

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

Present:

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

**Civil Revision No.2121 of 2014**

Md. Ali Siddiqui and another

-----Plaintiff-Respondent-Petitioners

=Versus=

Deputy Commissioner, Munshiganj,  
Collectorate Bhaban, Munshiganj, District-  
Munshiganj and others.

-----Defendant-appellant-opposite parties

Mr. Sheikh Muhammed Serajul Islam with

Mr. Md. Kalimullah, and

Mr. Jahangir Alam, Advocates

----- For the Petitioners

Mr. Mahbubey Alam, Attorney General, along  
with

Mr. Sheikh Reajul Haque,

Mrs. Shahida Khabir, AAG

-----For the Opposite Parties

Heard on 30.10.2016, 31.10.2016, 09.03.2017,  
14.03.2017, 20.03.2017 and

**Judgment on 11.04.2017**

At the instance of the plaintiff-respondent-petitioners, Md. Ali Siddique and another, this Rule has been issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 19.05.2014 passed by the learned Additional District Judge, Munshiganj in Civil Appeal No.13 of 2012 reversing those dated 13.08.2012 passed by the learned Joint District Judge, First Court, Munshiganj, in Other Class Suit No.08 of 2000 should not be set aside.

The relevant facts for disposal of this Rule, *inter-alia* are that the present-petitioners as the plaintiffs filed the Other Class Suit No.8 of 2000 for declaration of title and for recovery of khas possession and also for permanent injunction regarding the land mentioned in the Schedules 'Ka', 'Kha', and 'Ga' respectively in the plaint.

The plaint contains that the suit land originally belonged to one Kali Kumar Das pursuant to a Nimhowla. Chintaharan Das and others became the owners of the suit land wherein Jogendra Kumar Sen was the tenant and the record of right in the C.S. Khatian No.726 was published correctly. Subsequently, Jogendra Kumar Sen surrendered his possession to Chintaharan Das who died leaving behind seven sons. Thereafter, one Sayed Mesbahuddin Ahmed, Mutuwalli of Akramun Nessa, Waqf Estate filed the Rent Suit No.10 of 1962 in the court of Munsif, Court No.5 at Munshiganj which was decreed. Pursuant to the Execution Case No.36 of 1963 the suit land was sold on auction to one Asgar Ali and he got possession of the same on 09.10.1964 through court upon the total land measuring 44 decimals and S.A. Khatian for record was published accordingly. The said Asgar Ali transferred the suit land and the said Abdur Rahman sold 29.62 decimals to one Ferdous Ara vide registered deed No.2893 dated 24.06.1997 and he also sold 10 decimals to one Mohammad Ali Siddiqui through the registered deed No.2895 dated 24.06.1997. However, in the S.A. record of right in the name of one Pran

Kumar Banarjee was prepared and published incorrectly despite the fact of the plaintiffs were in possession. On 11.01.2000 the defendant threatened to dispossess the plaintiffs and thereafter actually dispossessed them on 05.04.2009 from a portion of the suit land.

The present opposite parties as the defendants contested the suit by filing a written statement denying all the material statements made in the plaint. The defendants have contended that the suit land was requisitioned by the present defendant-opposite parties, the government which was vested upon the government under the vested and non-residential property. The further contention of the defendants are that the suit land was never sold on auction and there was no rent suit as the document claimed by the plaintiffs are forged, fraudulent and created. Therefore, the plaintiffs and their predecessors did not acquire any right, title or interest upon the suit land. The suit land is under the necessity of the government.

After hearing the parties and considering the evidence and deposition of the witnesses of the respective parties, the learned Joint District Judge, Court No.1, Munshiganj decreed the suit by his judgment and decree dated 13.08.2012. Being aggrieved the present opposite parties as the appellants preferred the Civil Appeal No.136 of 2012 in the court of learned District Judge, Munshiganj which was heard by the learned Additional District Judge, Munshiganj on transfer who by his

judgment and decree dated 19.05.2014 allowed the appeal. This revisional application has been filed under Section 115(1) of the Code of Civil Procedure challenging the legality of the judgment and decree of the lower appellate court and the Rule was issued thereupon.

Mr. Sheikh Mohammad Serajul Islam, the learned Advocate, along with Mr. Md. Kalimullah and Mr. Md. Jahangir Alam, the learned Advocates appearing for the petitioners, submits that the learned appellate court allowed the appeal on surmises and conjectures and not by evaluating the facts and circumstances of the case as revealed by the evidences on record. After a long lapse of fifty years, the plea of tempering the records and discarding the title of the plaintiffs is not tenable in law because there is no proof of tempering against the plaintiffs. The plaintiffs are the bonafide purchasers with consideration. The defendant-opposite parties are stopped to take that plea after a long lapse of time, because the defendant-opposite parties are the custodian of the records and files. The learned Advocate also submits that the appellate court misinterpreted the law of limitation as in Article 142 of the said Act provides the limitation period for recovery of khas possession is 12 years from the date of dispossession. The plaintiffs were dispossessed from a portion of the suit land after filing the suit and they have amended the plaint after dispossession within time.

The learned Advocate further submits that the present petitioners are the bonafide purchasers of the suit land after examining that the property was not an enemy property and their vendors had entitlement and possession of the suit land but there were dispossession by the defendant-opposite parties and subsequently they got their possession back by a contempt proceeding in this Court and as such, they are absolutely in possession at present through vital document and as such, the Rule should be made absolute.

The Rule has been opposed by the present-opposite party No.1, the Deputy Commission, Munshiganj, in particular, the Revenue Deputy Collector, Munshiganj, District Collectorate Office, Munshiganj, opposite party No.3 by filed a Counter-Affidavit in Court controverting the statements made in the revisional application and contenting, *inter-alia*, that it is stated that part of the suit land (only two rooms) was taken lease by the father of the plaintiff-petitioners from the government in the year of 1977 and upon paying rents he used to live there with his family and in support of the defendant produced several documents as Exhibit Nos. A series to C without any objection from the plaintiffs and rest of the building with lands was given to other government employees for their living upon taking rents and the same was admitted by the witnesses of the plaintiffs. To succeed the suit and to evict other employees from the suit land (in Kha schedule) who were living there

before filing of the suit, the plaintiff-petitioners after closing of depositions of all the witnesses, all on a sudden with malaffide intention, amended the plaint for recovery of khas possession, though they were not dispossessed from that two rooms which are the part of the 'Kha' schedule land. Moreover, the plaintiff-petitioners did not file any application for status-quo anti before the trial court for their alleged dispossession, so there was no status-quo order.

The appellate court being a last court of facts upon considering all those evidence and records gave finding that it appears from the above that the plaintiffs possess the portion of the suit land as allotted to their father and not more than that. They are not in possession over 25 decimal of land as described in Schedule Ga of the plaint rather they are in possession over 14 decimal of land.

Mr. Mahbubey Alam, the learned Attorney General, along with the learned Advocate Mr. Sheikh Reajul Haque and Ms. Shahida Khatoon, the learned Assistant Attorney General, appearing for the opposite parties-government, submits that the learned trial court came to a wrongful conclusion by misreading and non-considering the factual aspects in this case and thereby decreed the suit, however, the learned appellate court on consideration of the evidence provided by the parties in the court came to a lawful conclusion to allow the appeal and thereby setting aside the judgment and decree of the trial court but this Rule has

been obtained by misleading the court as to the factual aspects of the case, as such, the Rule should be discharged.

The learned Attorney General further submits that the present-petitioners as the plaintiffs failed to prove their own case because the defendants have adduced evidence being Exhibit Nos. A, B and C which contain that the father of the present petitioners, Md. Ali Siddiqui, had been admitted tenant under the government upon the suit land and the opposite parties, the government had been collecting the rent since 1977 and therefore a tenant cannot claim entitlement by producing some false document as to the entitlement and there are sufficient document that the suit land was requisition property pursuant to be Requisition Case No.1462 of 1958 after following all the requirements and formalities thereof.

The learned Attorney General further submits that the present petitioners' case is that upon an auction purchase pursuant to the Rent Suit No.36 of 1963 and the decree in Execution Case as Exhibit-6 which contains some overwriting in the description of the schedule of the immovable property regarding the Khatian number and Dag number by practicing fraud upon the court, therefore, the bainapatra which was originally given thereupon was not a valid and legal document. Therefore, the Rule should be discharged and no interference from this Court is called for.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed under Section 115(1) of the Code of Civil Procedure along with Annexures therein, in particular, the impugned judgment passed by the learned appellate court below and also considering the materials in the lower court below, it appears to me that the present-petitioners filed Title Suit for declaration of title upon the suit land described in the schedule of the plaint for the land measuring 39.62 and the plaint also contained schedule for recovery of khas possession and also for a permanent injunction.

The admitted position between the parties are that one Kali Kumar Das in the C.S. Khatian was the original owner of the total suit land measuring 44 decimals. However, there are serious disputes between the parties as to the subsequent ownership of the land. The petitioner claimed that for default of payment of rent a Rent Suit was filed being Rent Suit No.10 of 1962 by one Sayed Meshbahuddin Ahmed who claimed himself as the Mutuwalli for a Waqf Estate. It is further claimed that he put the decree regarding the suit land through the Execution Case No.36 of 1963. In the said execution case of the suit land, the predecessor of the present petitioners purchased land on auction dated 21.08.1964.

On the other hand, the present-opposite parties claimed that the suit land measuring 44 decimals appertaining to C.S. Khatian No.726, Mouza No.77, Munshiganj was requisitioned by the government through the Requisition Case No.1462 of 1958. Thereafter, the land had been under the custody of the government upon which some structures were constructed and some of the rooms were under tenancy to the several persons, including, the father of the present-petitioners namely, Mohammad Ali Siddiqui as the Headmaster for Malpara Primary School, Munshiganj who obtained an allotment of two rooms from the S.D.O. of Munshiganj on 24.10.1977 which was affirmed by the Additional Deputy Commissioner Land Acquisition by his Order No.1912 of 1980 as per the Exhibit-3 upon an application pursuant to his application from time to time Exhibit-B. Further case of the present-opposite parties is that the defendant-opposite parties produced Exhibit-A series as the rent receipts through treasury challans provided by the said Md. Ali Siddiqui and others persons including one Ferhana Chowdhury in support of the case that the suit land has been under custody and control of the present-opposite party, the government.

On examining the above factual aspects of the present parties, I have carefully gone through the Exhibits and perused the present-petitioners' Exhibit No.6 which is a document for proving their own case but I could not satisfy myself that Exhibit-6 which is the vital document

for the present-petitioners regarding claims of an auction sale which is in the certified form issued by the office of the learned District Judge, Munshiganj which contains some overwriting in the main part of the said document regarding Khatian number and Dag number and also regarding the measurement for rent. In my plain reading of the said document it transpires to me that the khatian number has an overwriting by changing 7162 in place of 726, Dag No. 786 by an overwriting changed into 836. I have also noticed that the total land was admittedly 44 decimals by both the parties but this document changed from 44 decimals to 39 decimals of land. From the said document I am of the view that the present-petitioners obtained a certified copy from the court regarding the Execution Case but which is clearly not a genuine document. I, therefore, consider that the present-petitioners have failed to prove their entitlement upon the suit land through the alleged rent suit by making out their case as to a document for default in payment of rent and thereafter by creating some documents to show their entitlement upon the suit land. As such, the petitioners as the plaintiffs have failed to prove their own case which they were under obligation to prove under the Evidence Act and to prove at the civil standard of proof on balance of probability.

I have also carefully examined the defence case who claimed that the land measuring 44 decimals were originally requisitioned by the

government pursuant to the Requisition Case No.1462 of 1958 as it appears from the document filed by the present-opposite parties as the defendant as Exhibits-A, B and C respectively. Moreover, the present-petitioners Md. Ali Siddiqui was a tenant or an allottee under the present opposite parties and he had been paying rent and his son had been living in the said premises along with his father. Therefore, the present petitioner was fully aware of the allotment issued by the present opposite parties in favour of his father. Despite the above fact, the present petitioners in order to claim the ownership of the suit land created some documents after the year of 1962 knowing fully well that the suit land was requisitioned by the government in the year 1958 as it contains in the rent receipts for payment of rent through challan containing the information as to the requisition case being Case No.1462 of 1958 as Exhibits-A, A(2), A(5) respectively among other documents which have been exhibited documents.

Regarding the submissions of the learned Advocate of the present-petitioners that they have been the bonafide purchasers of the suit land from their predecessor who claimed themselves as the owners. However, in the above discussions this Court considered that if the predecessor of the petitioners could not any entitlement by any valid document then the subsequent purchasers would not definitely get any ownership. In such event of fact, they may have a claim against the vendors of their land but

they cannot have any claim over the suit land pursuant to the false, forged and fabricated documents from the present opposite party-government because the government could successfully established their claim with sufficient evidence in favour of the defendant as to the entitlement pursuant to the requisition case in the year of 1958. In view of the above I consider that the present-petitioner could not prove their entitlement upon the suit land.

I have perused the judgment and decree passed by the courts below. The learned trial court came to a wrongful conclusion by keeping himself only into the matter of vested property and he put his labour uselessly by citing some inappropriate decisions of the Higher Court in order to show that the present-opposite parties as the defendants failed to prove that the suit land was vested upon government as the vested property. Therefore, wrongfully decreed the suit without properly considering the relevant evidence and documents as well as the deposition of the witnesses of the witnesses produced by the parties on the basis of the following findings:

“I have already observed and viewed that the Government has totally failed to prove the legal basis and foundation for enlistment of suit property as vested property so it can thus be safely said that the enlistment of suit property as vested and Non-Resident property was illegal and the same has no binding effect on the plaintiffs.

The most important point to be mentioned here that the Government has published a new list of vested property of Munshiganj Sadar Upazilla in official gazette on 23/04/12. The suit property has not been enlisted as vested property in said official gazette. If the suit property would be really vested property, definitely the suit property would be enlisted as vested property in newly published official gazette dated 23/04/2012. In fact suit land is not vested property that's why it is not included in newly published official gazette of vested property.

However, the learned lower appellate court came to a lawful conclusion after considering the evidence and also taking into account Exhibits all in certified from Exhibit-6 among other relevant documents and came to its conclusion upon the following findings:

“The original record as to auction sale has been called for from the record room, Munshiganj Judge Court and found that originally, the plot number was 837 and quantum of land was 29 decimal. By tampering and adopting unfair means in collusion with the ministerial employees of the Court, khatian number has been transformed as 726 in place of 716, plot number has been typed as 836 in place of 837 and quantum of land has been shown 39 instead of 29 decimal.

It appears from the above that actually the suit land under C.S. Khatian no. 726 of C.S. Plot No. 836

measuring 39 decimal had not been sold out in auction sale and the application for execution of the decree under Exh-4, Writ of Possession under Exh-5 and the Sale Certificate under Exh-6 regarding the suit land are forged and Asgar Ali the auction purchaser did not acquire any right, title and interest in the suit land on the strength of the documents exhibited as Exh-4, 5 & 6 and the S.A. Khatian No. 56 prepared in the name of Asgar Ali as to the suit land has no basis at all. Thereafter, Abdur Rahman predecessor of the plaintiffs did not acquire any right, title and interest in the suit land by dint of purchase vide registered deed no. 369 dated 29.01.1997 under Exh-19. As Abdur Rahman did not acquire any title in the suit land, the plaintiffs also did not acquire any right, title and interest in the suit land on the strength of purchase vide registered deed no. 2893 dated 24.06.1997 under Exh-16 and registered deed no. 2895 dated 24.06.1997 under Exh-17.”

In view of the above discussions and examinations of the impugned judgment passed by the courts below I am of the view that the trial courts below committed an error of law in decreeing the suit, however, the lower appellate court came to a lawful conclusion to allow the appeal by reversing the judgment and decree passed by the learned trial court and thereby setting aside the judgment of the trial court. I am therefore not inclined to interfere into the judgment passed by the appellate court below.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is discharged however, there will be no order as to costs.

The ad-interim order of direction to maintain status-quo in respect of the possession of the suit land is hereby recalled and vacated.

The office is directed to communicate this judgment and decree to the concerned court immediately and the Section is also directed to send down the lower courts' record at once.