

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.6412 OF 2023

In the matter of:

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

And

Most. Ayesha Bibi and others

.... Petitioners

-Versus-

Md. Selim Shikder and others

.... Opposite parties

Mr. Kazi Elias-Ur-Rahman, Advocate

.... For the petitioners.

Mr. Mohammad Eunos, Advocate

.... For the opposite parties.

Heard and Judgment on 06.08.2026

On an application under Section 115(1) of the Code of Civil Procedure, 1908 this Rule was issued calling upon the opposite Nos.1-4 to show cause as to why the impugned judgment and decree dated 11.11.2019 passed by the learned Additional District Judge, Patuakhali in Title Appeal No.64 of 2013 disallowing the appeal and affirming the judgment and decree dated 31.03.2013 passed by the learned Joint District Judge, 3rd Court, Patuakhali in Title Suit No.88 of 2010 dismissing the suit should not be set aside and or such other or further order or orders as to this Court may seem fit and proper..

Facts in short are that the petitioners as plaintiffs instituted Title Suit No.88 of 2010 for redemption of 1.05 acres land transferred by three registered kabla deeds coupled with three separate deeds of reconveyance.

Defendant No.22 contested above suit by filing written statement and above suit was dismissed on contest by the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above plaintiffs as appellants preferred title Appeal No.64 of 2013 to the District Judge, Patuakhali which was transferred to the Court of Additional District Judge who on 11.11.2019 dismissed above appeal for non appearance of the appellants .

Being aggrieved by and dissatisfied with above judgment and decree of the learned Judge of the Court of Appeal below above appellants as petitioners moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure, 1908 and obtained this Rule.

Mr. . Kazi Elias-Ur-Rahman, Advocate for the petitioners submits that above appeal was fixed for hearing on a date of public holiday. As such this Appeal was taken up for hearing on next date. The learned Advocate for the appellant filed hazira but he was busy with hearing of another case in another Court and he was unable to appear before the

Court when above appeal was taken up for hearing and consequently above appeal was dismissed for default. In view of above facts the proper remedy of the appellant lies in Order 41 Rule 19A of the Code of Civil Procedure, 1908 for direct admission of above appeal. But erroneously instead of filing a petition under Order 41 Rule 19A of the Code of Civil Procedure to the Court of Appeal below this Civil Revision under Section 115(1) of the Code of Civil Procedure, 1908 has been filed. The petitioners may be allowed to file a petition under Order 41 Rule 19A of the Code of Civil Procedure, 1908 in the Court below for setting aside above order of dismissal of the appeal.

On the other hand Mr. Mohammad Eunos, learned Advocate for the opposite party Nos.1-2 and 4 submits that Order 41 Rule 17, 19 and 19A of the Code of Civil Procedure, 1908 provides specific provisions for readmission of an appeal dismissed for default in the impugned order the learned Judge of the Court of Appeal below has rightly mention that the Advocate for the appellants and respondent Nos.2-5 filed separate haziras but none was found for the appellant when the appeal was taken up for hearing and the learned Judge rightly dismissed above appeal for default. There is no illegality or irregularity in the impugned order of the learned Judge of the Court of Appeal below. The Code of Civil Procedure provides specific provision for

readmission of above appeal under Order 41 Rule 17, 19 and 19A of the Code of Civil Procedure, 1908 the learned Advocate has erroneously preferred this Civil Revisional application which is not tenable in law.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the impugned judgment and order dated 11.11.2019.

In the impugned order the learned Judge of the Court of Appeal below mentioned that the appellants were found absent on repeated calls when the appeal was taken up for hearing. As such the learned Judge of the Court of Appeal below dismissed above appeal for default. The learned Advocate for the appellants could not show any irregularity or illegality in above order of the learned Judge of the Court of Appeal below which could be revised by this Court. The Code of Civil Procedure has provided specific remedy for the appellants for readmission of above appeal in Rule 17, 19 and 19A of Order 41.

The learned Advocate for the appellants concedes that the filing of above division was an outcome of unintentional error on the part of the appointed Advocate for the appellants and he mentions that the appellants will file an appropriate petition for readmission of above appeal to the Court of Appeal below.

On consideration of above facts and circumstances of the case and submissions of the learned Advocates for the respective parties I am unable to find any illegality or irregularity in the impugned judgment and order passed by the learned Judge of the Court of Appeal below nor I find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure, 1908 and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

The order of stay as well as status-quo granted at the time of issuance of the Rule is vacated.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER