

District: Patuakhali

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

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 3070 of 1991

In the matter of :

Md. Sona Miah

... Petitioner

-Versus-

Chairman, Patuakhali Pourashava,
Patuakhali and another

...Opposite-parties

No one appears for either of the parties.

Judgment on: 26.11.2024

Rule was issued on an application under section 115 of the Code of Civil Procedure calling upon the opposite party No. 1 to show cause as to why the judgment and decree dated 28.12.1987 passed by the Sub-ordinate Judge, Patuakhali in Title Appeal No. 12 of 1986 reversing those of dated 30.11.1985 passed by the Munsif, First Court, Patuakhali in Title Suit No. 90 of 1985 decreeing 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.

The instant civil revisional application initially was filed before the Barishal Bench and was numbered as Civil Revision No. 41 of 1988; subsequently the said revision has been transferred to this Court and renumbered as Civil Revision No. 3070 of 1991.

This matter has been sent before this Bench under the order of Hon'ble Chief Justice to dispose of the revisional application expeditiously as the same is 36(thirty six) years old one, thus, it is taken for disposal on merit in absence of learned Advocates.

The present petitioner as plaintiff filed Title Suit No. 90 of 1985 in the First Court of the Munsif, Patuakhali for a declaration that item number 4 of the notice of Patuakhali Pourashava contained in Memo Number 141(16)1-P dated 25.03.1985 intending to leasing out 'Shrimp Mohal' at Patuakhali Terminal Ghat is illegal, void and without jurisdiction and for permanent injunction restraining the pourashava from realizing any tax or toll on account of shrimp business at the Tarminal Ghat. The defendant No. 1, Chairman, Patuakhali Pouroshava, Patuakhali contested the suit by filing written statement denying all the material averments made in the plaint claiming that the suit is not maintainable and the plaintiff has no locus standi to file the suit.

Learned Munsif of the First Court of Patuakhali by his judgment and decree dated 30.11.1985 decreed the suit.

Having been aggrieved by the said judgment and decree of learned Munsif, the defendant No. 1 preferred Title Appeal No. 12 of 1986 before the District Judge, Pautakhali. On transfer the said appeal was heard by the Sub-ordinate Judge, Patuakhali and by his judgment and decree dated 24.12.1987 allowed the appeal reversing the judgment and decree of learned Munsif of First Court, Patuakhali dated 30.11.1985 in Title Suit No. 90 of 1985 and thereby dismissing the suit on contest.

Having been aggrieved by the aforesaid judgment and decree of learned Sub-ordinate Judge, Patuakhali, the plaintiff preferred this civil revisional application and obtained the Rule.

Neither of the parties appeared to defend or contest the Rule.

From the record, it appears that the Court of appeal below in its judgment categorically found that the plaintiff failed to prove his locus standi to file this suit. The plaintiff claims that he along with other traders taken lease of Government khas land and upon constructing houses therein have been running their businesses. The plaintiff failed to produce any paper to show that he ever took any lease of any

khash land for running such business near the terminal ghat. No other traders filed any of those documents in favour of the plaintiff to show that they along with the plaintiff took settlement of any khash land for running shrimp business.

It was also found by the appellate Court below that the place in question under the suit is a market, situated within the pourashava for selling and purchasing of shrimp, where the plaintiff claimed to have his business dealing with and the appellate Court below specifically found that the pourashava is authorized under the law of the land to lease out the market in open tender within its jurisdiction.

Moreover, to maintain the suit as framed in declaratory form, the plaintiff is to establish that he has a legal character, title or any right which has been denied by the defendant, but in the case in hand, the plaintiff miserably failed to establish that he has any right, title or legal character entitling him to a declaration as sought for. Thus, the suit is hit by section 42 of the Specific Relief Act, 1877.

From the record, it further appears that the plaintiff-petitioner challenged the tender notice purportedly floated by the defendant No. 1, Pourashava for leasing out the market for the year 1985, the tenure of aforesaid tender or lease in question was ended in the year 1986. Thus, the suit lost its cause of

action long before 38(thirty eight) years, which makes the Rule infructuous.

In the premise above, this Court do not find any merit in the Rule.

Accordingly, the Rule is discharged without any order as to cost.

Send down the Lower Courts' Record.

Communicate the judgment and order at once.