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

Present:

Mr. Justice Muhammad Abdul Hafiz

Civil Revision No. 1251 of 2009

Rajargaon High School represented by Md. Islam Uddin, Headmaster and Secretary of the Managing Committee of Rajargaon, P.O. Shiberbazar, P.S. Sadar, District-Sylhet.
Plaintiff- Petitioner

Versus

Rajargaon Mokhjonul Ullum Madrasha represented by the Superintendent of Rajargaon, P.O. Shiberbazar, P.S. Sadar, District-Sylhet and others
Defendants-Opposite Parties

Mr. Tabarak Hussain, Senior Advocate
for the Plaintiff- Petitioner

Mr. Dider Alam Kollol, Advocate
for the Defendant-Opposite Parties

Judgment on 10.8.2022

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned Judgment and Decree dated 20.11.2008 passed by the learned Joint District Judge, 2nd Court, Sylhet in Title Appeal No. 9 of 2007 dismissing the appeal and thereby affirming the Judgment and Decree dated 18.7.2006 passed by the learned Assistant Judge, Zokigonj, Sylhet in Title Suit No. 42 of 2001 dismissing the suit should not be set aside and/or such

other or further order or orders passed as to this Court may seem fit and proper.

The petitioner as plaintiff instituted Title Suit No. 196 of 1999 in the Court of learned Senior Assistant Judge, Sadar, Sylhet praying for declaration of Title in the Suit land and for permanent injunction. Later the suit was transferred to the Court of learned Senior Assistant Judge, Zakigonj, Sylhet with an amended prayer for declaration of title, recovery of khas possession and cancellation of the Waqf deed dated 09.08.1993. The suit was renumbered as Title Suit No. 42 of 2001.

The Case of the plaintiff, in short, is that Moulvi Abdul Wahid and seven others as members of the Imdadul Islam Madrasha and School Committee executed registered Mortgage Deed No. 708 dated 14.02.1931 in favour of the Secretary of State for India in Council for obtaining grant of an amount of 300 rupees for the School on the conditions that this deed shall be treated as a sale deed and in future the successors of the mortgagors cannot claim any kind of title over the School building or the land on which it was situated. The School and Madrasha was jointly administered at that time and it was recognized as Middle English (M.E.) School, where Hindu and Muslim students could study together. In 1961 it became a Junior High School and

thereafter it became Rajargaon High School in 1977. In 1986 a new building of the School was built nearby because of increasing number of students. The old building was being used as student dormitory and later on it was used as student-teacher's auditorium. In the year 1993 the Rajargaon Madrasha requested to use the library of the old School building with the permission of the School. While they were using the School building, during the last settlement survey operation the School property was wrongly recorded in the names of the predecessors' of the defendants No. 8-39 and their predecessor, it was recorded as 'Madrasha' type and in the comment column it was written that the managing committee is in the possession by virtue of unregistered sale deed. The School Authority held a number of meetings with the Madrasha Authority with a view to correct the record of rights, they were assured but yet the Madrasha Authority cunningly mutated the land in their name. The School challenged the mutation case up to the Land Appeal Board but ultimately could not succeed. The Madrasha Authority now claiming that they became the owner of the property by a registered Waqf deed dated 09.08.1993. Hence the suit.

The case of the defendant Madrasha is that, in 1910 one Haji Mohibullah declared an oral Waqf in order to establish a Madrasha

over the suit land and as such Rajargaon Imdadul Islam Madrasha was established in 1931 it became a M.E. Madrasha and obtained Government Grant. In 1957 the grant was stopped and it became a private Madrasha and the name changed to 'Rajargaon Makhjanul Ulum Madrasha'. Thereafter due to the increased number of students another building of Madrasha was built nearby and the old building is being used as 'Hafizi' section. During the settlement survey the land was recorded in the names of the heirs of Haji Mohib Ullah and as such his heirs Md. Manik Uddin and others executed a registered Waqf deed dated 09.08.1993 in favour of the Madrasha. Thereafter the land was mutated in the name of Madrasha. The plaintiff School has no right title and interest over the suit land.

The learned Assistant Judge dismissed the suit by his judgment and decree dated 18.07.2006 and thus the plaintiff as appellant preferred Title Appeal No. 09 of 2007. The learned Joint District Judge, 2nd Court, Sylhet dismissed the appeal by the judgment and decree dated 20.11.2008 and hence the plaintiff-appellant as petitioner moved this application under Section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Tabarrak Hussain, the learned Advocate for the plaintiff-petitioner submits that the suit was filed for declaration of title, recovery of khas possession and cancellation of the Waqf deed. While framing issues, the Trial Court framed issue No. 4 in the following manner, "Whether the plaintiff has right, title and uninterrupted possession over the 2nd scheduled land:" The learned Judge misconstrued the prayer of suit and failed to frame an issue in respect of 'recovery of possession' moreover the judgment was delivered from the perspective that the plaintiff failed to prove their possession over the suit land. The Appellate Court below failed to notice this fundamental error of law and pronounced judgment in the light of the similar perspective of the Trial Court. Hence, both the Courts below committed a fundamental error of law which has resulted in an error in the impugned decisions occasioning failure of justice and as such those are liable to be set aside. He further submits that the Appellate Court below being the final court of fact failed to discuss the Exhibit- 1 which is the crucial document in deciding the merit of the case. The Appellate Court below passed the impunged judgment in a slip shod manner without discussing the evidence on record thoroughly and as such the same is liable to be set aside. It has been held by the Apex Court of our country that in case of misreading or non-

consideration of record or an error of law or procedure affecting the merit of the case, the High Court Division can exercise its power under Section 115(1) of the Code of Civil Procedure to set-aside the concurrent finding of fact arrived at by the courts below. These fundamental requirements are present in the instant case warranting interference by this Court. In this connection he has referred a decision reported in 6 MLR (AD) 267. He next submits that the very basis of title of the plaintiff School is the registered deed dated 14.02.1931 which has been marked as Exhibit- 1. It is evident from the deed that the agreement was executed between the 'School Authority of the Madrasha Imdadul Islam, Rajagaon' and the Secretary of the State for India for grant of money for the use of the said School. The deed contains a number of conditions to be abided by the 'School'. It was specifically stated in that deed that the term 'School Authority' shall be taken to include their successors in office, heirs and representatives, who shall also be bound by the terms and conditions of the deed. Although the name of the institute was Imadul Islam Madrasha but in fact it ran as a School as well as Madrasha and both Hindu and Muslim students studied there together. It was known as Middle English School or M.E. School. In the deed dated 14.02.1931 the term 'School Authority' has been referred throughout. The existence of this

School has been referred to in a number of Government documents which has been marked as exhibits by the plaintiff's. The Madrasha Authority took part in a number of meetings with the School Authority with a view to resolve the dispute regarding title of the School. The minutes of those meetings have been marked exhibited by the documents. The deed dated 14.2.1931 is admitted by the defendants also. He next submits that the defendants claim that an oral Waqf was made in the year 1910 in order to establish the Madrasha. However, they failed to produce any evidence to prove the oral Waqf. The defendants claimed that the S.A. recorded owners executed a registered Waqf deed in favour of the Madrasha in 1993. That mere registration of a Waqf deed does not make it a valid one. It has to be registered under the Waqf administrator as per the Waqf ordinance. No such document could be produced by the defendants and as such the Waqf deed was not proved. The defendants admit the existence of registered deed of mortgage dated 14.02.1931 and stated that Madrasha received Government Grant by this deed and in 1957 the grant was stopped and it became a private Madrasha with the new name. It is stated that as per defendants' claim their Madrasha is a 'Qawmi' Madrasha and it is well known that 'Qawmi' type of Madrasha does not receive any Government Grant. Therefore the claim of the

defendants becomes a self-contradictory one. The defendants claim that the Madrasha never ran as School and Hindu-Muslim never studied together there. However, defendants' witnesses deviated from this statement and admitted that it was a M.E. Madrasha and Hindus and Muslims studied together at that time. D.W. 2 in his cross examination clearly admitted that, " আমি যেটাই পড়াশোনা করছি তা এমি মাদ্রাসা ছিল। এখানে হিন্দু ছেলে মেয়েরা পড়াশোনা করত। শিক্ষকদের মধ্যে একজন হিন্দু শিক্ষক ছিলেন।"D.W 3 stated in his cross examination that, "নালিশী ভুমিস্থিত দালানে আরবী ফারসি উর্দু বাংলা ইংরেজি পড়াশোনা হইতো। এখানে হিন্দু ছাত্র-ছাত্রী ১/২ জন ছিল।" He then submits that S. A. record does not confer any title and registered document would prevail over record of rights. In this connection he has referred a decision reported in 18 BLC (AD) 44. Defendants' basis of claim of title is the S. A. record wherein the type of the property has been recorded as 'Madrasha' and in the comment section it is written that "the managing committee is in the possession by virtue of unregistered sale deed". However the plaintiff's claim is based on a registered document. It is a settled principle of law that S. A. record or any RoR does not confer any title and it does not have any presumption as to correctness. The defendants could not produce any document of title. The registered document relied upon by the plaintiff though not a title deed but the terms and conditions entered into an

agreement definitely created an estoppels regarding passing of title by the successors in interest. In this connection he has referred a decision reported in 18 BLC (AD) 44. Mr. Hussain lastly submits that at the time of hearing it was pointed out by the learned Advocate of the opposite parties that in the second last page of the deed dated 14.02.1931 the word 'School' has been cancelled meaning thereby that the agreement was executed between Madrasha and the Government, not between the School and the Government. In order to controvert that submission it is stated that in the second last page of the aforesaid deed the following has been written.

> "five lines from the top up to the end of the 5th line are cancelled on the reverse sheet. The word "School" on the opposite side is cancelled also in the 6th line."

He also submits that from the plain reading of this writing it is absolutely clear that this statement does not mean that the word 'School' has been omitted from the whole of the agreement. It refers to only something written on the reverse sheet. Therefore the submission made by the opposite party does not deserve any consideration.

Mr. Dider Alam Kollol, the learned Advocate for the defendant-opposite party, submits that the agreement dated

14.2.1931 Exhibit-1 executed in between the Madrasha (established before 1920) and the then Asam Government, is a mere agreement by which the Government Grant was allotted to the said M.E. Madrasha until 1957 and after that said Madrasha was re-named as Makhjamul Ulum Madrasha and it is crystal clear that this agreement is neither a title document nor conferred any title to the plaintiff by dint of said agreement and finding no title and possession of the plaintiff the Trial Court dismissed the suit and the Court of Appeal below also finding no infirmity of the Trial Court affirmed the judgment and decree of the Trial Court which is required to be maintained by this Court. He further submits that the plaintiff stated that the defendant was the permissive occupier but they measurably failed to prove the plea of permissive occupier by any P.Ws. and they also failed to prove their earlier possession and subsequent dispossession by the deposition of P.Ws. In this connection he has referred a decision reported in 61 DLR 789 and 11 BLT (AD) 143. He next submits that under and stretch of imagination it can be said that the said agreement/mortgage deed dated 14.2.1931 will be treated as sale deed as pleaded by the plaintiff nor the plaintiff acquired any title by this agreement and as such the Rule is liable to be discharged. He further submits that P.W.1 admitted that present Rajargaon

School is situated in the Dag Nos. 1124, 1129, 1130, 1132 and 1133 under Fokirer Mouja and the suit land is situated in Rajargaon mouja under Plot Nos. 3107 and he also admitted that suit land was recorded in the name of the Madrasha as evident from page 40 of Trial Court Judgment. Moreover P.W.4 also admitted that there is no record in the School record regarding the land that School claimed; but fact is that the suit land is recorded in the present B.S. printed Khatian in the name of the defendants-opposite parties. Madrasha and they have been paying rent to the Government and as such the Rule is liable to be discharged. He next submits that the plaintiff failed to prove the registered Waqfnama dated 19.8.1993 executed in favour of the defendant Madrasha and since a registered document has its presumptive value of correctness and it was duly registered and as such the Judgment and Decree of the Court below is required to be maintained and affirmed by this Court. He lastly submits that it is settled principle of law that concurrent finding of fact should not ordinarily be disturbed unless the finding are shockingly perverse it may be interfered with some exceptional circumstances and when there is no miss-reading, non-reading and miss-appreciation of the evidence on record and since both the Court below found no misreading, non-reading as non-consideration of the evidence on

record the revisional court has no jurisdiction to set-aside the concurrent finding of fact. In this connection he has referred the case reported in 43 DLR (AD) 82, 54 DLR 348. He also submits that the plaintiff is to prove his own case as settled by several judicial pronouncements but in the instant case the plaintiff tried to make out their case relying on the weakness of the defendants which cannot be sustained in law. In this connection he has referred the case reported in 6 BLC (AD) 41.

Heard the learned Advocate for both the parties and perused the record.

This is a suit for declaration of title, recovery of khas possession and cancellation of the aforesaid Waqf deed. The Plaintiff claimed that Moulvi Abdul Wahid and seven others as members of Imdadul Islam Madrasha and School committee executed registered Mortgage deed No. 708 dated 14.2.1931 Exhibit-1 in favour of the Secretary of State for India in council for obtaining grant. The School and Madrasha was jointly administered at that time and it was recognized as Middle English (M.E.) School, where Hindu-Muslim students could study together. But the defendants claimed that the Madrasha never ran as School and Hindu-Muslim never studied together there. Exhibit-1 which is crucial deed in deciding the merit of the case and in this

deed it was printed out that in the second last page of the aforesaid deed the word school has been cancelled meaning thereby that the agreement was executed between the Madrasha and the Government of India, not between the School and the Government. Moreso, the aforesaid deed was executed by Abdul Wahid and seven others who are all muslims. The plaintiff also failed to prove when and how they were dispossessed from the suit property. Both the Courts below upon proper discussion and appreciation of factual and legal aspects passed the impugned judgment and decree and the plaintiff-petitioner could not show any ground to interfere with the impugned judgment and decree.

Considering the facts and circumstances of the case I find no substance in the Rule, rather I find substances in the submissions of the learned Advocate for the defendants-opposite parties.

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

The impugned Judgment and Decree dated 20.11.2008 passed by the learned Joint District Judge, 2nd Court, Sylhet in Title Appeal No. 9 of 2007 dismissing the Appeal and thereby affirming Judgment and Decree dated 18.7.2006 passed by the learned Assistant Judge, Zokigonj, Sylhet in Title Suit No. 42 of 2001 dismissing the suit is hereby upheld.

Send down the lower Courts record with a copy of this Judgment to the Courts below at once.