

District: Kushtia

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

Present:-

Mr. Justice Md. Zakir Hossain

Civil Revision No. 2858 of 2022

Md. Hasanuzzaman Babu alias Md. Babu and
another

.....Defendant-Respondent-Petitioners
-Versus-

Md. Shariful Islam Hashem and others

..... Plaintiff-Appellant-Opposite Parties

Mr. Md. Al Amin, Advocate

..... For the petitioners

Mr. Kingshuk Das, Advocate

....For the opposite party Nos. 1-8

Heard and Judgment on: 03.12.2023

Md. Zakir Hossain, J:

At the instance of the petitioners, the Rule was issued to examine the legality and propriety of the Order No. 71 dated 22.03.2022 passed by the learned Joint District Judge, Second Court, Kushtia in Title Appeal No. 56 of 2013.

Facts leading to the issuance of the Rule are *inter alia* that the predecessor of the opposite party Nos. 1-10 being plaintiffs instituted Title Suit No. 249 of 2001 before the Court of the learned Senior Assistant Judge, Sadar, Kushtia impleading the opposite party Nos. 11-14 as defendants for declaration of title in respect of the land mentioned in the schedule to the plaint. The defendant No.1 entered appearance in the suit and denied the material allegations set out in the plaint contending *inter alia* that the suit land was recorded in the name of the

Government. After conclusion of the Trial, the Trial Court was pleased to dismiss the suit. Being aggrieved by and highly dissatisfied with the judgment and decree of the Trial Court, the plaintiffs being appellants preferred Title Appeal No. 56 of 2013 before the Court of the learned District Judge, Kushtia. After admitting the appeal and observing all the formalities, the learned District Judge was pleased to transmit the record of the same to the learned Joint District Judge, Second Court, Kushtia for disposal. During the pendency of the appeal, the respondent Nos. 5 & 6 filed an application for accepting the written statement on behalf of the respondent Nos. 5 & 6 of the aforesaid appeal. Upon hearing, the learned Joint District Judge was pleased to reject the prayer. Impugning the judgment and order of the learned Joint District Judge, the petitioners moved this Court and obtained the aforesaid Rule and stay therewith.

Heard the submissions advanced by the learned Advocates of the parties and perused the materials on record with due care and attention and seriousness as they deserve. The convoluted question of law embroiled in this case has meticulously been waded through.

It appears from the record that the plaintiffs filed the aforesaid suit for declaration of title in respect of 0.0275 decimal of land. The defendant-government contested the same holding the view that the suit land was recorded in the name of the Government. It also appears from the record that the Trial Court dismissed the suit with compensatory costs of Tk. 10,000/-. It further appears from the record that the learned Joint District Judge rejected the petition for accepting the written

statement holding the view that the defendant No. 5 of the original suit having received the summons did not appear in the original suit, therefore, the respondent Nos. 5 & 6, the legal heirs of the defendant No. 5 of the original suit, are debarred from filing the written statement.

On perusal of the materials on record, it is difficult to hold the view that the summons was duly served upon the defendant No. 5 of the original suit and moreover, the Title Appeal No. 56 of 2013 was filed impleading the respondent Nos. 5 & 6 as principal respondent. It appears from the record that in the memo of the appeal, the appellant prayed for remand back the suit. In the Memo of the appeal, it is stated that the respondent Nos. 2 & 3 on 18.01.1994 transferred 0.013 acre of land to Samsuddin Ahmed; the predecessor of the respondent No. 2. In the written statement, the respondent Nos. 5 & 6 held that by dint of the registered deed dated 18.01.1994, their father purchased the suit land. Therefore, neither the plaintiffs nor the defendants have got title in the suit land. In the above backdrop, the learned Joint District Judge ought to have accepted the written statement for final and complete adjudication or to prevent multi-complicity of the proceeding. Having regard to the facts and circumstances of the case, I am of the view that the Rule has got substance and as such, the same deserves to be made absolute.

The impugned judgment and order passed by the learned Joint District Judge is hereby set aside and accordingly, the application for accepting the written statement is allowed. The learned Joint District

Judge is directed to dispose of the aforesaid appeal within 06 (six) months from the date of receipt of the copy of this judgment positively. No unnecessary adjournment petition shall be entertained from either side.

With the above observation and direction, the Rule is made absolute. The earlier order of stay granted by this Court, thus, stands recalled and vacated.

Let a copy of this judgment with LCRs be sent down to the Courts below at once.

(Md. Zakir Hossain, J)

Naser.
P.O.