

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 2874 OF 2012

Tajul Islam

....Plaintiff-Respondent-Petitioner

-Versus-

Md. Siraj and another

.... Defendants-Appellants-Opposite
Parties

Mr. Md. Reza-E-Murshed Kamal,
Advocate

.... For the Petitioner

Mr. Golam Ahmed, Advocate

.... For the Opposite Party Nos. 1-2

Heard on: 12.10.2017

Judgment on: 08.11.2017

At the instance of the present plaintiff-respondent-petitioner, Tajul Islam, this Rule has been issued calling upon the opposite party Nos. 1-2 to show cause as to why the impugned judgment and order complained of in the petition moved in court should not be set aside/ or such other or further order or orders passed as to this court may seem fit and proper.

The Rule is directed against the judgment and order dated 28.09.2011 passed by the learned District Judge, Khagrachari, Hill District allowing the Civil Appeal No. 17 of 2008 and reversing the judgment and order dated 10.11.2008 passed by learned Joint District Judge, Khagrachari Hill District in record correction Case No. 40 of 2008.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioner, as the plaintiff filed the Civil Suit No. 40 of 2006 in the Court of learned Joint District Judge, Kagrachari, Hill District for correction of record, for direction upon the Assistant Commissioner (land), Sadar, Kagrachari to correct the schedule (mainly the boundary) of the suit property which was recorded through the Mutation Case No. 205 of 1998 and the Registry Bond No. 655 of 1999. The plaint contains that the present petitioner purchased land measuring .40 acres of Khatian No. 298, Plot No. 1662 described in the schedule of the plaint which was mutated by the Mutation Case No. 205 of 1998 and the Registry Bond No. 655 of 1999 and recorded thereof. After the purchase when the present petitioner went to take possession of the case land there was a mistake as to the boundary of the suit property. There were local Salishes regarding the boundary and as per decision of the Salish the present plaintiff- petitioner was given .34 acres of land instead of .40 acres. Accordingly, the case was filed for correction of .34 acres of land. The said case was contested by the present opposite party as the defendant by filing a written objection contending that the schedule of the plaint, in particular, the boundary of the land was within the properties of the defendant.

After hearing the parties the learned Joint District Judge, Kagrachari Hill District allowed the case by the judgment and order dated 03.11.2008. Being aggrieved the present opposite parties as the appellants preferred the Civil Appeal No. 17 of 2008 in the court of the

learned District Judge, Kagrachari, Hill District who allowed the appeal by his judgment and order dated 28.09.2011 by setting aside the judgment and order passed by the learned trial court. This revisional application has been filed under Section 115(1) of the Code of Civil Procedure challenging the legality of the said impugned judgment and order and the Rule was issued thereupon.

Mr. Md. Reza-E-Murshed Kamal, the learned Advocate for the petitioner submits that the learned Appellate court below without proper analyzing the evidences most wrongly and non judicially passed the judgment and order thereby committed error of law resulting in an error in the decision occasioning a serious failure of justice, and liable to be set aside.

The learned Advocate further submits that the present plaintiff-petitioner came to know awarded land measuring 34 decimals by the learned trial court but 6 decimals of land was transferred earlier in favour of the present opposite party No. 1. Accordingly, the petitioner conceded that he would be entitle to 28 decimal of land instead of 34 decimals of land, accordingly, a joint statement dated 11.10.2017 has been signed by both the learned Advocates appearing for the parties consenting as to the measurement of land and the boundary thereof.

The Rule has been opposed by the present opposite party No. 1.

Mr. Golam Ahmed, the learned Advocate appearing for the opposite party No. 1 submits that by the order of the Assistant Commissioner (land) pursuant to the judgment of the courts below a

local investigation was conducted by the Kanoongo's who submitted a report on 31.01.2007. The report ascertained that the petitioner was not entitled to get 34 decimals of land but the petitioner was entitled to 28 decimal of land as the 6 decimal of land was already transferred in favour of the present opposite party No. 1. Accordingly, the impugned judgment passed by the learned appellate court below committed no error of law by passing the impugned judgment. The learned Advocate further submits that he has filed a joint statement on 11.10.2017 accepting the entitlement of the present plaintiff petitioner upon the land measuring 28 decimals but not upon 34 decimal of land. The learned Advocates presented before this court "by way of joint petition" as per the instruction of their respective clients."

Considering the above submissions made by the learned Advocate appearing for the respective parties and also considering the revisional application filed under Section 115 (1) of the Code of Civil Procedure along with the Annexures therein, in particular, the impugned judgment and order passed by the appellate court below and also considering the materials in the lower court records, it appears to me that the present petitioner as the plaintiff filed a civil suit in the court of learned trial court for correction of record and correction of boundary for the scheduled suit land which he purchased from one Nabab Mohon Tripura by way of registered Bond No. 655 of 1999 dated 26.08.1999 upon the land measuring 40 decimals. However, when the said vendor Nabab MohanTriura wanted to handover possession of the suit land he could

not handover the possession of entire 40 decimal of land as the present opposite party No. 1, Md. Siraj had already purchased some portion of land earlier from the schedule land. It also appears that there was an efforts between/among the parties by way of local shalish to settle the dispute between the parties. In the said Salish the present petitioner was awarded 34 decimals of land, accordingly, the present petitioner filed the Civil Revision case for correction of boundary of the scheduled land. The learned trial court allowed the prayer of the plaintiff but the present opposite parties preferred a civil appeal which was allowed by the learned District Judge, Khagrachari, Hill District by setting aside the order of the learned trial court by passing the impugned judgment and order dated 28.09.2011.

I have considered the findings of the courts below, in particular the finding of the learned appellate court below who came to a conclusion to set aside the judgment of the trial court on the basis of the following finding:

“According to him the case of the plaintiff-respondent has no leg to stand on, as it is not properly instituted, hopelessly barred by the law of Limitation, the plaintiffs claimed land lacks in having its identity. Further, he has argued that from the papers available in the L.C. record, it is amply established that the plaintiff has not title and possession in the suit land touching its maintainability from the legal area.”

Regarding the above findings of the learned appellate court below I have examined the record and found that there is no dispute that the

present plaintiff petitioner purchased the land by a Registered Bond No. 655 of 1999 dated 26.08.1999 and I have also found that this document had never been challenged by the present opposite parties, therefore, the present plaintiff petitioner certainly became entitled to land by way of the above Bond. The present plaintiff petitioner cannot be deprived of his entitlement which he obtained by a valid transfer, even though, the schedule of the land, particularly the boundary of the schedule land was the exact measurement of land. Pursuant to the said dispute of the measurement of land there was a local Shalish which came to award 34 decimals instead of 40 decimals of land. Moreover during the hearing of this Rule the learned Advocate for the plaintiff petitioner submitted that his client has already admitted that the present petitioner would be entitled to only upon 28 decimals of land by accepting that 6 decimal of land was transferred earlier by Chan Mohon Tripura, the brother of Nobab Mohon Tripura. The present plaintiff petitioner accepted the transfer of 6 decimal of land out of 34 decimals of land by the brother of this vendor.

By obtaining instructions from the respective clients the learned Advocates filed an informal "JOINT PETITION" on 11.10.2017 which reads as follows:

"That under the instruction of our clients above named we the following Advocates of the petitioner and the opposite parties have filed this joint petition as they have compromised their dispute out of court and accordingly the petitioner will get .28 decimals

of land from .34 decimals of land from the suit property as described in the schedule of the case which was filed by the petitioner before the District Judge and Civil Judge, Khagrachari for correction of Boundaries of the suit land measuring .34 decimals. The petitioner will not disturb the opposite party No. 1 in his purchased and possessed .06 decimals of land as was reported by the Assistant Commissioner (land), Sadar Upazilla, Khagrachari on 31.01.2007.”

I have perused the joint statement of the learned Advocates and also considered the special legal provision for the Hill District area being the Chittagong Hill Tract Regulation, 1900 which provided laws for transfer of property in the Hill Tract area. However, some part of the Code of Civil Procedure subsequently came into operation in the Hill District areas. Accordingly, the instant transfer of property by Nabab Mohan Tripura in favour of the plaintiff petitioner is hereby declared valid. Accordingly, the learned trial court committed no error of law except the boundary of the schedule land, on the other hand, the learned appellate court below has misconstrued and non considered the relevant provisions of law and the documents in the record.

In any event, the parties have settled the disputes out of court and came to a settlement that the petitioner shall get 28 decimals of land instead of 34 decimals of land which the present opposite party consented.

I am therefore inclined to disposed of the Rule.

Accordingly, the Rule is disposed of with the following direction.

The judgment and order passed by the learned Joint District Judge, Khagrachari Hill District in Civil Suit No. 40 of 2006 and the judgment and order passed by the learned District Judge, Khagrachari Hill District in Civil Appeal No. 17 of 2008 are hereby set aside.

The present plaintiff petitioner and the opposite parties are hereby directed to approach before the Assistant Commissioner (land), Sadar Upazila, Khagrachari, Hill District within 30 days from the date of receipt of this judgment and order for properly demarcating the boundary of the land measuring 28 decimals from the land described in the Registered Bond No. 655 of 1999 dated 26.08.1999 by separating 6 decimals of land in favour of present opposite party Md. Siraj who purchased land through the Registered Born No. 126 of 2002 dated 14.2.2002.

The interim order of stay granted at the time of issuance of Rule upon the impugned order dated 28.09.2011 is hereby recalled and vacated

The office is directed to communicate the judgment and order to the concern Court immediately and the section is also directed to send down the lower court records at once.