

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 1537 OF 2012

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Nurul Azam Munshi

--- Defendant-Appellant-Petitioner.

-Versus-

Nurul Amin and others

--- Plaintiff-Respondent-Opposite Parties.

Mr. Humayun Kabir Sikder, Advocate

--- For the Defendant-Appellant-Petitioner.

Mr. S. M. Munir, Senior Advocate with

Mr. Md. Shaheen Mridha, Advocate

---For the Plaintiff-Res.-Opposite Parties.

**Heard on: 10.07.2023, 16.07.2023 and
17.07.2023.**

Judgment on: 31.07.2023.

At the instance of the present defendant-appellant-petitioner, Nurul Azam Munshi, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the plaintiff-respondent-opposite party Nos. 1-5 to show cause as to why the judgment and decree dated 22.02.2012 passed by the learned Joint District Judge, Court No. 1, Gopalganj in the Title Appeal No. 19 of 2010

dismissing the appeal and thereby affirming the judgment and decree dated 21.10.2009 respectively passed by the learned Assistant Judge, Sadar, Gopalganj in the Title Suit No. 31 of 2000 decreeing the suit on contest should not be *set aside*.

The relevant facts in short for disposal of this Rule, *inter-alia*, are that one Nurul Halim Munshi (predecessor of the plaintiff-respondent-opposite party Nos. 1-5) as the plaintiff filed the Civil/Title Suit No. 31 of 2000 in the court of the learned Assistant Judge, Sadar, Gopalganj for declaration of title upon the suit land described in the schedule- 1, 2 and 3 of the plaint and also for a declaration that the record of right of the suit land in the name of the defendant No. 1 in the S. A. Khatian was illegal, inoperative and not binding upon the plaintiff. After filing this suit the plaintiff died and he was substituted by his legal heirs by the opposite party Nos. 1-5. The plaint contains that the suit land measuring 26 decimals appertaining to Plot No. 1381, R. S. Khatian No. 11 and S. A. Khatian No. 24 was originally belonged to one Purna Charan Mondal and Nil Moni Mondal in equal shares. Subsequently, the said suit land was transferred to several persons from 1944 to 1950. The plaint further contains that the said 26 decimals of land Plot No. 1381,

R. S. Khatian No. 11 and S. A. Khatian No. 26 was purchased by the said deceased-plaintiff, Nurul Halim Munshi, by a registered Kabala Deed dated 27.01.1950 and the same land was recorded in the name of deceased-plaintiff and the defendant No. 1, Nurul Azam Munshi in equal shares. The plaint further contains that the plaintiff did not know about the wrong record of the suit land and the defendant No. 1 as being his full brother. The responsibility of record was given to the defendant No. 1 and the defendant No. 1 always told and informed that the land was correctly recorded in the name of the plaintiff but the defendant No. 1 with the collusion of the Surveyor wrongly recorded equal shares of the suit land in names of plaintiff and defendant No. 1 and after having knowledge of wrong record, the plaintiff instituted the suit for correction of the same as the record was wrongly published which he (plaintiff) challenged by filing the suit.

The suit was contested by the defendant No. 1 by filing a written statement contending, *inter alia*, that while Afsar Uddin Munshi had been possessing the suit land by purchasing on 27.01.1950 at a consideration money of Tk. 1,000/- (One Thousand) and at that time the plaintiff Nurul Halim Munshi was

not even born, as such, no question arises about purchasing the land by the plaintiff rather his father, Hazi Sadek Ali Munshi, paid the entire consideration money out of his own income sources and his father purchased the said land for himself and for own benefit and when S. A. Survey had been started the record of right in S. A. Survey was rightly published regarding the suit land. The defendant also contended that at the time of the concerned purchaser of the suit land, the plaintiff was originally aged 10 years old. The other defendant-opposite parties also contested the suit by filing a joint written statement and supporting their case.

After receiving the said suit the learned trial court heard both the parties by obtaining evidence adduced and produced by the parties by way of documentary evidence and by way of depositions in court. The learned Assistant Judge, Sadar, Gopalganj came to a conclusion after hearing the parties to decree the suit by the judgment and decree dated 21.10.2009. Being aggrieved the present petitioner as the appellant preferred the Civil/Title Appeal No. 19 of 2010 in the court of the learned District Judge, Gopalganj which was eventually heard by the learned Joint District Judge, Court No. 1, Gopalganj who passed

the impugned judgment and decree in favour of the present plaintiff-respondent-opposite parties by affirming the judgment and decree of the learned trial court.

This revisional application has been filed by the present defendant-petitioner under the provision of section 115(1) of the Code of the Civil Procedure challenging the legality of the said impugned judgment passed by the learned Joint District Judge, Court No. 1, Gopalganj and the Rule was issued thereupon.

Mr. Humayun Kabir Sikder, the learned Advocate appearing for the petitioner submits that the learned courts below committed an error in law and caused a failure of justice by way of passing the impugned judgment and decree on misreading the evidence on record and misconstruing both law and facts, as such, the impugned judgment and decree passed by the learned courts below are liable to be *set aside*.

The learned Advocate also submits that admittedly the plaintiff and the contesting defendant are co-sharers in the suit plot No. 286 of R. S. Khatian No. 65 and S. A. Khatian No. 83 and according to the statements of P. W. 1 in his cross-examination the plaintiff sold some portion of the land of the said plot No. 286 to one Babar, the plaintiff ought to have filed a

suit for partition but the plaintiff instead of filing a suit for partition filed a suit for simple declaration of title and the learned courts below without considering the aforesaid aspect arrived at a finding that the suit is not maintainable in its present form, thus, the learned courts below committed an error in law causing failure of justice, as such, the impugned judgment and decree is liable to be *set aside*, therefore, the Rule should be made absolute.

During the hearing of this Rule, the learned Advocate filed an application along with some additional documents which could not be exhibited in the learned trial court and he prays to accept the same. I have considered that those documents were not present before the learned courts below, as such, these documents were not examined by the parties at the trial or appellate stage, as such, I am not inclined to accept the same documents, thus, the application for accepting the additional evidence is hereby rejected.

The Rule has been opposed by the present opposite party Nos. 1-5.

Mr. S. M. Munir, the learned Senior Advocate, appearing along with the learned Advocate Mr. Md. Shaheen Mridha on

behalf of the present plaintiff-respondent-opposite party Nos. 1-5 submits that both the courts below considered the evidence adduced and produced by the parties in support of their respective cases and the learned appellate court below passed the impugned judgment and decree dismissing the appeal and thereby affirming the judgment and decree of the learned trial court, as such, this court should not interfere upon the impugned judgment of the learned appellate court below.

The learned Advocate further submits that the given facts by both parties there is no necessity to record the property in 2 names in the S. A. Khatian. If the claim of the plaintiff for purchasing the land in his name from the money of his own income source was such, thus, the learned trial court came to a proper decision and conclusion to decree the suit and the learned appellate court below also passed the impugned judgment concurrently dismissed the appeal and thereby affirmed the said judgment and decree passed by the learned trial court, thus, the Rule is liable to be discharged.

The learned Advocate also submits that S. A. Record did not properly publish in the name of both the parties in equal shares. According to the right and title the record should have

been published in the name of the plaintiff under the provision of law, however, the learned trial court committed no error of law by decreeing the suit.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed by the present petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below and also perusing the required documents available in the lower courts records, it appears to this court that the original plaintiff filed the title suit claiming title and for correction of record of right publishing in the S. A. Khatian. The plaintiff (now deceased and substituted) stated in the plaint that the original plaintiff purchased the suit land from the money of his own income sources by conducting a business of cloth at Dhaka. He himself was present physically at the time of execution of deed of purchase but he was not present at the time of record of right at the Tahashil Office/ Surveyor because of his engagement of cloth business in Dhaka and due to his engagement in Dhaka he requested his full brother to be present at the time of S. A.

Record by the Government Authority. However, the said brother being the present defendant No. 1 recorded the record of the right $\frac{1}{2}$ portion in his own name and the $\frac{1}{2}$ portion in the name of the plaintiff in collusion with the government officials or employees as the authority of the record of right of the Tahashil Office. Regarding the above factual aspects, I have carefully considered the findings of the learned courts below and also the circumstances that prevailed at that time for entering the correct name of the owner of the land. In this regard, I have also considered the depositions of the PWs and DWs who appeared in the court by the respective parties and I found it is clear that there were illegal actions/activities by the defendant-petitioner which is not acceptable within the ambit of law, thus, I considered that both the courts could realize and find that the plaintiff was the original owner and he was entitled to get a record in his name of the S. A. Khatian.

Regarding the title of the plaintiff over the suit land described in the schedules- 1, 2 and 3 of the plaint as well as for a declaration of the record in the name of the defendant No. 1 is collusive and not binding upon the plaintiff. The defendant adduced and produced the evidence of the plaintiff at the time of

claiming to purchase the suit land in his name. In this matter, the plaintiff claims as to the title of the suit land and the learned courts below committed no error of law by passing the impugned judgment.

In view of the above discussions and consideration of the evidence as well as also I have carefully examined the judgment of the learned courts below.

The learned trial court came to a lawful conclusion to decree the suit on the basis of the following findings and manner:

...“উপরোক্ত আলোচনার ভিত্তিতে আদালতের নিকট স্পষ্টরূপে প্রতিয়মান হয় যে, মূল বাদী নুরুল হালিম মুন্সী নিজ অর্থে নালিশী আরজির তপশীল বর্ণিত সম্পত্তি খরিদ করেছেন বিধায় উক্ত সম্পত্তিতে তিনি স্বত্ব প্রচারের ডিক্রি পেতে হকদার। আরো প্রতিয়মান হয় যে, তার নিজ নামে নিজ অর্থে উক্ত দলিলসমূহ রেজিস্ট্রি মূলে খরিদ হয়েছে বিধায় তপশীল বর্ণিত এস. এ. ২৪ নং খতিয়ানের ১৩৮১ দাগের ২৬ শতাংশের মধ্যে আট আনায় ১৩ শতাংশ এস. এ. ২৬ নং খতিয়ানের ১৩৭৮ দাগের ৬১ শতাংশের মধ্যে আট আনায় সাড়ে ৩০ শতাংশ এবং ১৩৮২ দাগের ৩৭ শতাংশের মধ্যে আট আনায় সাড়ে ১৮ শতাংশ এস. এ. ৮৩ খতিয়ানের ২৮৬ দাগের ২.০৮ একরের বাদীর নামে রেকর্ডিয় ১.০৪ একর বাদে বক্রি ১.৯৮ একরের মধ্যে ৯৪ শতাংশ মোট ১.৫৬ একর সম্পত্তি ১ নং বিবাদীর নামে ভ্রমাত্মকভাবে রেকর্ড হয়েছে যা বাদীগণের উপর বাধ্যকর নয় মর্মে প্রতিয়মান হয়।”...

The learned appellate court below concurrently found and dismissed the appeal and affirmed the judgment and decree of the learned trial court upon findings of the following manner:

...“যেহেতু ১৯৫৪ সালে ১ নং বিবাদী স্বীকৃত মতে নাবালক ছিলেন এবং যেহেতু ১৯৫৪ সালে খতিদকৃত জমি ১ নং বিবাদী নিজ অর্থে ও স্বার্থে খরিদকৃত মর্মে দাবী করেন সেহেতু ইহাই প্রতীয়মান হয় যে, ১৯৪৩/১৯৪৪/১৯৫০ ইং সালে মূল বাদীর অর্থে ও স্বার্থে নালিশী জমি খতিদ করা হয়। বিজ্ঞ নিম্ন আদালত ১ নং বিবাদীর জেরার এই স্বীকারোক্তির বিষয়টি আলোচনা না করিলেও এই সিদ্ধান্তে সঠিক ভাবে উপনীত হইয়াছেন যে, নালিশী জমিতে মূল বাদী তথা বর্তমান বাদী পক্ষের স্বত্ব স্বার্থ ও দখল বিদ্যমান।”...

On the basis of the above concurrent findings by the learned courts below in favour of the present opposite parties and in light of that I am not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below, as such, the Rule does not merit any further consideration.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The interim direction passed by this court at the time of issuance of the Rule to maintain *status quo* by the parties in respect of the possession and position of the suit land for a period

of 6 (six) months and subsequently the same was extended from time to time and lastly, it was extended till disposal of this Rule are hereby recalled and vacated.

The impugned judgment and decree dated 22.02.2012 passed by the learned Joint District Judge, Court No. 1, Gopalganj in the Civil/Title Appeal No. 19 of 2010 dismissing the appeal and thereby affirming the judgment and decree dated 21.10.2009 passed by the learned Assistant Judge, Sadar Senior Assistant Judge Court, Gopalganj in the Civil/Title Suit No. 31 of 2000 is hereby upheld.

The concerned section of this court is hereby directed to send down the lower court records along with a copy of this judgment and order to the learned courts below immediately.