

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

**CIVIL REVISION No. 1880 OF 2018**

**In the matter of:**

Surjo Kumar Vomik and others.  
...Petitioners.

**Present**  
Mr. Justice Mamnoon Rahman

**-Vs-**  
Amar Chandra Saha and others.  
....Opposite parties.

None appears  
...For the petitioners.  
Mr. H.M. Shanjid Siddique, Adv.  
...For the opposite party.

Heard on: **29.02.2024 & 03.03.2024**

**And**

Judgment on: **The 7<sup>th</sup> March, 2024**

**Mamnoon Rahman,J:**

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite party Nos. 1-9 to show cause as to why the impugned judgment and decree dated 14.02.20218 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Comilla in Title Appeal No. 269 of 2002 dismissing the appeal by affirming the judgment and decree dated 31.10.2002 (decree signed on 06.11.2002) passed by the learned Senior Assistant Judge, Debiddar, Comilla 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.

The petitioner as plaintiff instituted Title Suit No. 79 of 2000 in the court of Assistant Judge, Debiddar, Comilla impleading the present opposite party as defendants for the prayers stated in the plaint. The case of the plaintiff-petitioner-appellant, are that, Ram Sundor Vomik, Horichandra, Goghon, Purno Chandra and Nobin Chandra was originally

owner and possessor of the suit land and C.S Khatian being No. 135 correctly recorded in their name. Since Ram Sundor, Horichandra and Nobin Chandra have no heirs and Ghogon and Purno Chandra acquired the part of their share. Thereafter on the basis of amicable settlement Goghon Chandra obtained the ownership of the suit land. Then Goghon Chandra died leaving Ashwini and Jogesh. Then Ashwini died leaving Gopal, Poresh, Suresh, Ramesh and plaintiff No. 8 namely Nepal. Then Gopal died leaving 2 (two) son as plaintiff No. 1 and 2, Poresh died leaving plaintiff No. 3 and 4, Suresh died leaving plaintiff No. 5, Romesh died leaving plaintiff No. 6 and 7, Jogesh died leaving plaintiff No. 9 to 11, i.e. plaintiff No. 1 to 11 are owner of the suit land and they are enjoying and possessing the suit land. The defendant declared the S.A Khatian No. 169 was recorded in their name then the plaintiff collect the certified copy of the said S.A Khatian and they came to know the matter. It is also mentioned that S.A and B.S Khatian was wrongly recorded in the name of the defendant respect of the suit land, Therefore, the plaintiff filed the title suit praying for declaration of title, hence the suit.

The defendant-respondent-opposite party contested the suit by filing written statement denying all the material allegations made in the plaint. The case of the defendant, in short is that, the suit land was originally belonged to Ram Sundor and others and they possessing the suit land and C.S Khatian being No. 135 was correctly recorded in their name. As Purno Chandra was defaulter an auction was held in execution case No. 76 wherein Rada Chandra and Lal Mohon participated in the

auction and they were auction purchaser  $\frac{1}{5}$  part of the suit land and they got boynama. Rada Charan died leaving behind one son namely Shoshi Mohon. Rada Kanto and Amitra Lal got decree against the C.S recorded owner Ram Sundor and four brothers. Then in the year of 1940 the land was auctioned in execution case No. 136/140 and the same was purchased by Sachindra Lal Saha and Amrendra Saha on 12.05.1941 and accordingly possessing of the land was handed over in the year of 1943 through the court. As the son of Amorendra Saha was minor, Advocate Gouro Mohon Chowdhury look after the property of Amorendra Saha. Then Gouro Mohon and Sachindra Lal proposed to settlement the plot No. 842 and 841 then Anonda, Gobinda accepted the said proposal and they paid 5000/- to Gouro Mohon and Sachindra Lal. In that way Ananda and Gobinda obtained the ownership of the suit land and they are enjoying and possession of the suit land. Subsequently, the plot No. 76 was auctioned and Shashi Mohon and Gouro Mohon purchased the land through auction. Ananda and Gobinda obtained the ownership of suit land in settlement plot No. 841/842 through re-settlement and they had been possessing the land of plot No. 841 (in part) through borgadar Anchar Ali. Then Ananda and Gobinda had been possessing the plot No. 841 (In part) on 1358 B.S through brogadar Zobbor Ali. Thereafter, the heirs of Purno Chandra Vhomik filed a Title Suit being No. 2 of 1953 in that case the defendant No. 5 and 6 namely Ananda and Gobinda appeared and contested by filing written statement and on that their was admission the land of 76 No. Pattanitaluk was auctioned and an order of temporary injunction was passed in the case No. 2 of 1953. Then the

defendant No. 1 and 2 filed Title Appeal and the same was allowed on 22.12.1953. After concluding the trial the suit was dismissed by his judgment dated 8.5.1959 and decree signed on 15.05.1959. Thereafter the plaintiff filed Title Appeal being No. 196 of 1959 and the said appeal was dismissed on 27.11.1959. Subsequently the plaintiff filed appeal being No. 584 of 1960 before the Hon'ble High Court Division of Bangladesh Supreme Court and the same was also disallowed accepted on 3.08.1964. Then S.A Khatian being No. 169 correctly recorded in the name of Ananda and Gobinda, the defendant No. 1 to 5 are enjoying and possessing the suit land and B.R.S record correctly recorded in their name hence the suit is liable to be dismissed.

During trial the plaintiff adduced 4(four) witnesses while the defendant adduced 5(five) witnesses. Both the parties adduced evidences both oral and documentary. The trial court framed as many as five Issues. The trial court after hearing the parties and considering the facts and circumstances vide judgment and decree dated 31.10.2002 dismissed the suit. Being aggrieved by and dissatisfied with the aforesaid judgment and decree the petitioner preferred appeal being Title Appeal No. 269 of 2002 and the same was heard and disposed of by the Joint District Judge, Second Court, Cumilla who vide the impugned judgment and decree dismissed the appeal and thereby affirmed the judgment and decree passed by the trial court. Being aggrieved by and dissatisfied with the said order the present petitioners moved before this court and obtained the rule as aforementioned.

No one appears on behalf of the petitioners to press the rule though the matter is appearing in the list for hearing, as part heard as well as for judgment on several occasions. However, on perusal of the grounds taken in the revisional application the case of the plaintiff-appellant-petitioner is that, both the courts below without considering the possession of the suit property by the plaintiff dismissed the suit committed an error. The further case of the plaintiff as it revealed from the grounds that both the courts below failed to apply their judicial mind as much as failed to appreciate the legal position, evidence both oral and documentary in an appropriate manner. The further case of the plaintiff-appellant-petitioners, are that, the courts below misconstrued and misappreciated the evidence and record and thus committed an error came to a decisions occasioning failure of justice.

Mr. H. M. Shanjid Sddique, the learned counsel appearing on behalf of the opposite party-defendants vehemently opposes the rule. He submits that both the courts below on proper appreciation of the facts and circumstances evidence both oral and documentary came to a conclusion that the plaintiff failed to prove their case by all means and as such both the courts below committed no error which requires interference by this court. He further submits that in the case in hand the plaintiffs miserably failed to prove their right, title and possession over the suit property by any credible evidence as much as the defendants proved their case by sufficient oral and documentary evidence and as such the impugned judgment and decree passed by the courts below are liable to be maintained for ends of justice. He further submits that both

the courts below discussed in detailed the case of the plaintiffs and defendants side by side as much as evidence led by the parties and both the courts below on proper appreciation as well as in detailed findings disbelieved the case of the plaintiffs which requires no interference by this court.

I have perused the impugned judgment and decree passed by the trial court, judgment and decree passed by the lower appellate court, revisional application, grounds taken thereon, Lower Court's Records as well as necessary papers and documents annexed herewith and heard the learned counsel for the opposite party.

On perusal of the same, it transpires that the plaintiffs filed the suit for declaration of title. It transpires that the defendants contested the suit by filing written statement denying all the material allegations made in the plaint. It further transpires that admittedly the suit land belongs to five brothers and the same was recorded in C.S. Khatian No. 135 accordingly and the claim of the plaintiffs is that the land ultimately belongs to two brothers and out of a amicable settlement Goghan become the owner and the plaintiffs are the heirs of Goghan and as such the S.A. Record was wrongly prepared in the name of the predecessor in interest of the defendants. While the case of the defendants, are that,  $\frac{1}{5}$  of the property was sold on auction because of unpaid loan and Rada Chandra and Lal Mohon purchased the same and the remaining  $\frac{4}{5}$  was purchased by Sachindra Lal Saha and Amrendra Lal Saha. Subsequently there was a suit being Title Suit No. 2 of 1953 instituted by the heirs of

Purno Chandra Vhomik impleading the predecessors in title of the defendants of the instant suit as defendants. It was admitted by the heirs of Purno Chandra Vhomik in the said suit that the suit land was sold in auction for arrear of revenue and was then purchased by Shoshi Mohon Saha and Gouro Mohon Saha. Moreover, the 1<sup>st</sup> Court of the Munsif, Cumilla found that the predecessors of the defendants, namely Ananda and Govinda, were the lessees and in possession of the suit land. Also on appeal the lower appellate court also affirmed the judgment and decree passed by the trial court. It also transpires that against the aforesaid suit the parties traveled up to the High Court Division in First Appeal No. 584 of 1960 the High Court Division also affirmed the judgment and decree passed in Title Suit No. 2 of 1953. It further transpires that the trial court considered the judgment and decree passed in the previous suit which runs as follows;

*দেং ২/৫৩ মামলার রায় দৃষ্টে দেখা যায় বিজ্ঞ বিচারক রায়ে উল্লেখ করিয়াছেন " I also find that defendants ananda and Govinda are bonafide leases for value on the basis of settlement dated 27<sup>th</sup> 1353 B.S and they are in possession of dags 841 and 842 on the basis of that settlement from before the alleged contract. উত্তর রায় পর্যালোচনায় দেখা যায় যে, নালিশা জমিতে ঐদাদীপক্ষের পূর্বর্তী আনন্দ ও গোবিন্দ ঐছ পূর্ব থেকেই মালিক ও দখলকদার আছেন। এং তাহাদের নামে আর এস ১৬৯ নং খতিয়ান শুদ্ধভাবেই প্রস্তুত হয়। ঐদাদী পক্ষ বিগত ৩১/৮/২০০০ ইং তারিখ আর এস খতিয়ানের বিষয় অংগত হইয়াছেন ঐলিয়া যে ঐক্ত্য দিয়াছেন তাহা মোটেই বিশ্বাস যোগ্য নহে এং ঐদাদীগন তাহাদের উত্তরূপে বক্তব্য ও প্রমান করিতে পারেন নাই।*

The trial court further held as follows;

পি.ডব্লিউ-১ সূর্য কুমার জেরায় বলেন, গগন তৎকালীন জমিদার বা পাকিস্তান বা বাংলাদেশ সরকারকে খাজনা দিয়াছে এই মর্মে দাখিলা দাখিল করতে পারেনা। গগনের ওয়ারিশরা খাজনা দিয়াছে এই মর্মে দাখিলা দাখিল করিতে পারেনা। আমরা দাদীরা খাজনা দিয়াছি এই মর্মে কোন দাখিলা দাখিল করতে পারেনা।"

পি, ডব্লিউ-২ জেরায় বলেন "নদীয়াবাদ মৌজায় আমার কোন জমি নাই। পি, ডব্লিউ-৩ জেরায় বলেন, "নালিশা পুকুরে মাছ ফেলতে, ধরতে বা বিক্রি করতে আমি কখনও উপস্থিত ছিলাম না। পি, ডব্লিউ-৪ জেরায় বলেন," আমি পুকুর পাড় বর্গা নিয়াছি। কোন সনের কি মাসে বর্গা নিয়াছি বলতে পারেনা। আমার বর্গা নেওয়া জমির খতিয়ান নং বলতে পারবনা।

দাদী পক্ষের উপরোক্ত সাক্ষ্য পর্যালোচনা করিলে দেখা যায় যে, দাদীপক্ষ তাহাদের পূর্ববর্তী বা বর্তমান আমলের নালিশা জমি দাদী কোন খাজনা আদায় করিয়াছেন এই মর্মে কোন প্রমানাদি হাজির করিতে পারেন নাই। নালিশা জমিতে বাদী বা তাহার পূর্ববর্তী মালিক দখলকার থাকিলে অবশ্যই উহার খাজনা আদায় করিতেন। পক্ষান্তরে বিবাদী পক্ষের দাখিলীয় খাজনা দৃষ্টে দেখা যায় যে, বিবাদী পক্ষ বহু পূর্ব থেকেই নালিশা জমিতে মালিক দখলকার ছিলেন এবং উহার খাজনা আদায় করিয়া আসিতেছে। বাদীপক্ষ নালিশা পুকুরে মাছ ধরিয়া এবং পাড় বর্গা দিয়া দখল করিতেছেন বলিলেও পি, ডব্লিউ-৩ জেরায় বলেন তিনি কখনও মাছ ধরতে ছিলেন না। পি, ডব্লিউ-৮ বর্গা করিয়াছেন বলিলেও তিনি বর্গার সন এবং কোন তারিখের জমি বর্গা করিয়াছেন তাহা বলিতে পারেন নাই।

So, it transpires from the aforesaid findings of the trial court that the trial court considered the evidence of plaintiffs and defendants side by side and came to a conclusion by elaborate discussions and findings that the plaintiffs failed to prove their right and title in the suit property. While adjudicating the appeal the lower appellate court also vividly



considered and discussed the case of the plaintiffs and defendants side by side and also considered the judgment and decree passed by the trial court. The lower appellate court held as follows;

উক্ত আপোষ ংটন সংক্রান্ত কোন ংটন নামা া তৎপ্রেক্ষিতে আপীলেন্ট পক্ষের নামে কোন খতিয়ান হওয়া া আপীলেন্ট পক্ষ া তাদের পূর্বার্তীগণের উক্ত ভূমি সংক্রান্তে খাজনার রসিদ দাখিল করেছে এমন কোন খাজনা দাখিলা আপীলেন্ট পক্ষ প্রাপ্ত হয় নাই মর্মে উল্লেখ করেন। এমনকি আপীলেন্ট/াদী গগন চন্দ্র ও পূর্ণ চন্দ্রের মধ্যকার আপোষ ংটন সংক্রান্তে কোন মৌখিক সাক্ষী উপস্থাপন করতে পারে নাই। উপরোক্ত িাদী আপীলেন্ট িজ্ঞ কৌসুলী ালেন নগদ চন্দ্র ও পূর্ণ চন্দ্রদের মধ্যকার আপোষ ংটনের কাহিনী মিথ্যা। কেন না পূর্ণ চন্দ্র ভৌমিকের ওয়ারিশ সুরেন্দ্র, অতুল, রমনী ও শ্রীশ চন্দ্র াদী হয়ে রেসপনডেন্ট িাদীদের পূর্বার্তী আদরও গোিন্দ সহ অপর িাদীদের িরুদ্ধে নালিশী সম্পত্তি সংক্রান্তে দেওয়ানী ২/৫৩ নং মোকদ্দমা দায়ের করেন। উক্ত মোকদ্দমার আরজী, জাা ও রায় ডিক্রী িাদীপক্ষে দাখিল করা হয় যা প্রদর্শনী চ সিরিজ হিসাে চিহ্নিত হয়েছে। উক্ত দেওয়ানী ২/৫৩ নং মোকদ্দমার রায় ও ডিক্রী পর্যালোচনায় দেখা যায় যে, নালিশী সম্পত্তি সংক্রান্তে রায়তি পাট্টা পাওয়ার প্রার্থনায় পূর্ণ চন্দ্র ভৌমিকের ছেলেরা উক্ত মামলা দায়ের করেছিলেন। উক্ত মামলার আরজীতে াদীরা নালিশী সম্পত্তি নিলাম হওয়া াং উক্ত নিলাম শশী মোহন, গৌরি মোহন খরিদ করার িষয়ে স্বীকার করতঃ তাদেরকে নগদ সালামী নিয়ে উক্ত সম্পত্তি সংক্রান্ত পাট্টা সম্পাদন ও রেজিঃ করে দেয়ার প্রার্থনা করেছেন। যা থেকে নালিশী সম্পত্তির িষয়ে নিলাম খরিদ সংক্রান্ত যে সকল াক্ত্য রেসপনডেন্ট িাদী পক্ষ তাদের লিখিত জাে উল্লেখ করেছেন তার প্রমাণ পাওয়া যায় াং নালিশী সম্পত্তি আপোষ ংটনে গগন চন্দ্র পাননি মর্মেও প্রমাণিত হয়

Apart from that it also transpires that the lower appellate court also considered the judgment and decree passed in Title Suit No. 2 of 1953 wherein the lower appellate court further held as follows;

প্রিাদী পক্ষের দাখিলীয় পাট্টা ৩ ফর্দ যা প্রদর্শনী ত. দ. দ (১) ও (২) হিসাবে চিহ্নিত পর্যালোচনায় দেখা যায় যে, ৮৪১ ও ৮৪২ দাগের জমি আনন্দ চন্দ্র সাহা ও গোবিন্দ চন্দ্র সাহা ১৩৫৫ সনে ংন্দোঁস্ত গ্রহণ করেন। প্রদর্শনী ক, ক/১, ক/২ পর্যালোচনায় দেখা যায় যে, আনন্দ চন্দ্র সাহা ও গোবিন্দ চন্দ্র পক্ষে ১৩৯৪, ১৩৭০-৭৩, ১৩৯৪-১৪০৭ ংলা সনের খাজনা প্রদান করা হয়েছে। প্রদর্শনী খ. খ/১, খ/২ পর্যালোচনায় দেখা যায় যে, গোবিন্দ চন্দ্র ও আনন্দ চন্দ্র সাহার নিকট হতে ১ সাল ং্যাপী ংর্গা চাষের জন্য জব্বর আলী (১৩৫৭) আনছর উদ্দিন (১৩৪৭ ংলা) ংর্গা গ্রহণ করেন। রেসপনডেন্ট/প্রিাদীদের সকল দাখিলীয় কাগজাত পর্যালোচনায় দেখা যায় নালিশী জমিতে রেসপনডেন্ট পক্ষের স্বত্ব স্বার্থ দখলের ংষয়ে প্রমাণ পাওয়া যায়।

It is now well settled proposition of law is that by exercising the power conferred under section 115 of the Code of Civil Procedure, 1908 this court cannot go into the factual aspects even if in a case of reversal of judgment and decree. On perusal of the revisional application and the grounds taken thereon, I do not find any materials point of law or gross misreading of evidence raised by the petitioner in the case in hand.

To believe or disbelieve a witness as well as documentary evidence is within the jurisdiction of the Court's below and this Court sitting in a revision cannot interfere in such jurisdiction unless there is non-consideration of material evidence affecting the ultimate decision of the Court's below. On perusal of the application, it appears that the petitioner would not show any non consideration of material evidence by the Court's below. The findings arrived at and the decisions as made by

the courts below do not call for any interference by this court under section 115 of the Code of Civil Procedure, 1908. The findings of the courts below having been based on proper appreciation of evidence on record do not call for any interference.

Considering the facts and circumstances and the discussions made hereinabove, I am of the view that both the courts below in the case in hand committed no error which requires interference by this court.

Accordingly, the instant rule is discharged without any order as to cost. The judgment and decree passed by the courts below is hereby affirmed.

Send down the Lower Court's Record to the concerned court below with a copy of the judgment at once.

(Mamnoon Rahman, J:)

*Emdad.B.O.*