

Present:
Mr. Justice Md. Iqbal Kabir
And
Mrs. Justice Jesmin Ara Begum

First Appeal No. 694 of 2000

Government of Bangladesh, represented by the
Deputy Commissioner, Moulvibazar
....Appellant

Versus
General Certificate Officer, Moulvibazar and others
....Respondents

Mrs. Nahid Hossain, D.A.G. with
Mr. Md. Jahirul Islan, D.A.G,
Mr. Md. Abdul Mannan, D.A.G,
Mr. Md. Towhidul Islam, A.A.G,
Md. Md. Sabbir Hossain, A.A.G,
Mr. Nooray Alam Shiddique, AAG and
Ms. Nasrin Khandaker, A.A.G
....For the Appellant

No one appears
....For the Respondents

Judgment on 30.11.2025.

Md. Iqbal Kabir, J:

At the instance of the appellant, this First Appeal is directed against the judgment and decree dated 22.03.2000 passed by the learned Subordinate Judge, 1st Court, Moulvibazar in Title Suit No. 5 of 1997.

The short facts stated in this appeal are that respondents/ plaintiffs obtain a lease of a fishery, namely, Kushiara Jalmahal, for the year 1395 B.S to 1395 B.S, i.e., and deposited Tk. 2,50,000/- as a rent for the year 1395 B.S, and an agreement has been executed, and the defendant has given possession through a document. Thereafter, the plaintiffs went to the suit property and found that most of the land of the alleged jalmahal has been settled by various individual persons who are cultivating the paddy in the said land. He also found that the jalmahal has been turned into land. Therefore, he was not able to cultivate the fish. He filed an application to the Revenue Officer as he did not cultivate the fish. Knowing such RDC, Moulvibazar inquired into the matter and found that most of the alleged jalmahal, i.e., 128.25 acres of land, has been

settled in favour of the various persons and based on the report dismissed the FCC Case being No. 161/1990 vide its order dated 13.03.91, which was initiated to collect rent for the year 1396 B.S. However, in an appeal against the said rejection order, the appellate Court directed the plaintiff to pay Tk. 40,001.87. Against which plaintiff filed a review application, which was rejected. Thereafter, the plaintiff filed a case being No. 46/91, before the Sub-Judge, 1st Court, Moulvibazar, for setting aside all the notices issued by the RDC, Moulvibazar. Apart from that plaintiff filed a money suit being No. 8 of 92, to return the amount of Tk. 2,50,000/- in the said Court, which was deposited as rent for the year 1395 B.S. However, the Court decided that the decision which was given to deposit Tk. 40,001.87 was not valid and gave a part decree in a case being No. 8/92, thereby, the Court directed the respondent to pay Tk. 97916.97 to the plaintiff and dismissed the FCC Case being No. 161/1990. However, the opposite party did not take any initiative against such an order. After a long period of time at the instance of the vested interest quarter, the opposite party brought another FCC Case being No. 1 of 1991, against the plaintiff based on the same Jalmahal, only to harass and humiliate him. Hence this suit.

However, in the suit, the plaintiff prayed for the following relief:

(ক) ১ নং বিবাদীর কার্যালয়ের এফ, সি, সি ১/৯১ নং মোকদ্দমা সংক্রান্ত পরস্পর বিরোধী তারিখ সম্বলিত বিগত ২৭/১/৯৬ ইং তারিখে জারীকৃত স্মারক ও তদসংক্রান্ত বর্ণিত মোকদ্দমার পরবর্তী যাবতীয় আদেশ সমূহ বেআইনী, বেদাড়া, এখতিয়ার বর্হিভূত, Against the principle of Natural Justice স্বৈচ্ছাচারমূলক ও বাতিল বলিয়া ঘোষিত হওয়ার।

(খ) বাদী বিবাদীপক্ষ বিরুদ্ধে আর আর যে আকারে যদরূপ উপকার পাওয়ার যোগ্য বিবেচিত হন তাহা পাওয়ার।

(গ) সর্বাবস্থায় বাদীর দায়েরী অত্র মোকদ্দমার খরচ সহ ডিক্রী প্রদান করিতে মাননীয় আদালতের মর্জি হয়।

The Court below, considering the pleadings, framed as many as four issues, and those issues are as follows:

- ১) বর্তমান আকারে ও প্রকারে অত্র মোকদ্দমা চলিতে পারে কি না ?
- ২) ১নং বিবাদীর কার্যালয়ের ১/৯১ নং এফ, সি, সি মোতদ্দমা সম্পাদিত ২৭-১-৯৬ ইং তারিখের জারীকৃত স্মারক ও সরকারী আদেশ সমূহ বেআইনী স্বৈচ্ছাচার মূলক ও বাতিল যোগ্য কি না ?

৩) বাদী প্রার্থিত মতে প্রতিকার বা ডিক্রী পাইতে পারে কি না ?

৪) বাদী অদ্য কোন প্রতিকার পাইতে পারে কি না ?

However, learned Judge of the Trial Court, upon hearing and after conclusion of trial considering the material evidences on record, decreed the suit and thereby, declared that অত্র মকদ্দমা ১/৩ ও ৪ নং বিবাদীগণের বিরুদ্ধে দোতরফা সূত্রে ও অন্যান্য বিবাদীগণের বিরুদ্ধে এক তরফা সূত্রে খরচ ব্যতীত ডিক্রী হইল। এতদ্বারা ১ নং বিবাদীর কার্য্যালয়ের ১/৯১ নং এফ সি সি মোকদ্দমা সংক্রান্ত বিগত ২৭-১-৯৬ ইং তারিখের জারীকৃত স্মারক ও তৎসংক্রান্ত পরবর্তী আদেশ সমূহ বেআইনী স্বৈচ্ছাচার মূলক বাতিল যোগ্য বলিয়া ঘোষিত হইল।

Being aggrieved by and dissatisfied with the said judgment and decree dated 22.03.2000 passed by the learned Subordinate Judge, 1st Court, Moulvibazar in Title Suit No. 5 of 1997, the defendant, as appellant, preferred this appeal.

Mrs. Nahid Hossain, learned DAG, appearing for the appellant, submits that the plaintiff created a fake and fabricated story and did not pay the Government's rent. The intention of the plaintiff was to avoid rent in respect of the aforesaid land (Jalmahal). According to DAG, the Court below, without applying its judicial mind and analyzing the material evidence on record, decreed the suit. She submits alleged rent is public money, for the better interest of the public to recover those rents, the authority took initiative.

We have considered the submissions so advanced by the learned DAG for the appellants and perused the memorandum of appeal, including the impugned judgment and decree, and all the documents appended in the paper book.

The point for consideration is whether the impugned judgment and order call for any interference by this Court.

On going through the materials on record, including the plaint, it appears that the plaintiff filed a suit to recover the money for the years 1395 B.S and 1396 B.S wherein Sub-Judge, 1st Court, Moulvibazar gave a decision, but for the year 1397 B.S no complaint was lodged, therefore, the Court did not give any decision for such year. Though the FCC case has been brought only to

recover the money for the year 1397 B.S. Upon fixing the issue, the Court below in FCC Case being No. 1/91 declared that the notification dated 27.01.1996 issued by the defendant No. 1 is illegal and voidable.

However, on that point, the learned DAG finds difficulties in opposing the same.

Regard being had to the above facts and circumstances and the materials and evidence on record vis-à-vis the impugned judgment and decree, in its entirety, is well-founded. This Court does not find any reason to disagree with the findings given by the Court below in the impugned judgment in decreeing the suit.

Accordingly, the First Appeal is dismissed; however, without any order as to costs.

The impugned judgment and decree dated 22.03.2000 passed by the learned Subordinate Judge, 1st Court, Moulvibazar in Title Suit No. 5 of 1997 is hereby confirmed.

Let a copy of this judgment, along with the lower Court records, be communicated to the Court concerned forthwith.

Jesmin Ara Begum, J:
I agree.