

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.5576 OF 2022

In the matter of:

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

And

Atufa Mollah and others

.... Petitioners

-Versus-

Md. Shofiqul Alam and others

.... Opposite parties

Mr. Md. Mosiul Alam, Advocate

.... For the petitioners.

Mr. Md. Mahabubur Rashid, Advocate

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

Heard on 21.11.2024.

Judgment on 01.12.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 05.09.2022 passed by the learned Senior District Judge, Jamalpur, in Other Appeal No.115 of 2021 disallowing the appeal and thereby affirming the judgment and decree dated 10.10.2021 passed by the learned Additional Assistant Judge, Jamalpur, in Other Class Suit No.82 of 2007 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 petitioners as plaintiffs instituted above suit for declaration that order dated 29.06.2006 passed by the Additional District Commissioner (ADC) in Miscellaneous Case No.2(XIII)2005-

2006 modifying three land settlement cases of the plaintiffs by deducting 1.57 acres land is unlawful and not binding upon the plaintiff and for further declaration that judgment and decree dated 29.06.1990 passed by the learned Munsif in Title Suit No.179 of 1985 is unlawful and not binding upon the plaintiffs.

It was alleged that plaintiffs are landless peasant and they submitted three separate petitions to defendant No.9 for settlement of Government land and on conclusion of necessary inquiry disputed 2.9 acre land was given settlement to them by a three separate Miscellaneous Cases being Nos. $\frac{561(XII)03-04}{08(XII)03-04}$, $\frac{564(XII)03-04}{11(XII)03-04}$ and $\frac{565(XII)03-04}{12(XII)03-04}$ for 99 years and on the direction of above defendant plaintiffs executed separate registered kabuliyat deed Nos.18028, 18026 and 18031 dated 13.12.2003 and their names were mutated and separate khatians were prepared for each plaintiffs and they were paying rent to the Government and possessing above land peacefully.

Defendant Nos.1-8 did not have any right, title, interest and possession in above land and they obtained a collusive decree in Title Suit No.179 of 1985 on 22.08.1985 for 4.73 acre land. Pursuant to above judgment and decree the defendants did not acquire any title and possession in above land.

Above suit was contested by defendant Nos.1-6 by filing a joint written statement alleging that 4.96 acre land belonged to Muslem

Uddin and Moharani Hemonto and the same was correctly recorded in C.S. Khatian Nos.582 and 127 and above Muslem Uddin surrendered his land of C.S. Khatian No.582 to Hemonto who became owner and possessor of 4.96 decimal land and gave settlement to Hasan Ali and Kashem Ali by a registered kabuliyat dated 26.09.1946. Above Kashem Ali transferred his 2.48 decimal land to the defendant and defendants are in peaceful possession in above land but above land was erroneously recorded in the name of the Government and the defendants filed Title Suit No.179 of 1985 in the Court of Munsif, Jamalpur and obtained a decree on 29.06.1990. Plaintiffs do not have any right, title, interest and possession in above land.

At trial plaintiffs examined 4 witnesses and defendants examined 3. Documents of the plaintiffs were marked as Exhibit Nos.1-4 and those of the defendants were marked as Exhibit Nos.'Ka'-'Jha'.

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 plaintiffs preferred Other Class Appeal No.115 of 2021 to the learned District Judge, Jamalpur who dismissed the appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this Court and obtained this Rule.

Mr. Md. Mosiul Alam, learned Advocate for the petitioners submits that undisputedly six plaintiffs acquired disputed 291 decimal land from defendant No.9 by three separate settlement case and above plaintiffs executed three separate registered deed of kabuliyat in favour of the Government on 13.12.2003 and the plaintiffs mutated their names and created separate khatians in their names on the basis of above settlement.

It is also admitted that on an objection petition filed by the defendant Nos.1-8, defendant Nos.9-10 modified above three Settlement Cases of the plaintiffs and deducted 1.57 acre land from above settlement causes and transferred above 1.57 acre land to khatian No.1.

Since above three Settlement Cases were for different land in favour of different plaintiffs as such defendant No.9 committed serious illegality by reducing 1.57 acres land three Settlement Cases by one impugned order. Defendant No.9 did not mention any cogent ground or reason for above deduction of land from three settlement cases of the plaintiffs. Nor specific mention was made as to from which settlement case what quantity land was deducted. In no enquiry held by defendant Nos.9 or 10 it was found that the plaintiffs were not landless peasant at

the time of obtaining above settlements. As far as the impugned decree of the Title Suit No.1979 of 1985 of defendant Nos.1-8 is concerned plaintiffs were no party to above suit and the disputed land of this suit and the land of above judgment and decree are not identical. As such the learned Judge of the trial Court committed serious illegality in dismissing the suit and the learned District Judge without an independent assessment of materials on record most illegally dismissed the appeal and affirmed the flawed judgment and decree of the trial Court which is not tenable in law.

Mr. Md. Mahabubur Rashid, learned Advocate for the opposite party Nos.1-8 submits that above defendants acquired disputed land by a registered kabuliyat dated 26.09.1946 but above land was erroneously recorded in the name of the Government and they filed Title Suit No.179 of 1985 and obtained a decree against the Government on contest. But above land was again recorded erroneously in the name of the Government in the B.R.S. Khatian and above defendants has filed Title Suit No.253 of 2018 in the 1st Court of Joint District Judge, Jamalpur for declaration of their title in 3.86 acres land including the disputed land and above suit is still pending for trial. Since the Government has rejected the kabuliyat of the plaintiffs they do not have any locus standi to maintain this suit without a declaration for title.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the plaintiffs acquired by three separate settlement cases the disputed land from the Government and they executed three separate registered deed of kabuliyat and defendant Nos.9 and 10 accepted above kabuliyats, mutated the names of the plaintiffs and created separate khatians and received rent from the plaintiffs. It is also admitted that defendant No.9 on receipt of an application from defendant Nos.1-8 deducted 1.57 acres land of above three Miscellaneous Cases being Nos. $\frac{561(XII)03-04}{08(XII)03-04}$, $\frac{564(XII)03-04}{11(XII)03-04}$ and $\frac{565(XII)03-04}{12(XII)03-04}$ without mentioning the quantity of land being deducted from each settlement case nor any rectification was effected of the three registered kabuliyat deeds executed by the plaintiffs and accepted by defendant Nos.9 and 10.

Above reduction of land of the settlement cases was done by the Additional Deputy Commissioner (Revenue) on an allegation that the plaintiffs were not landless peasants and they obtained above settlement by false representation. But there is nothing in above impugned order to show that any enquiry was held to ascertain truthfulness or falsity of above allegation or it was found that the plaintiffs were not in fact landless peasants at the time of obtaining above settlements. In his cross examination PW1 Mozahar Uddin who is an Assistant Land Officer stated that settlement of the disputed land was given to the plaintiffs for 99 years and before giving of settlement

appropriated inquiry was held. He could not produce any document before the Court to show that the plaintiffs were not landless peasants.

In above view of the facts and circumstances of the case and materials on record I hold that defendant No.9 committed serious illegality in reducing 1.57 acres land of three Settlement Cases of the plaintiffs without any valid reason and by an unspeaking order and without following due process which is not tenable in law.

As far as the impugned decree of Title Suit No.179 of 1985 of defendant No.1-8 is concerned. Admittedly plaintiffs were not parties to above suit and there is nothing on record to show that the land of registered kabuliyat dated 26.09.1946 corresponds to the disputed land of this suit. Above defendants have produced and proved certified copy of the judgment and decree of Title Suit No.179 of 1985 but they did not produce a certified copy of above deed of kabuliyat dated 26.09.1946. There is nothing on record to show that the land of above kabuliyat was relayed by an survey knowing Advocate to identify the present location of above land and to determine whether above land corresponds to the disputed land or not.

Learned Advocate for the opposite party Nos.1-8 concedes that above defendants have filed Title Suit No.253 of 2018 in the 1st Court of Joint District, Jamalpur for declaration of title for 3.86 acre land including the disputed land and above suit is pending for trial. Above

conduct of defendant Nos.1-4 proves that they have in fact abandoned above judgment and decree of Title Suit No.179 of 1985.

On consideration of above facts and circumstances of the case and evidence on record I hold that the plaintiff succeeded to prove their title and possession in disputed 2.9 acre land but the learned Judges of both the Courts below failed to appreciate above evidence on record properly and most illegality the trial Court dismissed the suit and the Court of Appeal below dismissed the appeal and affirmed above flawed judgment and decree of the trial Court which is not tenable in law.

In above view of the facts and circumstance 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, this Rule is hereby made absolute. The impugned judgment and decree dated 05.09.2022 passed by the learned Senior District Judge, Jamalpur, in Other Appeal No.115 of 2021 affirming the judgment and decree dated 10.10.2021 passed by the learned Additional Assistant Judge, Jamalpur, in Other Class Suit No.82 of 2007 is set aside and above suit is decreed on contest against the defendant Nso.1-10 without cost. It is hereby declared that the impugned order passed by defendant No.10 reducing 1.57 acres land of above settlement cases of the plaintiffs is unlawful and not binding upon the plaintiffs. It is

further declared that the judgment and decree of Title Suit No.179 of 1985 is not binding upon the plaintiffs

However, there is no order as to costs.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER