

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1952 of 2011.

In the matter of:

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

And

Md. Tayeb Ali being dead his
legal heirs-

1(a) Ms. Sajiron Begum and other

...Petitioners

-Versus-

Aftab Uddin being dead his
legal heirs-

Md. Mazibor Rahman Babul and
others

...opposite parties

No one appears

...For the petitioners

Mr. Zulfiqur Ahmed, Advocate

**...For the opposite party Nos.1-
3.**

Heard & Judgment on: 25.11.2024.

This Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the impugned judgment and decree dated 27.08.2008 passed by the learned Joint District Judge, 1st Court, Kurigram in Other Appeal No.102 of 2000 allowing the appeal and reversing those dated 29.05.2000 passed by the learned Assistant Judge, Nageswari in Other Suit No.136 of 1994 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 petitioner as plaintiff instituted above suit for declaration of title for 1.30 acres land appertaining to plot NO.4 and 565 of S.A. khatian No.1 and further declaration that the ex-parte judgment and decree of Other Suit No.71 of 1993 dated 05.03.1994 of the court of learned Assistant Judge, Nageswari is collusive, unlawful and not binding upon the plaintiff.

It was alleged that above land belonged to jomindar Mukar Bimalendu Roy Bahadur and the nature of above land was "Bilyer Kura" or "Deep water" but subsequently above water body became cultivable and above jomindar gave settlement of above land orally to the plaintiff on receipt of Tk.200/-as salami and at an yearly rent of 12 anna on 4th Baishak 1356 BS and delivered possession. The plaintiff is in peaceful possession in above land by cultivation. But the same has been erroneously recorded in S.A. khatian No.1 in the name of the government. Defendant No.1 as plaintiff filed Other Suit No.71 of 1993 falsely claiming that above jaminder gave settlement of above land to him

orally and by giving false evidence obtained an ex-parte judgment and decree on 05.03.1994.

The suit was contested by No.1 and 2 by filing by submitting two separate written statements.

Defendant No.1 alleged that disputed 1.30 acres land belonged to Kumar Bimalendu Roy Bahadur and the nature of the land was "Bilyer Kura" and the same was accordingly recorded in C.S. khatian No.4. By the passage of time above land became cultivable and above jomindar gave settlement of the same to the defendant No.1 orally on 2nd of Srabon 1357 B.S. on receipt of salami of Tk.100/- and at an yearly rent of 10 anna and delivered possession. The defendant is in possession in above land but the S.A. khatian of above land has been erroneously recorded in the name of the government and local Tahsildar refused to receive rent from the defendant. The defendant as plaintiff filed Other Class Suit No.71 of 1993 and lawfully obtained an ex-parte judgment and decree on 05.03.1993.

Defendant No.2 stated that the disputed land was a huge water body known as "Nilyer Kura" and the same never became cultivable land and above water body has been given lease by the government

to the Fishermen Co-operative society for pisciculture and they are in possession in above water body. The jomindar never gave settlement of above land to any person and above a ex-parte judgment and decree of Other Class Suit No.71 of 1993 was ineffective, collusive and null and void.

At trial plaintiff examined four witnesses and defendant No.1 examined three witnesses and defendant No.2 examined one witness. Documents of the plaintiff were marked as Exhibit No.1-2 and those of the defendant No.1 were marked as Exhibit No.Ka-Ummo and documents of defendant No.2 were marked as Exhibit No.A-B respectively.

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

Being aggrieved by above judgment and decree of the trial court defendant No.1 preferred Other Appeal No.102 of 2000 to the District Judge, Kurigram which was heard by the learned Joint District Judge, 1st Court who allowed above appeal, set aside the judgment and decree of the trial court and dismissed above suit.

Being aggrieved by above judgment and decree of the court of appeal below above

respondent as petitioner moved to this court and obtained this rule.

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

Mr. Zulfiqur Ahmed learned Advocate for the opposite party No.1 submits that undisputedly disputed 1.30 acres land belonged to jomindar Kumar Binalendu Roy Bahadur and the same was correctly recoded in C.S. khatian No.4. Although the nature of above land was "Nilyer Kura" the same gradually became cultivable land and above jomindar gave settlement of the same to opposite party No.1 orally in 1357 B.S. and granted rent receipts. Defendant No.1 is in peaceful possession in above land but the same has been erroneously recorded in S.A. khatian No.1 in the name of the government. The petitioner filed this suit on a false claim of oral settlement of above land from the same jomindar. On consideration of above materials on record the learned Judge of the court of appeal below rightly held that the petitioner could not prove by legal evidence his title in the disputed land by oral settlement. Since the petitioner failed to prove his title in

the disputed land he had no locus-standi to challenge the legality of ex-parte judgment and decree obtained by this opposite party in Other Suit No.71 of 1993.

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

It is admitted that disputed 1.30 acres land of plot No.565 and other land belonged to jomindar Kumar Bimalendu Roy Bahadur and the same was correctly recorded in C.S. khatian No.4 and in above khatian specific mention was made that the nature of above land was "Nilyer Kura" or "Deep water".

It is also admitted that in S.A. khatian No.1 above land has been recorded in the name of the defendant No.2 government of Bangladesh.

Plaintiff and defendant No. admitted that the nature of above land was a deep water body but they have claimed that above water body was silted gradually and continuously and became cultivable. But there is no mention in the plaint as to when above land became cultivable. While giving evidence as P.W.1 above plaintiff admitted in cross examination that at the time of his taking of settlement above land was submerged

under water. Above admission of P.W.1 shows that above property was a water body and the same was not cultivable land and above land remains under water. As such the question of giving oral settlement of above land for agricultural purpose by the jomindar does not arise at all.

In support of his settlement P.W.1 had produced a couple of rent receipts but above rent receipts being private documents their execution was required to be proved by competent witnesses. But the plaintiff could not examine any witness to prove the execution of above rent receipts.

On consideration of above facts and circumstances of the case and materials on record I hold that the learned Joint District Judge on correct analysis of the evidence on record rightly held that the plaintiff could not prove his title and possession in the disputed land.

The plaintiff and defendant No.2 both have challenged the legality and propriety of the ex-parte judgment and decree of Other Suit No.71 of 1993 obtained by defendant No.1 for the disputed land.

It has been proved that the nature of the disputed property was a huge water body as was mentioned in the relevant C.S. Khatian and not

cultivate land. Defendant No.1 as plaintiff mentioned in the plaint of Title Suit No.71 of 1993 and in his evidence as P.W.1 in above suit that gradually above water body was silted and became cultivable. But no mention was made as to on what date or year above huge water body became cultivable. Defendant No.1 has claimed to obtain settlement of above land on payment of salami of Tk.100/-. It is not understandable as to why above settlement was not effected by a registered instrument since the salami was more than Tk.99. In support of above oral settlement defendant No.1 produced some rent receipts which were private documents and prepared on old papers by recent pencil writing and the execution of those dakilas were not proved in accordance with law.

On consideration of above facts and circumstances of the case and evidence on record I hold that both the plaintiff and defendant No.1 have tried in the same way to grab the above water body which was correctly recorded in the name of the government in S.A. khatian No.1 by making false claim of oral settlement. The learned Judge of the court of appeal below appreciated above materials on record rightly held that the plaintiff could not prove his title

and possession in above land but the learned Judge failed to hold that the impugned ex-parte judgment and decree of Title Suit No.71 of 1993 was false and obtained by fraud by defendant No.1 which was needed to be set aside.

In above view of the materials on record I find substance in this Civil Revision and the rule issued in this connection deserves to be made absolute in part.

In the result, the Rule is made absolute in part.

The impugned judgment and decree dated 27.08.2008 passed by the learned Joint District Judge, 1st Court, Kurigram in Other Appeal No.102 of 2000 is set aside in part and Other Suit No.136 of 1994 is dismissed on contest with cost and the impugned judgment and decree passed ex-parte by learned Assistant Judge, Nageswari in Other Suit No.136 of 1994 is set aside.

The earlier unsigned order dated 20.11.2024 is recalled.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.