

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2140 OF 1991

In the matter of:

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

And

Ajit Kumar Mallick @ Majumder @ Majee being dead
his heirs: Protap Chandra Majhi @ Majumder and
others

... Petitioners

-Versus-

Sailendra Nath Mollick and others

... Opposite parties

None appears

.... For the petitioners.

Ms. Purabi Saha, Advocate

.... For the opposite party No.1.

Judgment on 12.11.2024.

This Rule was issued calling upon the opposite party Nos.1 and 2 to show cause as to why the impugned judgment and decree dated 13.03.1991 passed by the Subordinate Judge, Bagerhat in Title Appeal No.19 of 1986 reversing those dated 13.01.1986 passed by the learned Munsif, Mongla, Bagerhat in Title Suit No.202 of 1984 should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for declaration that enlistment of disputed 5.53 acres land as vested and non resident property and leasing out of the same to defendant Nos.1-4 vide Lease Case No.35 (R) of 1975-76 is illegal, void

and not binding upon the plaintiff and for a decree of perpetual injunction.

Plaintiffs claimed title and possession in above land on the basis oral settlement by their predecessors from three sons of C. S. recorded tenant Radacharan in Baisakh 1349 B.S. and above property having enlisted as enemy property filed Title Suit No.368 of 1956 and obtained decree by their predecessors on 20.03.1957

The suit was contested by defendant Nos.1-4 and 5 by filing separate written statements alleging that plaintiffs predecessors did not take settlement of above land and above C.S. recorded tenants left this country for good for India before 1965 and the disputed property was rightly enlisted as vested and nonresident property and the defendants obtained lease of the same from the Government and they are in peaceful possession of the same.

On consideration of facts and circumstances of the case and evidence on record the learned Munsif dismissed above suit.

Being aggrieved by above judgment and decree of the trial Court plaintiffs preferred Title Appeal No.19 of 1986 to the District Judge, Bagerhat which was heard by the learned Sub-ordinate Judge who allowed the appeal, set aside the judgment and decree of the Trial Court and decreed the suit.

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

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

Ms. Purubi Saha, learned Advocate for opposite party Nos.1 submits that disputed 4.69 acres land has been enlisted in the "Kha" schedule of the Arpito Sampatti Prottarpon Ain, 2012 and published in the official gazette on 19.05.2012. Since above property has been published in above gazette as Aripito Shampatti this Civil Revision has abated pursuant to Section 28Ka of the অর্পিত সম্পত্তি প্রত্যাপণ আইন, ২০১২.

In support of above submissions the learned Advocate has produced the Bangladesh gazette published on 19.05.2012 Marked as Annexure No.1. As far as remaining 84.50 decimal land is concerned the learned Advocate submits that the learned Judge of the Court of Appeal has on an independent and correct analysis of evidence on record rightly allowed the appeal and decreed the suit which calls for no interference.

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

The opposite party as plaintiff instituted this Title Suit No.202 of 1984 in the Court of Munsif, Mongla, Bagerhat for declaration that

enlistment of disputed 5.50 acres land in the list of vested and non resident property is illegal and void. It appears from above Bangladesh Gazette dated 19.05.2012 that at serial No.47 and 50 in total 4.69 acre land out of disputed 5.5350 acre has been enlisted in the “Kha” schedule of the Arpito Sompotti Parttarpon Ain, 2001. Section 28Ka of the অর্পিত সম্পত্তি প্রত্যাপণ আইন, ২০০১ reads as follows:

“২৮ক। (১) অর্পিত সম্পত্তি প্রত্যাপণ (দ্বিতীয় সংশোধন) আইন, ২০১৩ কার্যকর হইবার সঙ্গে সঙ্গে অর্পিত সম্পত্তি সম্পর্কিত 'খ' তফসিলে প্রাপ্ত হইবে এবং উহা এমনভাবে প্রাপ্ত হইবে যেন, উক্ত তফসিলভুক্ত সম্পত্তি কখনোই অর্পিত সম্পত্তির তালিকাভুক্ত হয় নাই।

(২) এই আইনের অধীন স্থাপিত ট্রাইব্যুনাল, আপীল ট্রাইব্যুনাল বা বিশেষ আপীল ট্রাইব্যুনাল কর্তৃক উপ-ধারা (১) এর অধীন প্রিলুপ্তকৃত 'খ' তফসিলভুক্ত সম্পত্তির বিষয়ে ইতোমধ্যে নিষ্পত্তিকৃত যে কোন মামলার রায় বা ডিক্রী প্রাপ্তি ও অকার্যকর বলিয়া গণ্য হইবে এবং উক্ত ট্রাইব্যুনাল, আপীল ট্রাইব্যুনাল বা বিশেষ আপীল ট্রাইব্যুনালে প্রচারাধীন উক্ত 'খ' তফসিলভুক্ত সম্পত্তি সম্পর্কিত সকল মামলা abate হইয়া যাইবে এবং এইরূপ abatement এর জন্য সংশ্লিষ্ট আদালত কর্তৃক আনুষ্ঠানিক আদেশ প্রদানের প্রয়োজন হইবে না।

(৩) উপ-ধারা (১) এর অধীন প্রাপ্তকৃত 'খ' তফসিল সম্পর্কিত কোন আবেদন বা নালিশ জেলা কমিটি, বিভাগীয় কমিটি বা কেন্দ্রীয় কমিটিতে যে কোন পর্যায়েই থাকুক না কেন উহা স্বয়ংক্রিয়ভাবে প্রাপ্ত হইয়া যাইবে।

(৪) উপ-ধারা (১) এর অধীন 'খ' তফসিল প্রাপ্ত হওয়া সত্ত্বেও উক্ত তফসিলভুক্ত সম্পত্তিতে সরকার বা কোন ব্যক্তির কোন স্বত্ব বা স্বার্থ সম্পর্কে প্রচলিত আইনের অধীন প্রতিকার লাভে কোন আইনগত বাধা থাকিবে না।

(৫) ধারা ২০ক প্রিলুপ্ত হওয়া সত্ত্বেও উক্ত ধারার অধীন গঠিত কোন বিশেষ আপীল ট্রাইব্যুনালে 'ক' তফসিলভুক্ত সম্পত্তি সম্পর্কিত কোন মামলা প্রচারাধীন থাকিলে উহা এমনভাবে চলমান থাকিবে যেন, উক্ত ট্রাইব্যুনাল প্রিলুপ্ত হয় নাই এবং উক্ত মামলায় প্রদত্ত ডিক্রী ধারা ২ (ছ) এর উদ্দেশ্য পূরণকল্পে প্রদত্ত ডিক্রী হিসাবে গণ্য হইবে।”

As such this proceeding under Section 115 of the Code of Civil Procedure has abetted as far as above "Kha" listed disputed 4.69 acre land is concerned.

This proceeding is legally maintainable for remaining 84.50 decimal land. Undisputedly 5.79 acre land of C.S. Khatian No.146 and 6.90 acre land of C.S. Khatian No.165 belonged to Nogendra Nath and Radha Charan in equal share. Above Radha Charan died leaving 3 sons namely Shoshodhor, Profulla and Ajit Kumar and their names were recorded rightly in R.S. Khatian Nos.318 and 270.

It was claimed by the plaintiff that above three brothers gave settlement of above land to the predecessors of the plaintiff namely Rajendra, Banka Beihari and plaintiff No.3 in Boishakh 1349 B.S. and the plaintiffs are in possession of above land but relevant S.A. khatian was erroneously recorded in the name of the above landlords and above land was enlisted as enemy property at their instance.

As such the plaintiffs filed Title Suit No.368 of 1956 for declaration of their title and for further declaration that enlistment of above property as enemy property was illegal and not binding upon the plaintiffs and above suit was decreed on 20.03.1957.

At trial the plaintiff produced a certified copy of the judgment and decree passed in Title Suit No.368 of 56 which was marked as Exhibit No.4 and in above judgment and decree besides determination of title of the plaintiff clear mention has been made that the enlistment

of the suit property as enemy and nonresident property at the instance of above Shosodhar and others were unlawful and without any basis.

On a detailed analysis of the evidence on record the learned Judge of the Court of Appeal below held that plaintiffs are in peaceful possession of the disputed land. It turns out from record that above findings of the Court of Appeal below as to the possession of the disputed land is based on evidence on record.

The plaintiffs secured a decree in Title Suit No.368 of 1956 from a competent Civil Court to the effect that the enlistment of the disputed property in the list of nonresident and enemy property was unlawful long before the promulgation of the অর্পিত সম্পত্তি প্রত্যাপণ আইন, ২০০১. The learned Judge of the Court of Appeal below on consideration of materials on record rightly allowed the appeal and decreed the suit which calls for no interference.

In above view of the materials on record I am unable to find any infirmity or illegality in the impugned judgment and decree of the Court of Appeal below as far as it relates to disputed 84.50 decimal land nor I find substance in this revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged in part.

In the result, the Rule is discharged in part.

The impugned judgment and decree dated 13.03.1991 passed by the Subordinate Judge, Bagerhat in Title Appeal No.19 of 1986 is

affirmed for disputed 84.50 decimal land and for the remaining
disputed land this proceeding stands abetted.

However, there is no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER