning failure of justice. He concludes that the Rule having merit may be made absolute.

No one appears on behalf of the opposite parties to oppose the Rule.

Heard the learned Advocate for the petitioners and perused the materials on record and the laws relating thereto.

Plaintiff claims that Tozumuddin was the owner in possession in C.S. and S.A. record along with others and by amicable partition Tozumuddin acquired the suit land. During R.S. operation portion of the land situated in Baherchar Mouza of Thana Keranigonj was recorded in the name of Tozummuddin but the suit land situated in Panchulia Mouza of Thana Savar was wrongly recorded in R.S. khatian number 24 in the names of defendant numbers 1-6. It appears that the suit was filed on 25.03.2008 but order 2 dated 07.04.2008 shows that defendants filed an application for rejection of plaint under order 7 rule 11 of the Code of Civil Procedure by swearing affidavit but the summonses were shown to have been served on 21.05.2008. Similarly service of notice upon respondents in appeal also appears to be doubtful from perusal of orders dated 07.10.2013, 19.11.2013, 28.11.2013. Subsequently the application for rejection of plaint was rejected on 19.07.2011 as the appellate court pointed out. However defendants could not contest the suit or the appeal.

Perusal of paragraphs 4 and 5 of the plaint reveals that plaintiff claims the suit land as accreted land under section 87 of the State Acquisition and Tenancy Act but neither any date which is immensely important nor any document of approval granted by the authority for the accreted land has been mentioned in the plaint. Sub-section 2 of section 87 of the State Acquisition and Tenancy Act which is introduced by the President's Order Number 137 of 1972 provides that in case of accretion all lands so gained whether before or after 28.06.1972 shall vest absolutely in government but even then before the said date the right of a Malik to hold any accreted land as an increment to his holding can be maintained if such right is already recognised and declared by competent authority or court under the previous law otherwise under sub-section 3 of section 87 of the State Acquisition and Tenancy Act any claim before any court is barred. The plaint does not show any recognition or declaration granted by any competent authority or court before the President's Order Number 137 of 1972 came into force. Therefore plaintiff has no case.

Trial Court upon proper perusal of the pleading and appreciation of evidence and the concerned law as well correctly dismissed the suit but the appellate court in violation

of section 87 of the State Acquisition of Tenancy Act as well as the procedure laid down in order 41 rule 31 of the Code of Civil Procedure passed the judgment upon fanciful consideration and the same is liable to be set aside forthright.

I therefore find merit in this rule. Accordingly, the rule is made absolute.

The order of stay passed by this Court stands vacated.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J: