

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.710 OF 2019

In the matter of:

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

And

Government of Bangladesh and others

.... Petitioners

-Versus-

Md. Sogir Hossain

.... Opposite party

Mr. Md. Moshihur Rahman, Assistant Attorney General

....For the petitioners.

Mr. Uzzal Bhowmick with

Mr. Salina Akter, Advocates

.... For the opposite party.

Heard on 13.03.2025

Judgment on 19.03.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 04.07.2011 passed by the learned Additional District Judge, Nilphamari in Other Class Appeal No.85 of 2009 and reversing the judgment and decree dated 13.09.2009 passed by the learned Joint District Judge and

in charge of the Senior Assistant Judge, Sadar, Nilphamari in Other Class Suit No.60 of 2008 dismissing the suit should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for declaration that cancellation of mutation of the plaintiff vide Miscellaneous Case No.385 of 2005-06 is void, unlawful and not binding upon the plaintiff. It was alleged that three decimal land appertaining to S. A. Khatian No.2603 belonged to Tusta Peshakar wife of Abdul Talukder who were childless. Above Abdul Talukder died in 1961 and Tusta Peshakar died on 16.06.1968 leaving only brother Hayat Ali Sarder as heir who transferred above land to Rubi Khatoon by a registered kabola deed dated 02.06.1973. Above Rubi Khatoon who filed Title Suit No.250 of 1976 for declaration of title and confirmation of possession in above land and obtained an ex-parte decree on 18.11.2077. The Government of Bangladesh filed Miscellaneous Case No.179 of 78 for setting aside above ex-parte decree of Title Suit No.250 of 1970 which was rejected on contest on 23.01.1980. Above Rubi Khatoon got her name mutated vide Miscellaneous Case No.17 of 1980-81 on 22.06.1981 and paid rent and transferred above land to Insan Ali by registered kabola deed dated 22.06.1999 who in his turn transferred the same to the plaintiff by a registered kabola deed dated 22.07.2003. Plaintiff got his name mutated for above land vide Miscellaneous Case No.385 of 2005-06 and paid rent to the Government until 1412 B.S. and

possessing above land by running a vegetable shop. On 12.09.2006 defendant No.1 cancelled above mutation of the plaintiff mentioning that above land belongs to the Government.

Defendant No.2-5 contested the suit by filing a joint written statement alleging that above land was acquired by the Government vide Miscellaneous Case No.941 of 1967-68 dated 16.04.1969 under Section 19(Ka) of the State Acquisition and Tenancy Act, 1950 and the plaintiff or his predecessor did not have any right, title and possession in above land.

At trial plaintiff examined three witnesses and defendants examined one. Documents of the plaintiff were marked as Exhibit Nos.1-3 series and 4-8 and those of the defendants were marked as Exhibit No."A".

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge dismissed the suit.

Being aggrieved by above judgment and decree of the trial Court above plaintiff preferred Title Appeal No.85 of 2009 to the learned District Judge, Nilphamari which was heard by the learned Additional District Judge who allowed above appeal, set aside the judgment and decree of the trial Court and decreed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below defendant Nos.1-5 as petitioners moved to this Court and obtained this Rule.

Mr. Md. Moshihur Rahman, learned Assistant Attorney General for the petitioners submits that disputed three decimal land belonged to Tusta Peshakar who was a prostitute by profession and who had no husband and no family. As such after her demise above land remained unused and unclaimed and the Government acquired above land under Section 92 of State Acquisition and Tenancy Act, 1950 vide Miscellaneous Case No.951 of 1967-68. In order to grab above land one Hayat Ali claiming himself to be the brother of Tusta Peshakar executed an ineffective sale deed to Rubi Khatoon. Since Hayat Ali had no title and possession in above land and purchase from him by Rubi Khatoon did not acquire any title or possession in above land. As far as the judgment and decree of Title Suit No.250 of 1976 is concerned in above suit no evidence was adduced to show that Hayat Ali was legal heir of Tusta Peshakar. As such above ex-parte judgment and decree is of no help to the plaintiff. It is true that the plaintiff got his name mutated for above land on the basis of above unlawful Kabola deed from Rubi Begum but when the matter came to the notice of the Government that long before the alleged purchase by Rubi Khatoon above land was acquired by the Government under Section 92 of the State Acquisition and Tenancy Act, 1950 the defendant rightly cancelled the mutation of the plaintiff. The learned Judge of the trial Court on correct

appreciation of the materials on record rightly dismissed above suit. But the learned Judge of the Court of appeal below utterly failed to appreciate above facts and circumstances of the case and evidence on record and most illegally allowed the appeal, set aside the lawful judgment and decree of the trial Court and decreed the suit which is not tenable in law.

On the other hand Mr. Uzzal Bhowmick, learned Advocate for opposite party No.1 submits that disputed three decimal land belonged to Tusta Peshakar and the same was correctly recorded in S. A. Khatian No.2603. The husband of Tusta Peshakar namely Abdul Talukder died in 1961 and Tusta Peshakar died in 1968 without any issue and above property was inherited by his only brother Hayat Ali who transferred the same to Rubi Khatoon by registered kabola deed dated 02.06.1976. Above Rubi Khatoon filed Title Suit No.250 of 1976 against the Government and obtained an ex-parte judgment and decree on 30.11.1977. The Government filed Miscellaneous case No.139 of 1978 under Order 9 Rule 13 of the Code of Civil Procedure for setting aside above ex-parte judgment and decree but the same was rejected on contest on 23.01.1980 The plaintiff as a successive purchaser from Rubi Khatoon got his name mutated for above land vide Miscellaneous Case No.385 of 2005-06 and paid rent and taxes for above land. The defendant cancelled above mutation of the plaintiff without any lawful basis which is not tenable in law. The title of Rubi Khatoon in above land was finally established by ex-parte judgment and decree of Title

Suit No.250 of 1976. The learned Advocate lastly submits that at trial the plaintiff could not produce the order of cancellation of the mutation of the plaintiff, the order passed in Miscellaneous Case No.139 of 1978 and some other documents and the ends of justice will be met if the judgment and decree of the Court of Appeal below is set aside and the suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence.

It is admitted that disputed three decimal land belonged to Tusta Peshakar and S.A. Khatian No.2603 was rightly prepared. In above there is no mention of the name or address of father or husband of Tusta Peshakar.

The title Peshakar for a woman means prostitute and the learned Advocate for both sides have concurred that Tusta Peshakar was in fact a prostitute by profession. In our religious, cultural and social environment a prostitute keeps her family identity to protect the honour of the members of the family she has abandoned. A prostitute rarely enters into marital tie during continuation of her profession. In our society a prostitute is not recognized as a dignified human being. Exhibit No."Ka" shows that after demise of Tusta Peshakar disputed land was acquired by the Government under Section 92 of the State

Acquisition and Tenancy Act, 1950 on 16.04.1969. Plaintiff's claims title in above land as a successive purchaser but his predecessor purchased above land long after above acquisition by the Government.

In the plaint the name of Tusta Peshakar has been mentioned as Tusta Bibi and it has been further stated that she had a husband namely Abdul Talukder and they were issueless. The learned Advocate for the opposite party has repeatedly stated that Tusta Bibi and Tusta Peshakar were the same person but his above claim is outside of the pleadings and not supported by any legal evidence. It has been alleged that Hayat Ali was the heir and only brother of Tusta Bibi but it has not been proved by legal evidence that Tusta Bibi and Tusta Peshakar was the same person.

It has been alleged that above property of Tusta Bibi was inherited by his brother Hayat Ali in 1968 but above Hayat Ali did not mutate his name for above land as heir of Tasta Peahakar nor challenged the acquisition of above land by the Government. He allegedly transferred above land to Rubi Khatoon on 02.06.1976 and it was Rubi Khatoon who filed Title Suit No.250 of 1976 claiming that the above property belonged to Tusta Bibil and Hyat Ali inherited the same as her brother. But there is no mention in the plaint of above suit that above property belonged to Tusta Peshakar and she was a prostitute by profession. The learned Advocate for the opposite party submits that DW1 has admitted in his evidence that Hayat Ali was the brother of Tusta Bibi. But DW1 did not say anything about Tusta Peshakar who

died in 1968. The plaintiff has tried to get the property of a prostitute without admitting that she was a prostitute and without any evidence that after demise of Tusta Peshakar her property devolved upon Hayat Ali as her only brother.

Opposite party has produced a bunch of rent receipt (Exhibit No.2 series) and mutation of name of Rubi Khatoon by the Circle Officer, (Revenue) (Exhibit No.4), a tax receipt issued by Syedpur Pourashava on 28 October 2007 (Exhibit No.7) and all above documents were long after the acquisition of above land by the Government under Section 92 of the State Acquisition and Tenancy Act, 1950. The plaintiff or his predecessor did not challenge the legality and propriety of acquisition of above land by the Government under Section 92 of the State Acquisition and Tenancy Act, 1950.

On consideration of above facts and circumstances of the case and evidence on record I hold that the learned Additional District Judge utterly failed to realize the facts and circumstance of the case and evidence on record and without reversing any material findings of the trial Court most illegally allowed the appeal and set aside the judgment and decree of the trial Court which is not tenable in law. I hold that the ends of justice will be met if the impugned judgment and decree of the Court of Appeal below is set aside and the suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

In above view of the facts and circumstances of the case and evidence on record I find substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute. The impugned judgment and decree dated 04.07.2011 passed by the learned Additional District Judge, Nilphamari in Other Class Appeal No.85 of 2009 is set aside and above suit is remanded to the trial Court for re-trial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER