

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

Present:

Mr. Justice Jahangir Hossain

Civil Revision No. 627 of 2011

In the matter of :

An application under section 115(4) of the
Code of Civil Procedure

And

In the matter of :

Sayed Nurun Nahar Lucky and others

.....**Petitioners**

-Versus-

Government of the People's Republic of
Bangladesh represented by the Deputy
Commissioner, Brahmanbaria and others

.....**for the opposite parties**

No one appears

.....**for the petitioners**

No one appears

.....**for the Opposite parties**

Judgment on 19.11.2020

By order 27.02.2011 the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 14.06.2010 passed by the learned Additional District Judge, 1st Court, Brahmanbaria in Miscellaneous Appeal No.32 of 2010 allowing the appeal by affirming the order dated 21.03.2010 passed by the learned Senior Assistant

Judge, Nabinagar, Brahmanbaria in Title Suit No. 14 of 2009 should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The facts relevant for disposal of the Rule, in a nutshell are that the plaintiffs' predecessor late Hazi Abdul Motaleb purchased a pond measuring 33 decimals from the recorded tenants namely, Pitambar Shaha and Sree Dhar Mal in the Goshapur Mouza, settlement Dag No. 112 C. S Khatian No. 267 by an unregistered Deed dated 03.03.1952. The predecessor of plaintiffs was peacefully possessing the said pond by fishing within the knowledge of local people and without hindrance from any quarter. During his life time S. A. Khatian No. 822 and Kharija Khatian No. 823 were prepared in his name and gave rent to the government. Thereafter, he sold out 15 decimals of the land to the plaintiff Nos. 1 and 2 on 05.05.1996 by way of registered Deed No. 2640 and rest 18 decimals were owned by his sons and daughters. Hazi Abdul Motaleb, during his life time, instituted a Title Suit being No. 34 of 1994 against the defendant No. 06 [Union Bhumi Karmokarta] and subsequently it was dismissed. Thereafter, the petitioners as plaintiffs instituted Title Suit No. 14 of 2009 in the Court of learned Senior Assistant Judge, Nabinagor for declaration of title by way of adverse possession.

In the aforesaid suit the plaintiffs filed an application for temporary injunction against the defendants so that defendants could not fill up the pond by earth. Thereafter, the defendants contested the application for temporary injunction by submitting written objection. The learned Senior Assistant Judge by his order dated 21.03.2010 rejected the prayer for temporary injunction.

Against which the plaintiffs preferred Miscellaneous Appeal No. 32 of 2010 in the Court of District Judge, Brahmanbaria. On transfer the said Miscellaneous Appeal was heard by the learned Additional District Judge, 1st Court, Brahmanbaria. The learned Judge of the Appellate Court also dismissed the appeal affirming the order of the trial court by his judgment and order dated 14.06.2010.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 14.06.2010, the petitioners [plaintiffs] filed an application before this Court under section 115(4) of the Code of Civil Procedure and obtained the present Rule with an order of status quo in respect of possession and position of the suit land for a period of 06[six] months from date by order dated 27.02.2011. The order of status quo was further extended till disposal of the Rule by order dated 16.08.2011.

This matter was posted in the list for hearing on 18.11.2020 as item No. 09 but none appeared to support the Rule when it was taken up for hearing. For the ends of justice the matter was adjourned till today. Today no one also appears to support the Rule when it is taken up for hearing. Mr. B.M Rafel, learned Deputy Attorney General appearing on behalf of the Government submits that the file was missing in their office. They tried but failed to find it out. However, it appears from judgment and order of the courts below that the predecessor of the plaintiffs filed a Civil Suit being No. 34 of 1994 against the defendants in respect of the present suit land and the said suit was dismissed on contest. Thereafter, the predecessor of the plaintiffs preferred an appeal vide No. 52 of 1996 which was also dismissed on contest. It also appears from the

impugned judgment and order that the suit land was recorded in the name of the government as khash land. In the meantime, the said pond [suit land] was filled up by sands spending Tk. 3,00,000/-[three lakh] in order to build up a market and meanwhile a tender was also called for construction over the suit land. There is no prima facie and arguable case in favour of the plaintiffs. The balance of convenience and inconvenience do not lie in favour of the plaintiffs.

It is further evident that to ascertain the possession of the suit land, the trial court held a local inspection by appointing an advocate commissioner on the prayer of the plaintiffs. In the local inspection report dated 07.04.2009 it is found that the pond [suit land] was filled up by earth and as such there is no scope to restrain the defendants from making any construction over the suit land. Therefore, this Court finds no substance to interfere with the impugned judgment and order dated 14.06.2010.

Accordingly, the Rule is, hereby, discharged and the order of status quo granted earlier by this Court stands vacated.

Let a copy of this judgment and order be communicated to the concerned court below at once.

[Jahangir Hossain,J]