

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

**Present:**

**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 1779 OF 2013**

**WITH**

**CIVIL REVISION NO. 1780 OF 2013**

**IN THE MATTER OF:**

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

-And-

**IN THE MATTER OF:**

Syed Abdul Basit being died his legal heirs  
1(a)-1(f)

--- Petitioners.

-Versus-

Syed Rumel Ali and others.

--- Opposite Parties

(In C. R. No. 1779 of 2013).

Syed Abdul Basit being died his legal heirs  
1(a)-1(f)

--- Petitioners.

-Versus-

Syeda Parul Begum and others

--- Opposite Parties

(In C. R. No. 1780 of 2013).

**Mr. Uzzal Bhowmick, Advocate**

--- For the Petitioner(s).

(In both the Civil Revisions).

**Mr. Muhammad Abdul Halim Kafi, Advocate**

--- For the O. P. No. 11 & 14

(In C. R. No. 1779 of 2013).

--- For the OP No. 1 & 2

(In C R No. 1780 of 2013).

**Heard on: 19.02.2023, 22.02.2023,**  
**12.03.2023, 13.03.2023 and 14.03.2023.**

**Judgment on: 06.04.2023.**

These 2 (two) common type of Rules were issued by this court upon similar law and factual aspects, thus, these 2 (two) Rules have been heard together and also taken up for delivering by the following common judgment.

In the Civil Revision No. 1779 of 2013, at the instance of the present plaintiff-appellant-petitioners, Syed Abdul Basit being dead his legal heirs, Syeda Hasna Begum and others, the Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 11 and 14 to show cause as to why the judgment and decree dated 15.04.2013 passed by the learned Special District Judge, Sylhet in Title Appeal No. 168 of 2012 (analogously heard with Title Appeal No. 169 of 2012) disallowing the appeals by affirming the judgment and decree dated 16.04.2012 passed by the learned Senior Assistant Judge, Balagonj, Sylhet in Title Suit No. 22 of 2009 (analogously heard with the Title Suit No. 53 of 2009) decreeing the suits should not be *set aside*.

In the Civil Revision No. 1780 of 2013, at the instant of the present defendant-appellant-petitioners, Syed Abdul Basit being dead his legal heirs, Syeda Hasna Begum and others, the Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1

and 2 to show cause as to why the judgment and decree dated 15.04.2013 passed by the learned Special District Judge, Sylhet in Title Appeal No. 169 of 2012 (analogously heard with Title Appeal No. 168 of 2012) disallowing the appeals by affirming the judgment and decree dated 16.04.2012 passed by the learned Senior Assistant Judge, Balagonj, Sylhet in Title Suit No. 53 of 2009 (analogously heard with the Title Suit No. 22 of 2009) decreeing the suits should not be *set aside*.

These 2 (two) Rules were issued on the similar law and relevant facts for disposal, in the Civil Revision No. 1779 of 2013, *inter alia*, are that the present petitioners as the plaintiffs filed the Title Suit No. 22 of 2009 in the court of the learned Senior Assistant Judge, Balagonj, Sylhet against the present predecessor of the opposite parties for a declaration of title upon the suit land described in the first schedule of the plaint.

In another Civil Revision No. 1780 of 2013, the opposite party Nos. 1 and 2 as the plaintiffs filed the Title Suit No. 53 of 2009 in the court of the learned Senior Assistant Judge, Balagonj, Sylhet against the present petitioner and other opposite parties as the defendants for a declaration of title and recovery of khas (খাস) possession and evicting from the second schedule of the suit land described in the schedule of the plaint.

The plaint of the Title Suit No. 22 of 2009 contains that one Syed Kodris Ali alias Syed Kodris Ali the predecessor of the plaintiff and pro-forma defendant No. 12 was the original owner of the schedule land upon the Plot No. 1553, 1554 in 8 (eight) anna shares of the land. He sold his share to the proforma defendant No. 12, Syeda Najibun Nessa on 26.10.1942 along with handover possession. The record of rights was wrongly recorded in the name of the defendants, namely, Syed Kadar Ali and Syed Harun Ali.

The plaintiff took steps for correction of the record under sections 30 and 31 of the Tenancy Rule, 1955, thereafter, the record was corrected in favour of the plaintiff and there were legal steps taken by the defendants beyond the knowledge of the plaintiff, as such, an uncertainty was created as to the right and title of the plaintiff. On 24.03.2003 the plaintiff wanted to execute a registered exchange deed and became aware of the record of right. When the defendant denied the title of the plaintiff, thereafter, a cause of action was arisen for filing the suit.

The defendant Nos. 6 and 9 contested the suit by filing a written statement contending, *inter alia*, that the land of schedule 2 of the plaint was originally owned by Syed Harun Ali and Syed Kadar Ali. Syed Harun Ali died leaving behind his legal

successors. In the course of their succession the suit land was destroyed by river erosion, as such, D. P. Khatian's land measuring 0.97 acres (97 decimals) was recorded in the name of Syed Imran Ali and others. S. A. Khatian No. 302 along with other land measuring 1.12 acres was recorded and published in the name of Syed Harun Ali and Syed Kadar Ali. Defendants' property was looked after by defendant No. 6. On 06.12.2008 defendant No. 6 came to know about the record of rights and he knew that the same has been recorded in the name of the plaintiff by the field porcha (মাঠ পর্চা).

On the other hand, in the Civil Revision No. 1780 of 2013, the present opposite party Nos. 1 and 2, namely, Syeda Parul Begum and Syed Ahsan Habib (Liton) as the plaintiffs filed a Title Suit No. 53 of 2009 in the court of the learned Senior Assistant Judge, Balagonj, Sylhet with the prayers of declaring title and recovery of khas (খাস) possession over the schedule 2 of the land described in the schedule of the plaint. They also contain that the suit land originally belonged to Syed Harun Ali and Syed Kadar Ali. Syed Harun Ali died leaving behind his successors. At one point of time, the land was gone under Kushiara river erosion. However, the land measuring 0.97 acres (97 decimals) was recorded in the names of one Syed Imran Ali and others in the D.

P. Khatian. The plaintiffs described in the plaint that when the said Syed Harun Ali and Syed Kadar Ali were owned the defendant No. 6 and proforma defendant No. 12 were living and looking after the property as the caretaker but the land went under river erosion. The defendants managed records in the field porcha (মাঠ পর্চা). The plaintiff asked them to leave the property which was refused on 01.01.2009. However, the defendants made out some facts in the other Title Suit No. 22 of 2009 whereto they claimed for declaration of title. The mother of the proforma defendant No. 12 executed a sale deed on 26.10.1942 which is a collusive and false document.

The defendants of the present suit contested the suit by filing a written statement contending, *inter alia*, that Syed Kadar Ali, the predecessor of the plaintiffs and the defendant No. 12 were the original owner of the suit land described in schedule 2 of the plaint which is within the first schedule of the land. Syed Kadar Ali had been owning and possessing the land. He sold his part of the land in favour of the defendant No. 12, Syeda Najibun Nessa vide registered deed No. 2594 dated 26.10.2042 and handed over possession thereof but the land was wrongly recorded in the names of Syed Kadar Ali and Syed Harun Ali. The defendants, thereafter, was taken legal steps under Rules 30 and 31 of the Act.

The land administration authority passed a decision in favour of the defendants, therefore, the plaintiffs went to the higher authority for correction of the record of rights which was beyond the knowledge of the defendants. Plaintiffs were never in possession of the suit land but they could manage to put their names in the record of rights. The present defendant No. 1 filed a suit, whereas, the plaintiffs filed the Title Suit No. 22 of 2009 against each other. The learned trial court, as the learned Senior Assistant Judge, Balagonj, Sylhet heard both the Title Suit Nos. 22 and 53 of 2009 analogously and came to a conclusion to dismiss the Title Suit No. 22 of 2009 and decreed the Title Suit No. 53 of 2009.

Being aggrieved, 2 (two) appeals were preferred by the respective parties against each other being Title Appeal No. 169 of 2012 and Title Appeal No. 168 of 2012 and the said appeals were heard analogously by the learned Special District Judge, Sylhet who affirmed the judgment of the learned trial court.

These 2 (two) revisional applications have been filed by the same petitioner(s) challenging the legality of the judgment and decree passed by the learned courts below and these 2 Rules have been issued thereupon.

Mr. Uzzal Bhowmick, the learned Advocate, appearing on behalf of the petitioner(s) in both the Rules and submits that the plaintiffs holding and possessing of the suit land from the time of their successive predecessors, moreover, hundred years as of mouroshi (মৌরসী) and malia (মালিয়া) rights and the plaintiffs proved their title by producing a certified copy of Taluk prepared in the names of their predecessors (Exhibit-2) and registered kabala (Exhibit-3) dated 26.10.1942 which was executed by the father of the plaintiffs in favour of their mother in lieu of dower money but both the learned courts below without appreciating those evidence most erroneously dismissed the suit of the plaintiffs which caused a serious miscarriage of justice.

The learned Advocate further commonly submits in support of the Rules obtained by the petitioners that the defendants hopelessly failed to prove that the plaintiffs are permissive possessors by the evidence of defendants erroneously decreed the suit of defendants and the learned appellate court below also failed to detect that infirmity of the learned trial court and simply concurred with the findings of the learned trial court, as such, the same is liable to be *set aside*.

These 2 (two) Rules have been opposed by the present opposite party Nos. 11 and 14 (in C. R. No. 1779 of 2013 and

opposite party Nos. 1 and 2, Syed Ahsan Habib (Liton) and Syeda Parul Begum (in the C. R. No. 1780 of 2013).

Mr. Muhammad Abdul Halim Kafi, the learned Advocate, appearing on behalf of the opposite party Nos. 11 and 14 (in C. R. No. 1779 of 2013) and opposite party Nos. 1 and 2 (In C. R. No. 1780 of 2013), namely, Syed Ahsan Habib (Liton) and Syeda Parul Begum, submits that these 2 (two) suits were filed by and between the parties against each other on the common factual aspects and the learned trial court thoroughly examined the evidence adduced and produced by the parties came to a lawful conclusion to dismiss the Title Suit No. 22 of 2009 filed by the present plaintiff-petitioner(s) and also decreeing the suit filed by the present defendant-opposite parties and the learned appellate court below also after hearing the parties came to a concurrent decision to dismiss / affirm the judgment of the learned trial court, as such, this court does not require any interference upon the impugned judgment and decree as the present petitioners obtained the present Rules by misleading the court, as such, the Rules are liable to be discharged.

The learned Advocate also submits that the deed executed in the year 1942 by the father of the petitioner(s) in favour of the mother of the petitioners could not identify as the disputed land by

the Advocate Commissioner who was appointed by the learned trial court. Moreover, the PWs could not prove their title in the said suit being Title Suit No. 22 of 2009, as such, they failed to prove their title. On the other hand, the present opposite parties could prove their entitlement and record of rights by way of inheritance, even though, they were not in possession of the suit land which entitled them to be the owner of the suit land, as such, both the Rules should be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties in both the Rules and also considering the revisional applications filed under section 115(1) of the Code of Civil Procedure against the concurrent judgment and decree passed by the learned courts below along with the annexures therein, in particular, the impugned judgment and decree and also considering the essential materials available in the lower courts records, it appears to this court that these 2 (two) Rules were issued at the instance of the same petitioner, namely, Syed Abdul Basit (now deceased) being dead his legal heirs has been substituted and inserted their names. It also appears that in the Title Suit No. 22 of 2009 the plaintiff-petitioner claimed title and recovery of khas (খাস) possession upon the suit land on the

basis of a Kabinkabala (কাবিনকবলা) sale deed in leu of Kabinkabala (কাবিনকবলা) executed 26.10.1942.

I have a serious doubt about the said Kabinkabala (কাবিনকবলা) deed in the year 1942 because there was no manner of Kabinnama (কাবিননামা) at that time under any provision of law. However, in the said suit the plaintiff claimed title on the basis of the said deed by way of succession. On the other hand, the present opposite party Nos. 1 and 2 as the plaintiffs filed the Title Suit No. 53 of 2009 against the present petitioner and others for entitlement upon the suit land and also for recovery of khas (খাস) possession from the defendant-petitioner.

In this regard, I consider that both the parties have taken several legal steps to record their respective names as a record of rights but in the lengthy process the present petitioner or the predecessors or successors could not prove their rights, even though, he was in possession of the suit land, as such, the courts below came to a lawful conclusion to declare title and recovery of possession from the present petitioner.

Now, I am going to examine the findings of the learned courts below in order to examine the legality and propriety of the judgment and decree.

The learned trial court below came to a conclusion to find both cases in the following terms reads as follows:

“সুতরাং উপরিউক্ত আলোচনার প্রেক্ষিতে বলা যায় যে, স্বত্ব ২২/০৯ মোকদ্দমার বাদীপক্ষ নালিশী ভূমিতে তাহাদের স্বত্ব প্রমাণ করিতে ব্যর্থ হইয়াছে। অপরদিকে স্বত্ব ৫৩/০৯ মোকদ্দমার বাদীপক্ষ নালিশী ভূমিতে তাহাদের স্বত্ব প্রমাণ করিতে সক্ষম হইয়াছে। সুতরাং স্বত্ব ২২/০৯ মোকদ্দমার বাদীপক্ষ তাহাদের প্রার্থিত মত প্রতিকার পাইতে পারেনা। অপরদিকে, স্বত্ব ৫৩/০৯ মোকদ্দমার বাদীপক্ষ তাহাদের প্রার্থিতমতে প্রতিকার পাইতে পারে। স্বত্ব ৫৩/০৯ মোকদ্দমার বাদীপক্ষ তাহাদের প্রার্থিত মাহশিলাতে উপযুক্ত পরিমাণ দাখিল করিবেন।”

The learned appellate court below also came to a concurrent finding regarding the claims and counterclaims as to the title upon the suit land on the basis of the following findings:

“...অন্যদিকে, ৩০২ নং খতিয়ানে নালিশী জমি রেসপনডেন্টপক্ষের পূর্ববর্তী সৈয়দ কদর আলী ও সৈয়দ হারুন আলীর নামে রেকর্ড হয়েছে। ২২৯/৪ নং খতিয়ানের জাবেদা নকল এক্সিবিট ‘ক(১)’ হতে দেখা যায় যে, নালিশী মজি ইতোপূর্বেও সৈয়দ কদর আলী ও সৈয়দ হারুন আলীর নামে রেকর্ড হয়েছে। পরপর ২ টি রেকর্ডে নালিশী জমি রেসপনডেন্টপক্ষের পূর্ববর্তীদের নামে ডেকর্ড দৃষ্টে স্বাভাবিকভাবে অনুমান করা যায় যে, তারাই নালিশী জমিতে প্রকৃত স্বত্ব দখলকার ছিলেন। সুতরাং, নালিশী জমিতে আপীলকারীপক্ষের চেয়ে রেসপনডেন্টপক্ষের উন্নত স্বত্ব ও বৈধ স্বত্ব প্রমাণিত হয়। মামলা দায়েরের পূর্বে ১২ বছরের বেশী সময় ধরে নালিশী জমিতে আপীলকারীপক্ষ জবর দখলকার মর্মে কোন সাক্ষ্য প্রমাণ দেয়া যায় না।....”

In view of the above discussions, I am of the opinion that the learned trial court carefully considered the evidence adduced and produced by the parties by way of documentary evidence and

oral evidence by way of depositions, thus, the learned trial court committed no error of law to reach to his conclusion. The learned appellate court below also considered and examined the evidence of the parties and came to a lawful concurrent finding in both the appeals preferred by the respective parties against each other. I, therefore, do not find that the learned appellate court below committed any error of law by non-considering or misreading any evidence, as such, these 2 (two) Rules are not proper for interference by this court.

Accordingly, I do not find merit in the Rules.

In the result, the Rules issued by this court upon both the Civil Revision No. 1779 of 2013 and also in the Civil Revision No. 1780 of 2013 are hereby discharged.

The concurrent judgment and decree dated 15.04.2013 passed by the learned Special District Judge, Sylhet in Title Appeal No. 168 of 2012 (analogously heard with Title Appeal No. 169 of 2012) disallowing the appeals by affirming the judgment and decree dated 16.04.2012 passed by the learned Senior Assistant Judge, Balagonj, Sylhet in Title Suit No. 22 of 2009 (analogously heard with the Title Suit No. 53 of 2009) decreeing the suits be upheld.

The interim order of stay passed at the time of issuance of the Rule in the Civil Revision No. 1780 of 2013 for a period of 6 (six) months and subsequently the same was extended until the hearing of this Rule is hereby recalled and vacated.

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