

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

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 4640 OF 2022**

**IN THE MATTER OF:**

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

(Against Decree)

-And-

**IN THE MATTER OF:**

Md. Yeakub Ali and others

--- 3<sup>rd</sup> Party-Appellant-Petitioners.

-Versus-

Md. Mofizur Rahman and others.

---Opposite Parties.

**Mr. Md. Mainul Islam** with

**Mr. Mohammad Aftab Uddin**, Advocates

---For the 3<sup>rd</sup> Party-Appellant-Petitioners.

**Mr. Uzzal Kumar Bhowmick** with

**Mr. Monoj Kumar Kirtania**, Advocates

---For the Opposite Party Nos. 1-9.

**Heard on: 04.01.2024, 11.01.2024,**  
**14.01.2024, 17.01.2024, 18.01.2024,**  
**24.01.2024 and 31.01.2024.**

**Judgment on: 06.02.2024.**

At the instance of the present 3<sup>rd</sup> party-appellant-petitioners, Md. Yeakub Ali and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1-9 to show cause as to why the impugned judgment and decree

dated 29.08.2022 passed by the learned Additional District Judge, Court No. 1, Sylhet in Title Appeal No. 176 of 2020 affirming those dated 14.09.2020 passed by the learned Assistant Judge, Companygonj, Sylhet in Title Suit No. 69 of 2019 decreeing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party Nos. 1-9 as the plaintiffs filed the Title Suit No. 69 of 2019 in the court of the learned Assistant Judge, Companygonj, Sylhet for cancellation of the order dated 10.09.2017 passed by the opposite party No. 10, the Assistant Commissioner (Land), Companygonj, Sylhet and the Mutation Case No. 663 of 2017 and also for cancellation of the Order dated 14.01.2019 passed by the Additional Deputy Commissioner (Revenue), Sylhet in the Mutation Appeal No. 20 of 2018. The plaint contains that the suit land measuring 16.94 acres originally belonged to Abdul Jobbar and Mubasshir Ali in equal shares and S. A. Khatian was prepared in their names. The said Abdul Jobbar died leaving behind the present defendant opposite party Nos. 4-17 as the successors of his portion of land. The said defendant-opposite parties filed the Mutation Case No. 663 of 16-17, as such, the S. A. Plot was recorded in their names.

They transferred their shares of land in favour of the plaintiff opposite party Nos. 1 and 2 through the sale deed No. 825 dated 20.06.2017 and handed over the possession in their favour. Accordingly, the plaintiffs owned and possessed the suit land by growing paddy. The plaint also contains that during pending the said case the Assistant Commissioner (Land), Comanygonj, Sylhet passed an order for holding an inquiry. An inquiry was undertaken by the defendant No. 3, Union Land Assistant Officer, who submitted a report stating that the suit land was not in possession of the present plaintiff-opposite parties, as such, the mutation case was rejected. Being aggrieved the plaintiffs filed the Mutation Appeal No. 20 of 2018 in the office of the Additional District Commissioner (Revenue), Sylhet and the appeal was dismissed.

The present defendant-opposite party Nos. 10-12 (in this Revisional Application) contested the suit by filing a written statement contending, *inter alia*, that The State Acquisition and Tenancy Act, 1950 provides a specific remedy for challenging the order passed by them, as such, the suit is not maintainable. The suit was also contested by the present defendant-opposite party Nos. 13-37 (in the instant Revisional Application) and also

contested the suit by filing a written statement supporting the case made out in the plaint.

After hearing both the parties and perusing the evidence adduced and produced by the respective parties the learned trial court being the learned Assistant Judge, Companygonj, Sylhet decreed the suit by his judgment and decree dated 14.09.2020. Being aggrieved the present 3<sup>rd</sup> party-petitioners preferred the Title Appeal No. 176 of 2020 in the court of the learned District Judge, Sylhet which was heard by the learned Additional District Judge, Court No. 1, Sylhet. The 3<sup>rd</sup> party- petitioners contended that the land measuring 16.94 acres was belonged to the said Abdul Jabbar and Mobasshir Ali in equal shares. The said Mobasshir Ali transferred some land in favour of Abdul Latif and Aysha Bibi through the Sale Deed No. 904 dated 21.01.1964 and handed over possession and they also transferred the land to one Kazi Akbor Ali, the grandfather of the appellant-petitioners, by the Sale Deed No. 5196 dated 29.09.1967 and constructed a house in the part of the said land and mutated the record of right in their favour and their names also recorded in the R. S. Record of right and also their names recorded in the D. P. Khatian No. 450, as such, the present plaintiff-opposite parties had no right,

title or possession on the suit land but an Order was passed by the concerned authority allow the appeal filed under rule- 31 of The Tenancy Rule 1955. After hearing the present 3<sup>rd</sup> party-petitioners and others the learned appellate court dismissed the appeal by the impugned judgment and decree dated 29.08.2022. Being aggrieved the present 3<sup>rd</sup> party-petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and the Rule was issued thereupon.

Mr. Md. Mainul Islam, the learned Advocate, appearing along with the learned Advocate Mr. Mohammad Aftab Uddin on behalf of the 3<sup>rd</sup> party-appellant-petitioners, submits that both the parties claimed title and possession of the suit land after purchasing from the original owners, as such, the learned appellate court below committed an error of law as to the title and possession upon the suit land as the title in favour of the plaintiffs could not be decided as the property as there was no formal partition which was an ejmaly (এজমালী) property, therefore, the impugned judgment and decree passed by the learned courts below are liable to be *set aside* and the Rule should be made absolute.

The Rule has been opposed by the present plaintiff-opposite party Nos. 1-9.

Mr. Uzzal Kumar Bhowmick, the learned Advocate, appearing along with the learned Advocate, Mr. Monoz Kumar Kirtania on behalf of the plaintiff- opposite party Nos. 1-9, submits that the present 3<sup>rd</sup> party-petitioners did not have any right to file an appeal against the judgment and decree passed by the learned trial court and the learned appellate court below concurrently found that the 3<sup>rd</sup> party cannot challenge the impugned judgment as they could not prove as to their right and title upon the suit land described in the schedule of the plaint, therefore, the learned appellate court below committed no error of law by disallowing the appeal preferred by the present 3<sup>rd</sup> party-petitioners, as such, the Rule should be liable to be discharged.

The learned Advocate further submits that the suit was filed by the present plaintiff-opposite party Nos. 1-9 was declared title and possession by the learned trial court in favour of them but no one of the said learned trial court challenged who were parties in the learned trial court but the present 3<sup>rd</sup> party-petitioners as the appellants preferred the appeal which was

disallowed after considering the evidence by the learned appellate court below affirming the judgment of the learned trial court, thereby, the learned courts below committed no error of law and thus this Rule is liable to be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed by the present 3<sup>rd</sup> party-petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below and also perusing the relevant documents available in the lower courts record, it appears to this court that the present opposite party Nos. 1-9 as the plaintiffs filed a title suit claiming their title and possession upon the suit land according to the sale deed dated 20.06.2017 and in order to get their names recorded in the record of right by filing the Mutation Case No. 62/(IX-I)/17-18 in the concerned Assistant Commissioner (Land), Companygonj, Sylhet and the said Assistant Commissioner (Land) and Additional Deputy Commissioner (Revenue), Sylhet rejected the mutation case and also the mutation appeal case by the authority. It further appears that the present plaintiff-opposite

party Nos. 1-9 filed the present case in the court of the learned Assistant Judge, Companygonj, Sylhet who after hearing the parties of the said suit decreed the said suit by finding that the plaintiffs have title and possession upon the suit land despite the Assistant Commissioner (Land) and Additional Deputy Commissioner (Revenue), Sylhet failed to consider the possession of the plaintiff-opposite party Nos. 1-9.

The plaintiffs could prove their title pursuant to the deed dated 20.06.2017. The present defendant-opposite party Nos. 13-37 did not challenge the judgment and decree passed by the learned trial court by way of appeal. The 3<sup>rd</sup> party- petitioners as the appellants preferred an appeal in the court of the learned District Judge, Sylhet which was heard by the learned Additional District Judge, Court No. 1, Sylhet.

In the above given legal and factual aspects, this court has to take a decision on whether the 3<sup>rd</sup> parties can challenge any judgment and decree passed by a civil court. In this regard, I have carefully examined the judgment and decree passed by the learned trial court decreeing the suit in favour of the present plaintiff- opposite party Nos. 1-9. Normally, a right of appeal is approved by the concerned parties of a suit or appeal but in the



present case, the 3<sup>rd</sup> parties preferred an appeal without submitting the required and relevant documents to show their interest against the judgment and decree passed by the learned trial court. I have also carefully examined that the appeal was filed on the basis of co-sharers/parties in the mutation case and mutation appeal which were disallowed by the concerned authority, as such, the present 3<sup>rd</sup> party petitioners do not have any right to challenge the judgment of the learned trial court by way of appeal where those were not parties. The present petitioners also failed to prove their interest in preferring an appeal as being the 3<sup>rd</sup> party.

I have also examined the findings of the learned trial court who decreed the suit on the basis of the evidence both written and depositions of the PWs and DWs decreed the suit in favour of the plaintiff-opposite parties.

The learned trial court after hearing the parties of the title suit decreed the suit in favour of the present plaintiff- opposite parties on the basis of the following findings:

...“যেহেতু সহকারী কমিশনার (ভূমি) এবং অতিরিক্ত ডেপুটি কমিশনার (রাজস্ব) কর্তৃক প্রচারিত আদেশ বিচার বিভাগীয় কার্যক্রম নহে সেহেতু উক্ত আদেশের বিরুদ্ধে বিভাগীয় কমিশনার কিংবা ভূমি প্রশাসন

বোর্ডে চ্যালেঞ্জ না করিয়া দেওয়ানী কার্যবিধি ১৯০৮ এর ৯ ধারা মতে বর্তমান মামলা Suits of Civil Nature হিসেবে অত্রাদালতে মামলা দায়েরে Express or Implied Bar না থাকা প্রতিয়মাণ হওয়ায় অত্র মামলা আইনত চলতে কোন বাধা নাই প্রতিয়মাণ হওয়ায় অত্রাকারে ও প্রকারে অত্র মামলা রক্ষণীয়। যেহেতু বাদীগণের নিকট ৪-১৭ নং বিবাদীগণ বিক্রি করিয়াছেন। ৪-১৭ নং বিবাদীগণ নালিশী ভূমি দখল বাদীগণ বরাবরে হস্তান্তর করিয়াছেন বলিয়া লিখিত জবাব দাখিল করিয়া এবং DW-1 হিসেবে মৌখিক সাক্ষ্য প্রদান করিয়া বাদীগণের দখল স্বীকার করেন। ১ ও ৩ নং বিবাদী তার প্রতিবেদনে বাদীগণের দখল নাই এবং অতীতেও কখনো ছিল না দাবী করিলেও কার দখলে আছে তাহাও উল্লেখ করেন নাই। যেহেতু ৪-১৭ নং বিবাদীগণের নামে ১ নং বিবাদী নামজারী খতিয়ান সৃজন পূর্বক খাজনা গ্রহণ করিয়াছেন এবং ৪-১৭ নং বিবাদীগণের দখল আছে মর্মে প্রতিবেদন দিয়াছেন এবং উক্ত ৪-১৭ নং বিবাদীগণই বাদীগণের বরাবরে বিক্রয় পূর্বক দখল হস্তান্তর করিয়াছেন সেহেতু নালিশী ভূমিতে বাদীগণের স্বত্ব দখল আছে প্রতিয়মাণ হওয়ায় বাদীগণের নামে নামজারী খতিয়ান সৃজন করা ১ নং বিবাদীর দায়িত্ব ছিল বিধায় সহকারী কমিশনার (ভূমি), কোম্পানীগঞ্জ, সিলেট কর্তৃক নামজারী মামলা ৬২/(IX-I)/17-18 ইং এ প্রচারিত ১০/০৯/১৭ ইং তারিখের আদেশ এবং অতিরিক্ত ডেপুটি কমিশনার (রাজস্ব), সিলেট কর্তৃক নামজারী আপীল ২০/২০১৮ ইং মামলায় প্রচারিত ১৪/০২/১৯ ইং তারিখের আদেশ রদ ও রহিতযোগ্য প্রতিয়মাণ হওয়ায় অত্র মামলার বিচার্য বিষয় ১, ৪, ৫ বাদীগণের অনুকূলে সিদ্ধান্ত গৃহীত হলো”...

The learned appellate court below also concurrently found in favour of the present plaintiff- opposite parties by disallowing the appeal preferred by the present 3<sup>rd</sup> party- petitioners on the basis of the following findings:

...“সবচেয়ে বড় কথা যদি তর্কের খাতিরে ধরে নেওয়া হয় যে, আপীলকারীদের খরিদা দলিলের ভূমি সরেজমিনে নালিশা ভূমিকে আকর্ষণ করে তাহলে আপীলকারীপক্ষের উচিত ছিল আপীল স্থানীয় না করে স্থানীয় তদন্তের মাধ্যমে তা প্রমাণ করা। কিন্তু এ বিষয়ে আপীলের মেমোতে যেমন স্পষ্ট করে দাবী করা হয়নি, তেমনি কোন স্থানীয় তদন্তের দরখাস্তও আপীলকারীপক্ষ দাখিল করেননি। তাই নালিশা ভূমিতে সরেজমিনে রেসপনডেন্ট-বাদীগণ দখলে আছে বলেই প্রমাণিত হয় যেখানে বাদীপক্ষের পূর্ববর্তী বিক্রেতাগণ বিক্রয়ের পর বাদীগণকে দখল বুঝিয়ে দেওয়ার বিষয়ে জবাবে সুস্পষ্টভাবে উল্লেখ করেন। এমতাবস্থায়, বিজ্ঞ বিচারিক আদালত নালিশা ভূমিতে রেসপনডেন্ট-বাদীপক্ষের দখল রয়েছে মর্মে যে সিদ্ধান্ত প্রদান করেছেন তা সঠিক ও যুক্তিসংগত হয়েছে। ফলে সহকারী কমিশনার (ভূমি), কোম্পানীগঞ্জ, সিলেট কর্তৃক নামজারী মামলা ৬২/(IX-I)/17-18 ইং এ প্রচারিত ১০/০৯/১৭ খ্রি. তারিখের আদেশ এবং অতিরিক্ত ডেপুটি কমিশনার (রাজস্ব), সিলেট কর্তৃক নামজারী আপীল ২০/২০১৮ নং মামলায় প্রচারিত ১৪/০২/২০১৯ খ্রি. তারিখের আদেশ বেআইনী ও রদ রহিত করে রেসপনডেন্ট-বাদীপক্ষের নামে পৃথক নামজারী খতিয়ান সৃষ্টির জন্য মর্মে বিজ্ঞ বিচারিক আদালতের তর্কিত রায় ও ডিক্রী সঠিক হয়েছে।”...

In view of the above findings by the learned courts below found concurrently in favour of the present plaintiff-opposite party Nos. 1-9 as to the title and possession upon the suit land by providing evidence, in particular, the Sale Deed dated 20.06.2017 and the Mutation Case No. 62/IX-I/17-18. Therefore, the learned trial court committed no error of law by decreeing the suit in favour of the plaintiff-opposite party Nos. 1-9.

I also consider that the learned appellate court below committed no error of law by affirming the judgment and decree passed by the learned trial court concurrently finding as to the judgment and decree upon the suit land.

I am, therefore, not inclined to interfere upon the impugned judgment and decree passed by the learned Additional District Judge, Court No. 1, Sylhet on 29.08.2022 and I also found that there is no requirement to consider the Rule any further.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The concerned section of this court is hereby directed to send down the lower courts' records along with a copy of this judgment and order to the learned courts below immediately.