

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

**Present:
Mr. Justice Ashish Ranjan Das**

Civil Revision Case No. 1342 of 2011.

In the matter of:

Mosammat Mariam Nessa and others.

.....Plaintiff-appellant-Petitioner.

-Versus –

Government of Bangladesh and others

..... opposite party.

Mr. Nawshed Jamil, Advocate with

Mr. Md. Motiar Rahman, Advocate

.....Plaintiff-appellant-Petitioner.

Mr. S.M. Ashraful Hoque, D.A.G.

.....for the opposite party.

**Heard on:16.01.2024 and Judgment
on:17.01.2024.**

Ashish Ranjan Das, J.:

In the instant case the plaintiff petitioner obtained a rule under section 115(1) of the Code of Civil Procedure, 1908 (for short C.P.C) against the judgment and decree of dismissal passed in Title Appeal No.107 of 2006 by learned Joint District Judge, Meherpur wherein the decree of dismissal passed in Title Suit No. 114 of 1996 by learned Senior Assistant Judge, Meherpur was affirmed in appeal.

I have heard the learned lawyers for the petitioner and the objection raised by the learned Deputy Attorney General and also perused the record.

Short facts relevant for the purpose that could be gathered from the file are that 47 decimals of land of plot No. 2596 Khatian No. C.S. 563 belonged to the landlord Moharaja Mohindra Chandra Nondi who settled the disputed plot in favour of Labonno Prova Biswas. Then on she started living there by constructing a paccua building. As India was partitioned Labonno Prova exchanged the disputed property with that of one Atahar Ali of District-Hawra, West Bangal. He obtained a Power of Attorney and on its strength the land was sold to Dalil Biswas the predecessor of the plaintiffs. On the land there were delapated buildings also and the government according to the plaintiff rented the houses to defferent persons. The government requisitioned the property. However, mistakenly only 20 decimals of land was recorded in the name of Labonno Prova and as her successor the plaintiffs have been paying rent. But out of the exchanged properties only 20 decimals of land was recorded in the name of Labonno Prova while the remaining portion remained recorded in the name of her landlords and not in the name of government. As the government attempted to construct puccka buildings on the vacant portion of the disputed land the plaintiff brought this suit for

declaration of title on the basis of adverse possession. They have been owning and possessing the land down from their predecessor for than 50 years.

In the trial court the opposite party Government represented by the Collector of Meherpur contested the suit by filing a written statement. It has been claimed by the government that the property has been acquired and remaining under the possession of the government leaving no title or possession for the plaintiff petitioners.

In the court of trial the suit was dismissed and in appeal also the decree of dismissal remained affirmed.

Now the learned lawyer for the plaintiff petitioners submit that both in the trial and in appeal light was not thrown at the real facts and documents.

It appears that the government has been claiming the property as acquired and it appears that the courts below also stamped the property as acquired and dismissed the suit. The learned lawyer for the plaintiff-petitioners Mr. Nawshed Jamil, advocate took me through Exhibit-11 certified copies of house rent Case No.30 of 1952 (requisition) wherein it appears that the defendant Government in the proceeding admitted ownership of the plaintiffs. Besides by recording a portion of the exchanged property of 20 decimals in the name of the plaintiff predecessor, the government seems to have recognized

bonafide of the fact of exchange. The learned Deputy Attorney General pointed out that the P.W.1 in the court trial in his deposition mentioned the property as acquired. The learned lawyer for the petitioner however, submits that the P.W.1 made such suicidal statements out of ignorance.

It appears that the defendant Government recognizing the bonafide of exchange between Labonno Prova and Atahar Ali registered a deed (Exhibit-1) on 07.12.1978. Mysteriously the original deed of exchange was not admitted in evidence. It was power of Attorney and on its strength the land was sold and the government also accepted preparation of ROR in the name of the Labonno Prova in respect of 20 decimals of land. The plaintiff produced a series of Government rent receipts exhibit-5 series and also produced bank receipts (exhibit-8-10) which suggested that the rent collected for the suit land was deposited in the name of the plaintiffs.

Thus as I see and the learned lawyers also raised that the evidences both oral and documentary were not properly led. The learned lawyer for the petitioner submits that entire matter requires to be readjudged.

I find substance in the submission.

As a result the rule is made absolute.

The impugned judgment passed by the learned Joint District Judge, Meherpur dated 06.05.2010 in Title Appeal No.107 of 2006 is hereby set aside.

The learned lower appellate is instructed to rewrite a judgment giving opportunity to both the parties to lead evidences if so advised.

With the finding the Rule is made absolute.

The lower appellate is instructed to decide the appeal preferably within 06(six) months.

However, there is no order as to costs.

Send down the Lower Court records and communicate the judgment and decree to the concern Court at once.

(Justice Ashish Ranjan Das.)