

District-Bhola

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

Present:

Mr Justice Md Atoar Rahman

Civil Revision No 482 of 2022

Md Kamal Hossain being dead his
heirs 1(a) Sarekur Rahman Ashik and
others

...defendant-respondent-petitioners

- versus-

Md Shahjada Kabir and others

...plaintiff-opposite parties

Mr Md. Maksud Alam, Advocate

...for the defendant-respondent-
petitioners

Mr Swapan Kumar Dutta, Advocate

... for the plaintiff-opposite parties

**Heard on: 14.01.2024, 04.02.2024 and
05.02.2024**

Judgment on: 09.05.2024

This Rule was issued upon an application under section 115(1) of the Code of Civil Procedure, 1908 calling upon the opposite parties No 01 to 07 to show cause as to why the impugned judgment and decree dated 21.10.2021, passed by the learned Joint District Judge, First Court, Bhola in Title Appeal No 94 of 2011 allowing the appeal and reversing the judgment and decree dated 02.06.2011, passed by the learned Assistant Judge, Borhanuddin, Bhola in Title

Suit No 03 of 2007, dismissing the suit should not be set aside and/or passed such other or further order(s) as to this court may seem fit and proper.

During issuance of the Rule an order was passed staying operation of the impugned judgment and order passed by the appellate court below till disposal of the Rule.

The facts for the purpose of disposal of the Rule are that the opposite parties No 1 to 8 as plaintiffs instituted a suit for declaration of title in the suit land by way of adverse possession in the Court of Senior Assistant Judge, Borhanuddin, Bhola being Title Suit No 03 of 2007 impleading the petitioners and others as defendants stating *inter alia* that the predecessor of the present petitioners Atahar being owner and possessor of the suit property died leaving behind 4 sons namely, defendant-petitioners No 1 to 3 and Abu Salem Najju as his heirs. They entered into an agreement for sale the suit property with the plaintiffs' predecessor Shahjahan and executed an unregistered deed of agreement on 19.06.1975 and delivered possession of the suit property to him. But subsequently they denied to execute and registered the sale deed on the basis of agreement. Nevertheless, predecessor of the plaintiffs Shahjahan had been enjoying the possession of the suit property for more than 12

years and accordingly right of title by way of adverse possession had been created in favour of the plaintiffs, hence the suit for declaration.

The defendant-petitioners submitted two separate sets of written statement denying all the material assertions made in the plaint. During trial two compromise petitions were submitted for decreeing the suit on the basis of the same. But the learned Assistant Judge dismissed the suit by the judgment and decree dated 02.06.2021.

Being aggrieved by and dissatisfied with the above judgment and decree the plaintiffs preferred an appeal being Title Appeal No 94 of 2011 in the Court of District Judge, Bhola. On transfer said appeal was heard by learned Joint District Judge, First Court, Bhola who by the impugned judgment and decree dated 21.10.2021 allowed the appeal reversing the judgment and decree passed by the learned Assistant Judge and decreed the suit on compromise.

Being aggrieved by and dissatisfied with the above judgment and decree passed by the appellate court the defendant-respondent-petitioners moved to this court with an application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and the order of stay.

Mr Md Maksud Alam, the learned Advocate appearing on behalf of the defendant-petitioners along with a supplementary affidavit submits that during the trial the defendants No 1 to 3 did not submit any compromise petition on 18.06.2008 or on 20.08.2009 with the plaintiffs and they also did not give any deposition supporting the compromise petitions as DWs No 1, 2 and 3 and the compromise petitions are forged and the depositions before the trial court as DWs had been made by false personification and having considered the materials on record learned trial Judge rightly and perfectly dismissed the suit. But learned Judge of the appellate court without going through the materials on record and without following the provisions of law allowed the appeal and decreed the suit on compromise committing an error of law resulting in an error in such decision occasioning failure of justice and, as such, the impugned judgment and decree is not sustainable in law.

On the other hand, Mr Swapan Kumar Dutta, the learned Advocate, appearing on behalf of the plaintiff-appellant-opposite parties submits that learned Judge of the trial court upon misconception of law and facts dismissed the suit holding that the signatures available in the agreement dated 19.06.1975 of the defendants No 1 and 3 Md Alamgir Baklai and Md Jahangir Alam Baklai and signatures given by them on deposition sheets as DWs 1

and 2 are not same without uttering a single word about the signatures of all the defendants available in those petitions of compromise. Moreover, the learned trial Judge did not refer to any single word about the deposition of DW 3 as such, committed a serious error of law in dismissing the suit and the appellate court below upon proper appreciation of facts and law rightly reversed the judgment and decree passed by the learned trial Judge which is immune from interference by this court exercising revisional jurisdiction under section 115 (1) of the Code of Civil Procedure.

I have heard the submissions placed by the learned Advocates of both the sides and perused the record along with both the judgments and connected papers on record.

It appears that there are two compromise petitions in the record purported one to have been executed and proved on 20.08.2009 by the plaintiffs and defendants No 1 and 3 and another to have been executed and proved on 18.06.2008 by the plaintiffs and the defendant No 2. Specific assertions of the learned Advocate for the defendants-petitioners are that none of the defendants executed any compromise petition, nor proved the same by deposing in the trial court. It transpires that none of the courts below has taken into consideration both the compromise petitions except the compromise petition claimed to have been executed by the

defendants No 1 & 3. It also appears that there is no claim that the defendant No 4 Tofayel Ahmmad is a party to any of the compromise petitions. But learned Judge of the appellate court decreed the suit on compromise against all the defendants. Apart from this, he did not satisfy himself in respect of execution and proving of the petitions of compromise by the defendant No 1, 2 & 3 as required under the provisions of Order XXIII, rule 3 of the Code of Civil Procedure.

On the other hand, learned trial Judge dismissed the suit holding that agreement for sale as claimed by the plaintiff-opposite party was doubtful as the signatures of the defendants No 1 & 3 given in the depositions as DWs 1 & 2 and the agreement for sale dated "19.06.1976" were not found identical. It is also found that although the suit was dismissed but the petition of compromise for decreeing the suit was made part of the decree.

However, for better appreciation of the matter the relevant provision in respect of compromise of a suit ie rule 3 of the Order XXIII of the Code of Civil Procedure is quoted bellow:

"3. Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of

the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit”

From the above quoted provisions of law it is found that if in any suit a compromise petition or an agreement regarding compromise is submitted the court shall satisfy itself whether the same is duly executed by the parties and the same is lawful or valid within the meaning of the Contract Act. The court is not empowered to determine the truthfulness of the pleadings and validity of the document(s) in support of the respective cases in deciding the suit on compromise. If the court satisfies itself that the petition of compromise or the agreement of compromise has been duly executed by the parties and proved by them in the court and agreement or conditions of the same are found valid and lawful then it shall dispose of the suit on the basis of the compromise. If the court is not satisfied itself about the execution, genuineness or lawfulness of the petition or agreement of compromise, it shall reject the same and proceed with the suit to dispose of on merit in accordance with law.

In the instant suit the learned trial Judge in order to his satisfaction did not examine the execution, genuineness and validity of the petition or agreement of compromise, rather he dismissed the

suit on merit having disbelieved the document in support of the plaintiffs' case without giving opportunity to adduce evidence in support of respective cases.

On the other hand, it has already been mentioned that the learned Joint District Judge without taking into consideration the petition of compromise claimed to have been executed by the defendant No 2 and without determining his satisfaction in respect of execution of the petitions of compromise by the defendants allowed the appeal and decreed the suit against all the defendant on compromise, although the defendant No 4 did not execute and submit any petition of compromise. Thus, in deciding the appeal the learned Judge of the appellate court committed an error of law resulting in an error in such decision occasioning failure of justice.

In view of the above discussions and considering the facts and circumstances, I am of the view that justice will be met if the title suit is send back on remand to the trial court for disposal of the same afresh ascertaining whether the disputed petitions of compromise dated 18.06.2008 and 20.08.2009 were executed by the defendants No 2 and 1 & 3 and proved by them as DWs 1, 2 & 3 by giving depositions on 18.06.2008 and 20.08.2009 respectively. In this respect if the learned Judge of the concerned court thinks fit and proper he may take opinion of hand writing expert about the

signatures purported to have been given by the defendants No 1 to 3 in the disputed petitions of compromise and depositions by comparing with the admitted signatures.

If the petitions of compromise are found genuine and conditions of the same are found lawful then the suit shall be disposed of on the basis of the compromise against the defendant-party/parties to the compromise and on merit against other(s) in accordance with law and procedure. If the petitions of compromise are found not genuine or conditions are found unlawful then the same shall be rejected and the suit shall be disposed of on merit giving opportunity to both the parties to adduce evidence in support of their respective cases.

In the result, the Rule is made absolute without any order as to cost. The impugned judgments and decrees passed by the appellate court as well as by the trial court are hereby set aside. The Title Suit No 03 of 2007 is sent back on remand to the trial court for disposal following the directions and observations as made above within a shortest possible time.

Let the lower courts' records along with a copy of this judgment be transmitted at once.