

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3459 of 2022

In the matter of:

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

And

Mst. Rina Akter being dead his heirs-Tahura Akter and others

... Petitioners

-Versus-

Md. Nurul Islam and another

... Opposite parties

Mr. Md. Moshihur Rahman, Advocate

... For the petitioners.

None appears

... For the opposite parties.

Heard on 19.11.2024 and Judgment on 06.01.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 06.06.2022 passed by the learned Joint District Judge, 2nd Court, Netrakona in Other Class Appeal No.35 of 2022 allowing the same and setting aside the judgment and decree dated 25.01.2022 passed by the learned Senior Assistant Judge, Sador, Netrakona in Other Class Suit No.62 of 2020 should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for declaration of title for 1.50 acres land by adverse possession alleging that above land was acquired by Abdul Jabber predecessor of the petitioners by way of settlement from the Government by registered deed of kabuliyat dated 19.10.1981. Above Abdul Jabber transferred above land to the plaintiff in January 2000 for a consideration of Taka 75,000/- and delivered possession. The defendant repeatedly asked above Abdul Jabber for execution and registration of a sale deed who delayed the same on various pretexts and the plaintiff angrily stated that he would acquire title in above land without any sale deed. On 15 November 2019 the defendants who are heirs of above Abdul Jabber claimed title in above land by inheritance.

The suit was contested by defendant Nos.1-2 and 4-6 by filing a joint written statement alleging that Abdul Jabber was the rightful owner and possessor of above land and after his demise defendants inherited the same. Defendants are in peaceful possession of above land by cultivation. Above Abdul Jabber did not sale above land to the plaintiff nor he delivered possession of above land.

At trial plaintiff examined 5 witnesses and defendant examined 3. Documents of the plaintiff were marked as Exhibit Nos.1-3 and those of the defendant were marked as Exhibit Nos.1 and 2.

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 above plaintiff preferred Other Class Appeal No.35 of 2022 to the Court of District Judge, Netrokona which was heard by the learned Joint District Judge, 2nd Court who allowed above appeal, set aside the judgment and decree of the trial Court and decreed the suit.

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

Mr. Md. Moshihur Rahman, learned Advocate for the petitioners submits that the plaintiff was the Chairman of the local Union Council and Abdul Jabber was a landless peasant who acquired above land from the Government by way of settlement. Had Abdul Jabber actually sold above land to the plaintiff he would surely execute and register a kabala deed to the plaintiff. The plaintiff could not prove by legal evidence that he paid any money to above Abdul Jabber for purchase of above land. Plaintiff witnesses have given contradictory evidence with regard to the place of talk of sale and there was no evidence on record to show that Abdul Jabber ever received Taka 75,000/- from the plaintiff. The plaintiff witnesses could not prove continuous and

peaceful possession of the plaintiff in the above land creating title by adverse possession. On consideration of the facts and circumstances of the case and evidence on record the learned Judge of the trial Court rightly dismissed the suit but the learned Judge of the Court of appeal below without an independent assessment of evidence on record and reversing any material findings of the trial Court most illegally allowed the appeal, set aside the lawful judgment and decree of the trial Court and decreed the suit which is not tenable in law.

No one appears on behalf of the opposite parties at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

I have considered the submissions of the learned Advocate for the petitioners and carefully examined all materials on record including the judgments of the Courts below and the evidence adduced by both the parties at trail.

It is admitted that disputed 1.50 acres was owned and possessed by Abdul Jabber who acquired the same from the Government as a landless peasant by registered kabuliyat dated 19.10.1981 and defendants are heirs of above Abdul Jabber.

The plaintiff has filed this suit for declaration of title in above land by adverse possession. But while giving evidence as PW1 the plaintiff stated that he sought declaration of jote title.

It turns out from the plaint and the evidence of PW1 that the plaintiff has claimed to have entered into the possession of the disputed land not unlawfully but lawfully with the consent of Abdul Jabber. It has been alleged that Abdul Jabber sold above land on receipt of Taka 75,000/- and delivered possession. There is no mention either in the plaint or in the evidence of PW1 as to when alleged lawful possession of the plaintiff became adverse against above Abdul Jabber. There is no claim in the plaint or in the evidence of PW1 that Abdul Jabber denied the alleged transaction of sale or denied to execute and register a sale deed. It has been stated in the plaint that it was not Abdul Jabber but the plaintiff himself who angrily refused to obtain any sale deed from Abdul Jabber. In this regard PW1 Md. Nurul Islam has contradicted above claim of the plaint by stating that Abdul Jabber stated that there was no necessity of any sale deed. Since above Abdul Jabber did not deny the alleged transaction of sale of the disputed land and denied to execute a sale deed or denied the alleged lawful possession of the plaintiff in the disputed land the alleged lawful possession of the plaintiff did not become adverse against Abdul Jabber. As such there is no lawful basis of claim of title by adverse possession against Abdul Jabber of the defendants.

As mentioned above plaintiff was a locally influential person and Union Parishad Chairman and Abdul Jabber a poor peasant. As such it

is not believable that after receipt of full consideration money Abdul Jabber delayed the execution and registration of sale deed and the plaintiff remained inactive in getting an appropriate remedy.

In the plaint no specific date was mentioned as to above sale of the disputed land and receipt of Taka 75, 000/- by Abdul Jabber. Nor any mention has been made as to the venue where above transaction or take of sale was held. In his evidence PW1 Md. Nurul Islam merely stated that above Abdul Jabber sold above land to the plaintiff orally but he did not mention the date, venue or the persons who were present at the time of above sale.

As to the entry of the plaintiff into the possession of the disputed land nothing has been mentioned the evidence of PW1. PW2 Nayeb Ali, PW3 Abdul Gafur, PW4 Md. Kamal Hossain, PW5 Abdul Wahab did not mention the date of entry of the plaintiff into the possession of the disputed land. Nor any of them has stated when the alleged lawful possession of the plaintiff became adverse against the real owners Abduls Jabber.

On consideration of above facts and circumstances of the case and evidence on record I hold that the plaintiff has miserably failed to prove his claim of title by adverse possession in disputed 1.50 acres land by legal evidence and the learned Senior Assistant Judge on correct appreciation of evidence on record rightly dismissed the suit but the

learned Judge of the Court of Appeal below miserably failed to appreciate properly the facts of the case and the law as to adverse possession and most illegally allowed the appeal set aside the lawful judgment and decree of the trial Court and decreed the suit which is not tenable in law.

In above view of the materials on record I find substance in this application under Section 115(1) of the Code of Criminal 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 06.06.2022 passed by the learned Joint District Judge, 2nd Court, Netrakona in Other Class Appeal No.35 of 2022 is set aside and those dated 25.01.2022 passed by the learned Senior Assistant Judge, Sador, Netrakona in Other Class Suit No.62 of 2020 is restored.

However, there is no order as to costs.

Send down the lower Courts record immediately.