

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

Present:

Mr. Justice Rezaul Karim

Civil Revision No. 72 of 2012

Md. Munzur Rahman Mondal and others

..... petitioners

-Versus-

Mst. Lotifa Bewa and others

..... opposite parties

None for both sides.

Heard and Judgment on: 21.07.2026

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 05.06.2011 passed by the learned Additional District Judge, Joypurhat, in Miscellaneous Appeal No. 18 of 2008, affirming the judgment and order dated 06.03.2008 passed by the learned Senior Assistant Judge, Sadar Court, Joypurhat, in Miscellaneous Case No. 25 of 2002 under Order 9 Rule 13 of the Code of Civil Procedure, should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the operation of the impugned judgment and order was stayed for a period of six months.

The opposite parties, as plaintiffs, filed Partition Suit No. 135 of 2000 in the Court of Senior Assistant Judge, Sadar Court, Joypurhat, for partition of ninety one acres of land. The petitioners were defendants in that suit. The suit was decreed ex parte on 16.8.2001. The petitioners claimed that they had no knowledge of the suit, since summons was never served upon them, and that they came to know of the ex parte decree only later. On coming to know of the decree, they filed an application under Order 9 Rule 13 of the Code of Civil Procedure on 16.7.2002, registered as Miscellaneous Case No. 25 of 2002, praying that the ex parte decree be set aside on the ground that summons of the suit was never served upon them and that the plaintiffs had practised fraud by obtaining a false report of service.

The learned Senior Assistant Judge framed four issues, of which the issue as to whether summons of the original suit was served upon the petitioners was found to be the most material. petitioner No. 1, Md. Munzur Rahman Mondal, deposed that he was defendant No. 10 in the original suit, that he received no summons of the suit, and that his address at the relevant time was Dilbahar Hotel. In cross-examination, however, he admitted that he had built his own house only three years before his deposition, and that before that, he lived in his ancestral home. The address given in the plaint of the original

suit was his ancestral address, being the very place where he was residing when the suit was filed. The record further showed that the summons was served at that address, and that it was received and signed for by defendant No. 11, who was a close relative of the petitioner residing at the same address. On this evidence, the learned Senior Assistant Judge found that summons of Partition Suit No. 135 of 2000 was duly served upon the petitioners, and by judgment and order dated 06.03.2008 dismissed the Miscellaneous Case.

Being aggrieved, the petitioners preferred Miscellaneous Appeal No. 18 of 2008 before the learned District Judge, Joypurhat. The learned Additional District Judge, upon re-examination of the evidence relating to the service of summons, concurred with the finding of the trial court and held that summons was validly served, and by judgment and order dated 05.06.2011 dismissed the appeal, thereby affirming the judgment of the trial Court.

None appeared for either party when the matter was taken up for hearing. I have, therefore, gone through the revisional application, the grounds taken therein, and the record of the courts below, including the deposition of petitioner No. 1 and the findings recorded by the two Courts below.

It is well settled that the revisional jurisdiction of this Court under Section 115(1) of the Code of Civil Procedure is a limited jurisdiction. This Court, sitting in revision, does not sit as a Court of appeal and does not re-appreciate evidence to arrive at a different finding of fact. Interference is warranted only where the Court below has committed an error of law resulting in an error in the decision, occasioning failure of justice.

In the present case, both the trial Court and the appellate Court concurrently found, on evidence, that the summons of the original suit was served at the petitioners' address given in the plaint, which was their actual address at the material time, and that it was received by a close relative on their behalf. This finding was not based on mere surmise. It rests on the admission made by petitioner no. 1 himself in cross-examination, that he shifted from the address given in the plaint only three years before his deposition, and on the endorsement of service found on the record. I do not find any error of law or any illegality in the concurrent findings of the courts below on the question of service of summons. The ground that the two Courts below took contradictory views is not borne out by the record, since both Courts, upon appraisal of the same evidence, reached the same conclusion. No ground

has been made out to warrant interference with the concurrent findings of fact arrived at by the Courts below.

Regard being had to the above, I find no merit in this Rule.

In the result, the Rule is discharged, however, without any order as to costs.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate the judgment at once.