

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.198 of 2002.

In the matter of:

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

And

Aymona Bibi being dead her
heirs:

(1) Jomshed Ali and another

...Petitioners

-Versus-

Government of Bangladesh and
others

...opposite parties

No one appears

...For the petitioners

Mr. Md. Mahfuzur Rahman, DAG with
Mr. Md. Moshihur Rahman, AAG with
Mr. Md. Mizanur Rahman, AAG

...For the opposite parties.

Heard on: 13.11.2024

Judgment on: 14.11.2024.

This Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the judgment and decree dated 19.09.2001 passed by the learned Joint District Judge, 2nd Court, Sylhet in Title Appeal No.14 of 1986 and affirming the judgment and decree dated 20.08.1985 passed by the learned Munsif, Additional Sylhet in Title No.99 of 1985 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 in short are that petitioner as plaintiff instituted above suit for declaration of title for 21 decimal land alleging that above land belonged to the plaintiff and her uncle Imran Ali and they transferred above land to Abdur Rahim and Joadullah by registered kobla deed dated 02.12.1952 and delivered possession. By amicable partition Abdur Rahim alone acquired title in above property and transferred the same to the plaintiff by registered kobla deed dated 30.01.1953 and delivered possession. Plaintiff is in possession in above land but S. A. khatian has been erroneously recorded in the name of defendants No.1 and 2.

The suit was contested by defendant No.1 by filing a written statement alleging that disputed 21 decimal land belonged to Ramesh Chandra and accordingly relevant S.A. khatian was prepared. Above Ramesh Chandra left this country for good for India before 1965 and above property was enlisted as enemy property and subsequently vested and non-resident property. Plaintiff does not have any right title and interest in above land and above kobla deeds dated 02.12.1952 and

30.01.1953 of the plaintiff are forged, collusive and ineffective documents.

At trial plaintiff examined three witnesses and his documents were marked as Exhibit Nos.1 & 2 series. The defendant did not examine any witness nor produced and prove any document.

On consideration of facts and circumstances of the case and evidence on record the learned Munsif, Additional Court dismissed the suit.

Being aggrieved by above judgment and decree of the trial court the plaintiff as appellant preferred Title Appeal No.14 of 1986 to the District Judge, Sylhet which was heard by the learned Sub-ordinate, 2nd Court who dismissed the appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by above judgment and decree of the court of appeal below above appellant as petitioner moved to this court and obtained this rule.

No one appears on behalf of the petitioner at the time of hearing of this revision although this matter appeared in list for hearing on several dates.

Mr. Md. Mizanur Rahman learned Assistant Attorney General for the opposite parties submits

that admittedly disputed land has been recorded in the name of Ramesh Chandra in the relevant S.A. khatian and P.W.2 Taher Ali has admitted in cross examination that disputed land belonged to Ramesh Chandra who left this country for good for India and the suit land has been enlisted as enemy property. The plaintiff has filed this suit for declaration of title but she could not mention in the plaint the source of title of the executants of two registered documents, mentioned above.

I have considered the submissions of the learned Assistant Attorney General and other materials on record.

It is admitted that disputed land has been recorded in the name of Ramesh Chandra in the relevant S.A. Khatian.

Plaintiff claims that above land belongs to the plaintiff and her uncle Imran but no mention has been made as to the source of their title.

It is also admitted that above kobla deed of the plaintiffs do not containing any plot number and khatian number of the land transferred by above deeds. It turns out from record that the learned judges of the trial court appointed an Advocate Commissioner for relay of the disputed

land to ascertain if the land of above two kobla deeds attract the disputed land of this suit. Above Advocate Commissioner submitted a report but the Advocate Commissioner was not examined at trial and the defendant did not get an opportunity to cross examine above Commissioner. As such above Advocate Commissioner report did not attain the status of legal evidence.

Moreover, P.W.2 Taher Ali admitted that the disputed land belonged to Ramesh Chandra and the same was rightly enlisted as Enemy property.

On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the court of appeal below has rightly dismissed the appeal and affirmed the judgment and decree of the trial court which call for no interference.

In above view of the materials on record I am unable to find any infirmity or illegality in the impugned judgment and decree of the court of appeal below nor I find any substance in this petition under section 115(1) of the Code of Civil Procedure and the rule issued in this connection is liable to be discharged.

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

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.

Md.Kamrul Islam
Assistant Bench Officer