

Present:

Mr. Justice Md. Shohrowardi

Civil Revision No. 1772 of 2021

Md. Abdul Jalil, being dead, his legal heirs:-

1(a) Most Nazma Begum and others....Petitioners

-Versus-

Md. Azam Ali Miah, being dead, his legal heirs:-

1(a) Malek Miah and others....Opposite parties

Mr. Kamruzzaman Bhuiyan, Advocate with

Ms. Nasima Kumkum, Advocate

....For the petitioners

No one appears.

....For the opposite parties

Heard on 22.06.2026

Judgment delivered on 02.07.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 18.05.2017 passed by the Additional District Judge, Natore in Miscellaneous Appeal No. 47 of 2007 affirming the judgment and order dated 05.07.2007 passed by the Assistant Judge, Sadar, Natore in Miscellaneous Case No. 90 of 2003 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Relevant fact for disposal of the Rule, is that the petitioner filed Miscellaneous Case No. 90 of 2003 under Order IX Rule 13 of the Code of Civil Procedure, 1908 in the Court of Assistant Judge, Sadar, Natore praying for setting aside the exparte judgment and decree dated 10.06.1982 passed in Other Class Suit No. 816 of 1979 stating that no summon was served upon the father of the petitioner who was the defendant No. 1 in Other Class Suit No. 816 of 1979 and before final decree, the father of the petitioner died on 24.02.1985 but the petitioners were not substituted in the said suit. After hearing the miscellaneous case, the trial Court, by order dated 05.07.2007, rejected the miscellaneous case, against which the applicant filed Miscellaneous Appeal No. 47 of 2007 in the Court of District Judge, Natore, and the appellate Court, by impugned judgment and order, affirmed the order dated 05.07.2007 passed by the trial Court, against which the petitioner obtained the Rule.

After filing the miscellaneous case, the applicant examined 1 P.W. and the plaintiff examined 2 O.P.W.

Learned Advocate Mr. Kamruzzaman Bhuiyan, appearing along with learned Advocate Ms. Nasima Kumkum on behalf of the petitioners, submits that the summons in Other Class Suit No. 816 of 1979 was not served upon the father of the petitioner, who was defendant No. 1, and no vokalatnama was filed by the defendant No. 1 in the said suit. Consequently, the plaintiff obtained an ex parte

decree suppressing the summons. He further submits that O.P.W. 1 admitted in cross-examination that the defendant purchased 4.25 decimals of land from Abdul Mojid and he has no objection if the retrial is held.

No one opposes the Rule.

On perusal of the records, it reveals that the decree in Other Class Suit No. 816 of 1979 was passed ex parte, and O.P.W. 1 admitted that the defendant purchased 4.25 decimals of land from Abdul Mojid and he has no objection if the re-trial is held. Admittedly, the final decree was drawn after the death of the defendant No. 1 without substituting the petitioner as defendant. I am of the view that for ends of justice the Miscellaneous Case No. 90 of 2003 should be allowed, setting aside the ex parte judgment and decree dated 10.06.1982 passed in Other Class Suit No. 816 of 1979, restoring the suit in its original file and number.

I find merit in the Rule.

In the result, the Rule is made absolute with costs of Tk. 1,000(one thousand). The impugned judgment and order passed by the Courts below are hereby set aside.

The judgment and decree dated 10.06.1982 passed in Other Class Suit No. 816 of 1979 by the Assistant Judge, Sadar, Natore is hereby set aside. The Other Class Suit No. 816/1979 is restored to its original file and number. The petitioner is entitled to adduce the evidence in the suit.

The trial Court is directed to dispose of the Other Class Suit No. 816 of 1979 expeditiously.

The petitioners are directed to deposit the costs of Tk. 1,000(one thousand) in the trial Court within 30(thirty) days from the date of receipt of this judgment and order by the trial Court.