

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 2455 of 2013

Md. Motaleb Shaikh

..... Petitioner

-Versus-

Md. Shah Alam Jintu and others

..... Opposite-Parties

Mr. Sherder Abul Hossain, Advocate with

Mr. Zaidy Hasan Khan, Advocate

... For the Petitioner

Mr. M.M. Shafiullah, Advocate

... For the Opposite Party No. 1

Judgment on 26.08.2025

In this revision Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 19.02.2013 passed by the learned Joint District Judge, 1st Court, Munshigonj in Title Appeal No. 196 of 2006 allowing the appeal and thereby reversing the judgment and decree dated 05.11.2006 passed by the learned Senior Assistant Judge, Louhajong, Munshigonj in Title Suit No. 16 of 2005 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the opposite party, as plaintiff, filed Title Suit No. 16 of 2005 in the Court of

the learned Assistant Judge, Louhajonj, Munshigonj for declaration of title in the suit land and for cancellation of deed No. 1105 dated 02.09.2003 stating that the suit land belonged to Faijuddin and Abdul, accordingly C.S. khatian stands prepared in their names. Faijuddin died leaving four sons namely Alep, Gaijuddin, Altaf and Dattabbar, Altaf died leaving two sons Mobarak and Kadir. Heirs of Faijuddin namely Mobarak and others transferred the suit land in favour of the plaintiff by a sale deed No. 1260 dated 08.12.2004. On 05.10.2005, when the plaintiff went to the local Tohshil Office to mutate his name in place of his vendor, he found that defendant No. 1 mutated his name in respect of the suit land on the basis of sale deed No. 1105 dated 02.09.2003. It was further stated in the plaint that the defendant's purchase deed is false and forged one because, on perusal of the deed No. 526 dated 27.01.1943, deed No. 3354 dated 30.09.1959 and partition deed No. 3577 dated 05.12.1967, it was found that Faijuddin and Abdul died long before the date of execution of the petitioner's purchase deed.

The petitioner, as defendant No. 1, contested the suit by filing a written statement contending *inter alia*, that suit land belonged to Faijuddin who sold the same to the defendant on 02.09.2003 vide

registration deed No. 1105 and after purchase the defendant petitioner mutated his name in the khatian. It was further stated that he erected number of tin shed rooms on the suit land and carrying on his business therein and the plaintiff has no title or possession in the suit land and the plaintiff's alleged purchase deed is false, illegal, forged and void one. On conclusion of the suit and on perusal of the evidence on record the learned trial court dismissed the suit by the judgment and decree dated 05.11.2006.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiff opposite party No.1, as appellant, preferred Title Appeal No. 196 of 2006 in the court of the learned District Judge, Munshigonj. On transfer the appeal was heard by the learned Joint District Judge, 1st Court, Munshigonj who allowed the appeal by the impugned judgment and decree dated 19.02.2013. At this juncture, the petitioner moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Sherder Abul Hossain with Mr. Zaidy Hasan Khan Mr. Mohammad Eunus, learned Advocates appearing for the petitioner at the

very outset submits that the plaintiff filed the instant suit for declaration of title and recovery of possession. In a suit for recovery of possession claiming dispossession from the suit land, the plaintiff must disclose the manner of dispossession with date and time, but in the plaint there is no averment how and at what time, in what manner the plaintiff was dispossessed by the defendant. The trial court while dismissing the suit rightly held that the plaintiff failed to prove his title in the suit property and also dispossession by the defendant, but the appellate court while allowing the appeal failed to take into consideration that the plaintiff could not prove his possession in the suit land by evidence both oral and documentary and no averments to that effect have been made in the plaint. As such, in the absence of any statement in respect of possession and dispossession of the plaintiff from the suit land and absence of any oral evidence to that effect the appellate court ought not to have allowed the appeal and decreed the suit in favour of the plaintiff.

He submits that by filing an application for amendment of plaint by the plaintiff opposite party admitted the contention of the petitioner that without any statement made in the plaint, the suit itself is incompetent, but the appellate court without appreciating provisions of law and the

evidences available on record allowed the appeal and decreed the suit, as such, the judgment and decree passed by the appellate court is liable to be set aside.

Mr. M.M. Shafiullah, learned Advocate appearing for the opposite party No. 1 candidly submits that the plaint in suit has not been happily drafted giving clear statement of acquiring title in the property, possession of the plaintiff and manner of dispossession by the defendant, but rightly prayed for a decree for declaration of title and recovery of possession.

He submits that for proper adjudication of the matter in dispute and to decide the real controversies between the parties a clear statement in respect of possession and dispossession of the plaintiff has to be brought on record by way of amendment of the plaint, accordingly, he filed an application praying for amendment which is allowed by this Court. On the other hand, the petitioner also filed an application for taking additional evidence by submitting a certificate from local Union Parishad Chairman to prove the existence of heirs of Sheikh Faijuddin and Sheikh Abdul.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil

Procedure, plaint in suit, written statement and impugned judgment and decree of both the courts below.

By filing application for amendment of plaint, the plaintiff incorporated some statements in the plaint requiring further evidence. The petitioner also wanted to file additional written statement and to adduce additional evidence by filing a certificate issued by the local chairman. Both the parties agreed that the suit may be sent back to the trial court on remand for hearing a fresh after recording evidences of both the parties.

From perusal of application for additional evidence filed by the petitioner and the application for amendment of plaint, I find that the plaintiff in suit, incorporated some statement at 5th page of the plaint and incorporated a new paragraph No. 5(Ka) bringing some facts which are required to be proved by evidence. As such, I find substance in the submission of the learned Advocates of both the parties, accordingly, I think that the purpose of the parties will be served and justice will be met, if the suit is sent back on remand to the trial court for fresh trial and recording evidence by setting aside the judgment and decree of both the courts below.

In view of the above, I find merit in the Rule as well as in the submissions of the learned Advocate for both the parties.

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

The judgment and decree passed by both the courts below are hereby set aside. The suit is sent back on remand to the trial court for fresh trial and pass judgment a fresh after recording evidences affording sufficient opportunity to both the parties to prove their case.

The trial court is hereby directed to dispose of the suit within shortest possible time preferably within 06 (six) months giving top most priority and considering age of the litigation.

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

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.