

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

CIVIL REVISION NO. 4402 of 2022

**Md. Sanu Miah being dead his legal
heirs 1(Ka) Nurun Nessa Khatun and
others.**

...Petitioners

-Versus-

Rashidpur Tea Easte and others

....Opposite parties

Mr. Shah Emran, Advocate

..... for the petitioners

Mr. Md. Helal Uddin , Advocate

..... for the opposite party No. 1

Heard and Judgment on: 11.12.2023

Present:

Mr. Justice Md. Badruzzaman.

This Rule was issued calling upon opposite party No. 1 to show cause as to why the judgment and order dated 23.05.2022 passed by learned Additional District Judge, 1st Court, Habigonj in Civil Revision No. 04 of 2016 dismissing the revision and affirming an order dated 21.01.2016 passed by learned Assistant Judge, Bahubal, Habigonj in Title Suit No. 50 of 2008 should not be set aside.

At the time of issuance of Rule this Court vide order dated 17.10.2022 stayed further proceedings of Title Suit No. 50 of 2008 for a period of 06 (six) months which was, subsequently, extended on 29.05.2023 for a further period of 1 (one) year.

Facts, relevant for the purpose of disposal of this Rule, are that opposite party No. 1 as plaintiff instituted Title Suit No. 50 of 2008 against the petitioners for a decree of permanent injunction in the Court of Assistant Judge, Bahubal, Habigonj in respect of 150.60 acres land of S.A Plot No. 131 of Khatian No. 2 and 3 stating, *inter*

alia, that the plaintiff got the suit land from the Government and it has been owning and possessing the suit property as lessee by Tea plantation therein but the defendants made threat to dispossess the plaintiff from the suit land.

Defendants Nos. 1-5, 7-14, 16-19 jointly and defendant No. 20, the Government separately filed written statements. In the written statement filed by the Government, it has been stated that the suit property is a Tea Garden which has been leased out to the plaintiff as Tea Garden. On the other hand, the defendant petitioners in their written statement contended that they have been owning and possessing a part of the suit land by erecting dwelling house therein. In course of trial, the plaintiff adduced evidence to prove its case. At that stage, the defendant petitioners applied for local inspection of the suit land to ascertain its nature and feature and the learned trial Court, upon hearing, rejected the application by order dated 21.01.2016 against which the defendant petitioners moved Civil Revision No. 04 of 2016 before the learned District Judge, Habigonj which was heard by learned Additional District Judge, 1st Court, Habigonj who, after hearing, dismissed the revision and affirmed the order of the trial Court.

The petitioners have challenged the said order passed by the revisional Court in this second revision and obtained the instant Rule.

Opposite Party No.1 has entered appearance by filing Vokatnama to oppose the Rule.

Mr. Sha Imran, learned Advocate appearing for the petitioners submits that the petitioners are owning and possessing a portion of the suit land by erecting dwelling house therein but the plaintiff is claiming that the suit property is a Tea Garden and accordingly, application for local inspection was filed to ascertain the nature and feature of the suit land but the Court of revision without considering

such aspect of the matter illegally dismissed the revision by affirming the order of trial Court.

Mr. Helal Uddin, learned Advocate appearing for opposite party No. 1 and Mr. Prohollad Debnath, learned Assistant Attorney General appearing for the Government jointly submit that the Court of revision did not commit an error of an important question of law in rejecting of application for local inspection because of the fact that there was no specification in the application in regard subject matter of the inspection and no schedule was given in the application in which the defendants claim their title and possession and accordingly, the application was vague and unspecified and the matters which have been sought to be inspected can be resolved by adducing evidence during trial and as such, interference is not called for by this Court.

I have heard the learned Advocates, perused the revisional application, the plaint of the title suit, the written statements filed by the defendants, the application for local inspection and the orders passed by the Courts below.

On perusal of the plaint, it appears that the plaintiff is a company who filed the instant suit stating that the company took lease of the Tea Estate measuring 150.60 acres of land from the Government and the company has been owning and possessing the suit land by tea plantation therein.

On the other hand, the defendant petitioners in their written statement stated that they have taken settlement of “ ৮/হাল ” land out of the suit land from Dinnath Pal and have been owning and possessing the same by planting tree and cultivation of paddy. In the written statement the defendants did not specify their claimed land. Though the defendants claimed that they are owning and possessing a part of the suit land but they themselves could not specify in which

portion of the suit land they are possessing. In the application for local inspection it has also not specified to the extent of their entitlement. Moreover, the application for inspection is not supported by any affidavit and thus cannot be considered as per law. However, their case may be decided during trial upon taking evidence which has been rightly held by the Courts below.

Accordingly, I find no reason to interfere with the judgment of the Court of Revision.

In the result, the Rule is discharged however, without any order as to costs.

The order of stay granted earlier is hereby recalled and vacated.

The learned Assistant Judge, Bahubul, Habigonj is directed to proceed with Title Suit No. 50 of 2008 in accordance with law.

Communicate a copy of the judgment to the Courts below at once.

(Md. Badruzzaman, J)