

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2890 of 2023

In the matter of:

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

And

The Peoples Republic of Bangladesh represented by the
Deputy Commissioner, Sirajgonj
... Petitioners

-Versus-

Md. Jel Hossain Mondal and others

... Opposite parties

Mr. Md. Moshihur Rahman, Assistant Attorney General
with Mr. Md. Mizanur Rahman, Assistant Attorney
General

... For the petitioners.

Mr. Md. Ismail Hossain Bhuiyan, Advocate

... For the opposite party Nos.1 and
3-4.

Heard on 09.01.2025 and Judgment on 12.01.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 15.06.2014 passed by the Additional District Judge, 1st Court, Sirajgonj in Other Class Appeal No.64 of 2013, affirming those dated 25.06.2009 passed by the learned Assistant Judge, Kazirpur Adalat, Sirajgonj in Other Class Suit No.12 of 2008 decreeing the suit, should not be set

aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that opposite parties as plaintiffs instituted above suit for declaration of title for 63 decimal land as described fully in schedule 'Kha' to the plaint alleging that 5.50 acres land including disputed land belonged to four brothers namely Bikrom Ali, Ikram Ali, Nabab Ali and Kosim Ali and their mother Pathojan Bibi and the same was accordingly recorded in C.S. Khatian No.261. Above Pathojan Bibi died leaving four sons Ikrom Ali, Bikrom Ali, Nabab Ali and Kasim Ali as her heirs and above Nabab Ali and Kasim Ali died before marriage leaving two brothers Ikrom Ali and Nabab Ali as heirs. Plaintiffs are heirs of above Ikrom Ali and defendant Nos.2-10 are heirs of Bikrom Ali and on the basis of amicable partition plaintiffs are in peaceful possession in above disputed land and they have their ancestral dwelling house in 19 decimal land of Plot No.4371.

Defendant No.1 contested above suit by filing a written statement alleging that 2.29 acres land of above C.S. Khatian was subsequently recorded in S.A. Khatian No.1 in several plots but 43 acres land was not recorded in any khatian which was omitted from record and 1.86 acres land of above C.S. Khatian was rightly recorded in the names of individuals in several S.A. Khatian. But 43 decimal land was omitted

from recording in any khatian. Plaintiffs do not have any right, title, interest and possession in the above land.

At trial plaintiffs examined 3 witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-4. On the other hand the defendant examined 1 witness but defendant did not exhibit any document.

On consideration of the facts and circumstances of the case and evidence on record the learned Assistant Judge decreed above suit.

Being aggrieved by above judgment and decree of the trial Court above defendant as appellant preferred Other Class Appeal No.64 of 2013 to the learned District, Sirajgonj which was heard by the learned Additional District Judge, 1st Court who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with the judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court and obtained this Rule.

Mr. Md. Moshihur Rahman, learned Assistant Attorney General for the petitioner submits that the basis of the claim of the plaintiffs is C.S. Khatian No.261. It has been alleged that names of the predecessors of the plaintiffs were recorded in above khatian and as their successive heirs plaintiffs are in continuous and peaceful possession in the above

land. A certified copy of C. S. Khatian No.261 has been produced by the plaintiffs at trial which was marked as Exhibit No.1. Defendant claims that above document was a forged document. As such the plaintiffs were required to prove the genuinity and correctness of the above khatian but they failed to do so. But the learned Judges of both the Courts below have failed to appreciate above aspect of the case and evidence on record and most illegally decreed the suit and dismissed the appeal respectively which is not tenable in law.

On the other hand Mr. Md. Ismail Hossain Bhuiyan, learned Advocate for the opposite party Nos.1 and 3-4 submits that the plaintiffs have produced a certified copy of C.S. Khatian No.261 at trial which was marked as Exhibit No.1. Above document shows that plaintiffs predecessor Ikrom Ali, Bikrom Ali and Pathojan Bibi were tenants of the disputed land and plaintiffs as heirs of Iikrom Ali is in possession of the disputed land. It has been stated in the both the C.S. and S.A. Khatian that the nature of disputed Plot No.2513 is home and plaintiffs are living in the house situated in above land. Plaintiffs have succeeded to prove their title and possession in above land by consistent and mutually supportive evidence of three competent witnesses and on consideration of above materials on record the learned Additional District Judge rightly dismissed the appeal and

affirmed the judgment and decree of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the Courts below and evidence on record.

At Paragraph No.1 of the plaint and in his evidence as PW1 plaintiff has stated that Ikrom Ali, Bikrom Ali, Nabab Ali, Jashim Mondal and Pathojan were tenants of 5.54 acres including above disputed 63 decimal land and the same was correctly recorded in C.S. Khatian No.261. In support of above claim PW1 produced a certified copy of above C.S. Khatian which was marked as Exhibit No.1. It turns out from Exhibit No.1 that the same corroborates above claim as to ownership of 5.54 acres land of C.S. Khatian No.261.

Learned Assistant Attorney General submits that above C.S. Khatian is a forged document. But no such averment has been made either in the written statement submitted by the defendant No.1 or in the evidence of sole defendant witness examined by the defendant at trial. The plaintiffs have given a genealogy of above C.S. recorded tenants in the plaint which has been reiterated by plaintiff witness No.1 in his evidence as PW1. It has been stated that Pathojan died leaving her

four sons Ikrom Ali, Bikrom Ali, Nabab Ali and Jashim Mondal as her heirs and Nabab Ali and Jashim Mondal died issueless before marriage leaving two brothers Ikrom Ali and Bikrom Ali as their heirs. Defendant No.1 did not dispute above genealogy of the plaintiffs either in the written statement or in the evidence of PW1.

It is admitted that plaintiffs are successive heirs of Ekram and claims title and possession in disputed 63 decimals land as his successive heirs. It has been alleged by the plaintiffs that they have their dwelling house in disputed 19 decimal land of Plot No.2513. Above claim of the plaintiffs have been corroborated by the endorsement in the possession column of above plot both in the C.S. and S. A. Khatians. The defendant did not make any specific denial to above claim of the plaintiffs that plaintiffs have their ancestral dwelling house in above disputed land. It is true that 43 decimal land of above C.S. Khatian No.261 was omitted from the relevant S.A. Khatians. But that does not shift the ownership of above land to the Government. While giving evidence on behalf of the defendant DW1 could not mention the basis of S.A. Khatian of the disputed land in the name of defendant. He merely stated that the S.A. Khatian No.1 was prepared since the disputed land became khas land of the Government.

Since plaintiffs predecessors were original owners of the disputed land and in their names C.S. Khatian was correctly prepared the burden lies upon the defendant to show the basis of the S.A. Khatian which stands in his name. But the defendant could not claim let alone prove that the tenancy of Pathojan Bewa and other C.S. recorded tenants came to an end by any means and above property vested in the Government.

On considerations of above facts and circumstances of the case I hold that the learned Judges of both the Courts below rightly found that the plaintiffs have succeeded to prove their title and possession in the disputed land as successive heirs of C.S. recorded tenant and on above correct view the learned Additional District rightly dismissed the appeal and affirmed the judgment and decree of the trial Court which calls for no interference.

In above view of the materials on record I am unable to find any illegality or infirmity in the impugned judgment and decree of the Court of Appeal below nor I find any 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 the result, the Rule is hereby discharged. The order of stay granted at the time of issuance of the Rule is recalled.

However, there is no order as to costs.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER