

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1313 of 2022

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure.

And

Bir Muktijodda Sarder abdur Rashid Advocate
... Petitioner

-Versus-

Nehal Uddin Mrida Waqf Estate and others
... Opposite parties

None appears

...For the petitioner.

Mr. Swapan Kumar Dutta, Advocate

....For the opposite party No.1.

Heard and Judgment on 13.12.2024

On an application under Section 115(4) of the Code of Civil Procedure this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and order dated 04.11.2021 passed by the learned Senior District Judge, Patuakhali in Civil Revision No.09 of 2021 rejecting the Civil Revision and thereby affirming the judgment and order dated 08.12.2020 passed by the learned Senior Assistant Judge, Patuakhali Sadar, Patuakhali in Title Suit No.322 of 2017 whereby an application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure filed by the defendant No.2 petitioner for rejection of plaint had been rejected

should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that opposite party as plaintiff instituted above suit for declaration that the auction sale of 50 decimals land including disputed 11 decimal pursuant to Decree Execution Case No.1 of 1969 is not binding upon the plaintiff.

It was alleged that above auction sale of 50 decimal land including disputed 11 decimal land of the plaintiff was held by Decree Execution Case No.01 of 1969 but the plaintiff was not made a party in above original suit or in above decree execution case.

In above suit defendant entered appearance and submitted a petition under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint alleging that the Government as plaintiff instituted Title Suit No.188 of 1969 for setting aside above mentioned auction sale of 50 decimal land by execution of decree of Title Suit No.188 of 1969 but the same was dismissed up to the Appellate Division. As such this case is barred by Section 11 of the Code of Civil Procedure. Secondly the plaintiffs have filed this suit for cancellation of above auction sale after about 31 years. As such the suit was barred by limitation. On consideration of submissions of the learned Advocates for the

respective parties the learned Senior Assistant Judge rejected above petition.

Being aggrieved by above judgment and order of the trial Court above defendant preferred Civil Revision No.9 of 2021 to the learned District Judge, Patuakhali who dismissed above revision and affirmed the judgment and order of the trial Court.

Being aggrieved by above judgment and order of the Court of Appeal below above petitioner as petitioner moved to this Court under Section 115(4) of the Code of Civil Procedure and with leave obtained this Rule.

Mr. A. K. Rashedul Huq, learned Advocate for the petitioner submits that the Government of Bangladesh challenged the legality and propriety of above auction sale of 50 decimal land but above suit of the Government was dismissed and above judgment of the trial Court was upheld by the Appellate Division of the Supreme Court of Bangladesh. This suit has been filed after about 31 years of the confirmation of above auction sale by a competent Court. As such this suit was also barred by limitation. But the learned District Judge failed to appreciate above facts and the law correctly and most illegally dismissed the Civil Revision of the petitioner and affirmed the flawed judgment and order of the trial Court which is not tenable in law.

On the other hand Mr. Swapan Kumar Dutta, learned Advocate for the opposite party No.1 submits that it is true that the Government filed Title Suit No.188 of 1969 for setting aside above auction sale of 50 decimal land. But the same was dismissed by the trial Court and above judgment was upheld by the Appellant Division of the Supreme Court of Bangladesh. But the plaintiff was not a party to above Title Suit No.188 of 1969. As such above judgment and decree was not binding upon the plaintiff. The plaintiff claims only 11 decimal land out of above auction sold 88 decimal land. As far as the question of limitation is concerned at Paragraph No.5 of the plaint the plaintiff has stated that he came to know about the existence of above auction sale pursuant to the discloser of the same by the defendant on 09.05.2015 and this suit was filed on 17.07.2017 within the statutory period of limitation. On consideration of above materials on record the learned Judges of both the Courts below on correct appreciation of materials on record rightly rejected the petition of the petitioner under Order 7 Rule 11 of the Code of Civil Procedure and rejected the revision respectively which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that in total 88 decimal land including disputed 11 decimal land was sold in auction pursuant to decree Execution Case No.01 of 1969 on 20.10.1969 and the plaintiff was not a party in above auction proceeding or in the original Title Suit No.329 of 1965. It is also admitted that previously the Government of Bangladesh instituted Title Suit No.188 of 1969 for setting aside above auction sale but the suit was dismissed and above decree was upheld by the Appellate Division of Supreme Court of Bangladesh. It is true that above auction sale was held on 20.10.1969 and this suit was filed on 17.07.2017 and in this regard plaintiff has claimed at Paragraph No.4 that the plaintiff came to know about the impugned auction proceeding for the first time on 09.05.2015. Since the plaintiff was not a party in above auction proceedings and he allegedly came to know about the same for the first time on 09.05.2015 and the suit was filed on 17.07.2017 this suit apparently not barred by limitation. But the plaintiff must prove by legal evidence at trial all above claims that he was a lawful owner of the disputed 11 decimal land but he was not made a party in above auction proceedings and for the first time he came to know about the same on 09.05.2015. The trial Court shall framed specific issues covering above aspect of the suit and determined those issues on consideration of evidence to be adduced by both the parties at trial.

In above view of the materials on record I hold that the learned District Judge on correct appreciation of materials on record has rightly dismissed the Civil Revision which calls for no interference.

I am unable to find any substance in this revisional application under Section 115(4) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there is no order as to cost.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER