

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.5463 OF 2002

In the matter of:

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

And

Government of Bangladesh

.... Petitioner

-Versus-

Abdul Gafur being dead his heirs- Minaj Uddin and others

.... Opposite parties

Mr. Saifur Rahman, Deputy Attorney General with
Mr. Md. Mizanur Rahman, Assistant Attorney General,
Mr. Md. Moshihur Rahman, Assistant Attorney General
and

Mr. Md. Arifur Rahman, Assistant Attorney General

.... For the petitioner.

Ms. Aynunahar Siddiqua, Advocate

.... For the opposite parties.

Heard on 27.05.2025 and Judgment on 01.06.2025.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 30.07.2001 passed by the learned Sub-ordinate Judge, 3rd Court, Fatchuganj, Sylhet, in Title Appeal No.14 of 1998 dismissing the appeal and affirming the judgment and decree dated 25.02.1996 passed by the learned Assistant Judge, Fatchuganj, Sylhet in Title Suit No.5 of 1995 should not be set

aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that opposite party as plaintiff instituted above suit for declaration of title for 1.28 acres land appertaining to Plot No.1001 of D.P. Khatian No.53 alleging that above property was connected with Taluk No.4627/13 of Gopi Roy which was owned and possessed by Bubu Surji Kumar Chowdhury. Plaintiff Nos.2 and 3 obtained settlement of above land in 1350 B.S. and transferred $\frac{1}{3}$ rd share of above property to plaintiff No.1 by gift. During settlement survey plaintiffs names were recorded at Bujarath stage and plaintiffs paid rent of above land regularly. Due to nonpayment of rent for certain time Government filed Certificate Case No.1973 of 67-68 but subsequently after independence of Bangladesh rent of land upto 25 bigha having exempted the plaintiff did not pay any rent. In June 1994 the plaintiffs approached the Survey Officer for a copy of the khatian informed that above land has been omitted from survey.

Above suit was contested by defendant No.1 by filing a written statement alleging that disputed property was alluvial property of Kushiara river and during S.A. survey above land was not recorded and plaintiffs did not have any right, title and interest in above property.

At trial plaintiffs examined three witnesses and defendants examined one. Documents of the plaintiffs were marked as Exhibit Nos.1-6 .

On consideration of the facts and circumstances of the case and evidence on record learned Assistant Judge decreed above suit.

Being aggrieved by above judgment and decree of the trial Court above defendant as appellant preferred Title Appeal No.5 of 1995 to the District Judge, Sylhet which was heard by the learned Sub-ordinate Judge, 3rd Court who dismissed above 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 appellant as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Saifur Rahman, learned Deputy Attorney General for the petitioner submits that in this suit for declaration of title under Section 42 of the Specific Relief Act, 1877 the plaintiffs did not describe the disputed property with necessary Plot Number and Khatian Number or by providing boundaries. The plaintiffs claimed that above property belonged to Surji Kumar Chowdhury but there is no description as to the manner of acquisition of title by above Surji Kumar Chowdhury nor any document was produced to show that above Surji Kumar Chowdhury was the owner of above property. The plaintiffs could not

mention the exact date and year of taking above property. Plaintiff Nos.2 and 3 have alleged to have transferred $\frac{1}{3}$ rd land to plaintiff No.1 by gift but there is no mention of the date and means of above gift. Since the plaintiffs could not prove their lawful title in above property the learned Sub-ordinate should have allowed above appeal and set aside the unlawful judgment and decree of the trial Court but the learned Sub-ordinate Judge committed serious illegality in dismissing the appeal and affirming the unlawful judgment and decree of the trial Court which is not tenable in law.

On the other hand Ms. Aynunnahar Siddiqua, learned Advocate for the opposite parties submits that at trial the plaintiff examined three witnesses and also produced a bunch of documents which were marked as Exhibit Nos.1-6 but all above documents were erroneously destroyed by the trial Court. In support of above submissions the learned Advocate produced an information slip which shows that all documents of above suit were destroyed by the trial Court. On consideration of facts and circumstances of the case and evidence on record the learned Judge of both the Courts below concurrently held that the plaintiffs succeeded to prove their lawful title and possession in disputed 1.28 acres land and accordingly the learned Judges of the Court of Appeal below dismissed the appeal and affirmed the lawful judgment and decree of the trial Court which calls for no interference.

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

A plaintiff of a Civil Suit has to stand on his own feet and prove his claim of title and possession in the disputed property by adducing evidence and a plaintiff shall not get decree due to deficiency in the case of the defendant.

Plaintiff filed above suit for declaration of title for 1.28 acres land but the plaintiff could not provide accurate description of above 1.28 acres land necessary for proper identification by mentioning survey Khatian number and Plot number or by providing boundaries. In the schedule of the plaint above land has been described by D.P. Khatian No.53 but D.P. Khatian or Draft Publication Khatian being not finally published and gazette notified Khatian the same cannot be taken into account for identification of above land. It is admitted that in B.S. Survey above 1.28 acres land has been recorded in the name of the defendant No.1. In the schedule of the plaint the plaintiff did not provide of boundaries of above land by mentioning the names of the owners of the contiguous land. As such disputed 1.28 acres land remained totally unspecified and vague. A Court of law cannot pass a decree for an immoveable property unless the same has been described by Khatian and Plot Number or by boundaries so that the same can be identified. On above ground alone above suit was liable to be dismissed

but the learned Judges of both the Courts below have miserably failed to appreciate above aspect of the suit.

As far as acquisition of title of the plaintiffs are concerned at Paragraph No.4 of the plaint it has been alleged that the disputed property relates to Taluk No.46271/13 of Gopi Roy but at Paragraph No.5 it has been stated that above property belonged to Surji Kumar Chowdhury. There is no description as to how Surji Kumar Chowdhury acquired above land nor any document was produced by the plaintiff to show that Surji Kumar Chowdhury was the owner and possessor of above property. Plaintiff Nos.2 and 3 claimed to have taken settlement of above land from above Surji Kumar Chowdhury but in the plaint there is no specific date or year of above settlement nor the plaintiffs mentioned the means of taking on above settlement. The plaintiffs did not produce any document in support of above of settlement of disputed land from Surji Kumar Chowdhury.

It is not understandable as to how the file containing exhibited documents of the trial Court could be destroyed when Civil Revision was filed to the High Court Division by the appellant of Title Appeal No.14 of 1998.

On consideration of above facts and circumstances of the case and evidence on record I hold that the ends of justice will be met if the judgment and decree of the Court of Appeal below is set aside and above suit is remanded to the trial Court for retrial after giving both

parties an opportunity to amend their respective pleadings and adduce evidence. The learned Joint District Judge shall hold an enquiry as to how exhibited documents were destroyed when the Civil Revision was filed to the High Court Division without long delay.

In above view of the facts and circumstances of the case and materials 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, the Rule is hereby made absolute. The impugned judgment and decree dated 30.07.2001 passed by the learned Subordinate Judge, 3rd Court, Fatchuganj, Sylhet, in Title Appeal No.14 of 1998 dismissing the appeal and affirming the judgment and decree dated 25.02.1996 passed by the learned Assistant Judge, Fatchuganj, Sylhet in Title Suit No.5 of 1995 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

The learned District Judge, Sylhet is directed to hold an inquiry as to how the exhibited documents were destroyed when a Civil Revision against the judgment and decree of the Court of Appeal below was pending for hearing this Court and ensure appropriate punitive measures against the persons who were responsible for above destruction.

The learned Joint District Judge, Sylhet is also directed to conclude the trial of the suit expeditiously within a period of 6(six) months from the date of receipt of this judgment.

Let a copy of the judgment be sent to the District Judge, Sylhet at once.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER.