

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

Civil Revision No. 2449 of 2023

In the matter of:

Mosammat Joynob Bibi alias Moroni
...Petitioner.

-Vs-

Deputy Commissioner, Dhaka.
....Opposite party.

Present
Mr. Justice Mamnoon Rahman

Mr. S.R.M. Lutfor Rahman Akhand, Adv.
...For the petitioner.

Mr. Khan Md. Peer-E-Azam Akmal, DAG with
Mr. A.K.M. Mukhter Hossain, AAG
Ms. Sonia Tamanna, AAG
Mr. Md. Uzzal Hossain, AAG
...For the opposite party.

Heard on: **04.08.2024**

And

Judgment on: **The 27th January, 2025**

In an application under section 115(4) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 15.02.2023 passed by the learned District Judge, Dhaka in Civil Revision No. 186 of 2019 disallowing the revision thereby affirming the judgment and order dated 07.10.2019 passed by the learned Senior Assistant Judge, 6th Court, Dhaka in Title Suit No. 42 of 2004 rejecting the application for amendment of the decree passed in Title Suit No. 42 of 2004 and also amendment the schedule of the plaint, should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The short facts relevant for the disposal of the rule, is that, the petitioner as plaintiff filed Title Suit No. 42 of 2004 in the court of Senior Assistant Judge, 6th Court, Dhaka for declaration of title. The defendant of the said suit contested by filing written statement denying all the material allegations made in the plaint. The trial court, namely the Senior Assistant Judge, 6th Court, Dhaka proceeded with the suit wherein both the parties adduced evidence both oral and documentary. The trial court after hearing the parties and considering the facts and circumstances decreed the suit partially in respect of $13\frac{1}{2}$ acres of land vide judgment and decree dated 19.11.2006. The defendant however did not file any appeal challenging the judgment and decree passed by the trial court. Pursuant to the judgment and decree passed by the trial court the plaintiff petitioner took necessary steps to correct the R.S. Khatian on the ground that in the survey, namely the Dhaka City Survey the Dag was shown as 258 but in the decree it was stated as 259. Thereafter, the city Jarip also prepared showing the plot as 258. The petitioner thereafter pressed an application under section 151/152 read with section 153 of the Code of Civil Procedure, 1908 for amendment of the schedule of the plaint as well as decree before the trial court. The trial court after hearing the parties and considering the facts and circumstances, vide judgment and order dated 07.10.2019 rejected the application. Being aggrieved, the petitioner moved before the District Judge, Dhaka by way of civil Revision No. 186 of 2019 and the same was heard and disposed of by the District Judge, Dhaka who

vide the judgment and order dated 15.02.2023 also rejected the revision. While rejecting the application both the courts below came to a conclusion that the suit is of the year 2004 and the decree was passed in the year 2006 and the instant application is being filed long after the same and as such the same cannot be corrected at this stage. The other findings of the both the courts below are that the court has no jurisdiction to amend the same being *functus officio* and such amendment can only be done by opening of the case itself.

Mr. S.R.M. Lutfor Rahman Akhand, the learned Advocate appearing on behalf of the petitioner submits that both the courts below without applying their judicial mind and without considering the facts and circumstances, most illegally and in an arbitrary manner passed the impugned judgment and order which requires interference by this court. He submits that there is no dispute regarding the title, ownership and possession of the property in question and the trial court decreed the suit in favour of the petitioner but inadvertently the plot number was shown as 259 instead of 258. By referring the latest Khatian being No. 3 as evident in Annexures-B and B(1) the learned Advocate submits that the latest Khatian also shown as 258 and this is pure clerical mistake which requires to be corrected for ends of justice. The learned Advocate also referred the provisions of section 152 and submits that the court is fully empowered to correct clerical or arithmetical mistake. Regarding the question of delay the learned Advocate also referred the decisions reported in 56 DLR221.

Mr. Khan Md. Peer-E-Azam Akmal, the learned Deputy Attorney General appearing on behalf of the opposite party vehemently opposes the rule. He submits that this is a case of the year 2004 and decree was passed in the year 2006 and the application was preferred after long 13 years as such the court below committed no error in rejecting the same.

I have heard the learned Advocate for the petitioner as well as the learned Deputy Attorney General for the opposite party. I have perused the impugned judgment and order passed by both the courts below, revisional application, ground taken thereon as well as necessary papers and documents annexed herewith.

On perusal of the same, it transpires that admittedly the present petitioner as plaintiff filed Title Suit No. 42 of 2004 in the court of Senior Assistant Judge, 6th Court, Dhaka impleading the opposite party as defendant. It further transpires that in the said suit the defendant opposite party contested by filing written statement denying all the material allegations made in the plaint. It further transpires that the trial court proceeded with the suit wherein the trial court framed Issues and both the parties adduced evidence both oral and documentary. Pursuant to the evidence led by the parties and materials on record the trial court passed decree in favour of the present petitioner. It further transpires that the defendant did not prefer any appeal against the judgment and decree passed by the trial court. On perusal of the papers and documents, it further transpires that subsequently when the petitioner took steps in the office of the Assistant Commissioner of land for

correction of the record the Dag number was found wrongly recorded as 259 instead of 258. Subsequently, it came to the knowledge of the petitioner-plaintiff that in the plaint the same Dag was wrongly mentioned as 259 instead of 258 though all the other Dags are intact. Thereafter, the petitioner-plaintiff pressed an application under section 151/152 read with section 153 of the Code of Civil Procedure, 1908 before the trial court. Section 152 of the Code of Civil Procedure, 1908 deals with the provision regarding clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission and the said provisions of law empowers the court of law to correct the same either of its own motion or on an application such clerical or arithmetical mistakes. The said provisions of law is based on the principle that an act of the court shall not prejudice any person and the courts have a duty to see that their records are true and they represent the correct state of affairs. When a decree signed by the court with due notice to the party lawyers, it should be deemed to have been correctly drawn. Once a judgment has been delivered, signed and sealed, it can only be changed under this section, namely section 152 or under Order 47 rule 1 of the Code of Civil Procedure, 1908. As per the said provisions of law it is an imperative duty of the court to correct the mistake and the power is unlimited. In the decisions reported in 56 DLR 221 the High Court Division came to a conclusion that while exercising the power conferred under section 152 of the Code of Civil Procedure, 1908 there being no question of limitation. In the present case in hand, it transpires that admittedly in

the plaint, judgment and decree the Dag Number was drawn as 259 instead of 258. The proposed prayer is not affecting any person or authority in any manner or any right and title of any person. It further transpires that subsequent record of right, namely the Dhaka City Jarip as evident in Annexures-B and B(1) clearly shows the Dag Number as 259.

Considering the facts and circumstances, I am of the view that the court of law is very much competent to correct the instant clerical mistake in the judgment and decree passed by the court below. Accordingly, the instant rule is made absolute without any order as cost. The impugned judgment and decree passed by the court below is hereby set aside. The trial court is directed to correct the judgment and decree as well as schedule of the plaint by inserting the Dag Number 258 instead of 259 within 7(seven) days from the date of receipt of the instant order without fail.

The office is directed to communicate the order to the concerned court below with a copy of the judgment, at once.

(Mamnoon Rahman,J:)