

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No.2462 of 2000

IN THE MATTER OF :

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

-And-

In the Matter of:

Nuruzzaman Patwary

...Defendant-Petitioner

-Versus-

Siddiquar Rahman @ Siddique Mia and others

...Plaintiff-Opposite Parties

None

Heard and Judgment on: 28.08.2024

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite party No. 1 to show cause as to why the order No. 29 dated 6.6.2000 passed by the Additional District Judge, Feni in Title Appeal No. 79 of 1996 arising out of the judgment and decree dated 10.10.1996 passed by the Assistant Judge, Parshuram in Title Suit No. 20 of 1995 should not be set aside and/or such other or further order or orders should not be passed as to this court may seem fit and proper.

It appears from record that this Court by its order dated 10.01.2001 was pleased to pass an order of injunction restraining the opposite party Nos. 1 to 8 from entering in to the suit land and its tank and also not to disturb in the peaceful possession of the Defendant-petitioner till disposal of the Rule.

Succinct facts for disposal of this Rule are that the present opposite parties as plaintiffs instituted the instant Title Suit No. 20 of 1995 for declaration that the

exparte decree dated 08.06.1981 passed in suit No.2/1981 is not binding upon them contending *inter alia* the exparte decree was obtained by the defendant (present petitioner) by practicing fraud upon the court; in that suit summons and registered envelope in the name of the plaintiffs (present opposite parties) were shown to have been served upon but in-fact the defendant in connivance with peon of the Post Office by practicing fraud upon the court did it as such the exparte decree is not binding upon them.

The present Petitioner as defendant contested the suit denying all the material allegations against him stating *inter alia* that the decreetal land was owned by Aftabuddin and others by dint of settlement from Moharaja. They became defaulter in payment of rent and Moharaja instituted a rent suit being Rent Suit No.82/1918 against Aftabuddin and others. The land was put in auction and auction was purchased by Moharaja himself under Rent Execution Case No. 1742/1919 and it was confirmed on 19.04.20 A.D. Plaintiff's father Nobab Ali and heirs of Karim Boksh were the parties in the aforesaid litigation. The right, title and interest of the Plaintiff's predecessors had lost in the said litigation. Hence the Plaintiff cannot have any claim over the decreetal land. Thereafter, Moharaja gave settlement of the suit land in favour of Aftabuddin on 20.05.25 by a registered Patta and Kabu-lyet No.2119. Aftabuddin died leaving one son i.e. the defendant No.1 and two daughters Amena Khatun and Hafiza Khatun, the predecessor of defendant No.2/12 and by arrangement the defendant No.1 i.e. the present Petitioner got the land from them; that in the last M.R.R. record the land was recorded in the name of Aftabuddin, Karim Boksh, Rahim Boksh, Elahi Boksh and others who have no title over the suit land; that for this wrong recording the defendant no.1 (petitioner) as plaintiff instituted Title Suit No.2/81 impleading the heirs of Kasim Boksh as defendant No.7-17, heirs of Rahim

Boksh as defendant No. 18-20 and Government of Bangladesh as defendant No.21; that Summons and notice of the suit no.2/81 was duly served upon them through Court and by Post but they did not appear; on such circumstances the suit was decreed exparte and thereafter the defendant no.1 (petitioner) mutated the suit land by mutation Case No. 2/81-82 and is in peaceful possession over the suit land and the present B.S. Record was also prepared in name of the defendant no.1 (present petitioner).

The learned Assistant Judge after conclusion of trial and considering the evidence on record was pleased to decree the suit by his judgment and decree dated 10.10.1996.

Against the judgment and decree passed by the Trial Court, the defendant no.1 as appellant preferred appeal before the District Judge, Feni which was ultimately heard by the Additional District Judge, Feni who by his order dated 06.06.2000 was pleased to reject the appellant's application for time and was further pleased to dismiss the appeal for default.

Against the said order passed by the learned Additional District Judge, Feni dated 06.06.2000 the Defendant-appellant filed the instant Revisional Application and obtained the Rule and order of injunction as stated at the very outset.

It appears from record that an application for compromise outside the Court was filed before this Court on 15.05.2001 by the Defendant-appellant-petitioner and Plaintiff-respondent-opposite party No.1.

It further appears from the record that this Court by its order dated 21.06.2001 kept the application for compromise with the record to be considered at the time of hearing of the Rule as no one appeared when the matter was taken up for hearing on 21.06.2001. Since then no one of either parties has taken any step for hearing of the Rule.

Today when the matter is taken up for hearing no one appears either to press or oppose the Rule. However, since this Civil Revision is of the year of 2000 I am inclined to dispose of the matter.

It appears from record that the appellant petitioner filed an application for adjournment of the hearing of the appeal but the appellate court rejected the prayer for adjournment by his impugned order dated 06.06.2000 and on the same date dismissed the appeal for default as the learned advocate failed to place his argument in favour of the appellant. The appellant court should not have dismissed the appeal for default of appearance as on that date the learned advocate sought time by filing application. The learned judge should have fixed another date for hearing the appeal.

Be that as it may, in the application for compromise filed by the parties before this Court the Defendant-petitioner and the Plaintiff-opposite party No. 1 stated that they are neighbours and relatives, both of them are octogenarian. Because of their age they are not inclined to continue further litigation which may spell ruin into both the families, they are also not inclined to leave these litigations as a legacy to the future generation and as such they have squared up their differences and amicably settled their dispute in the following terms:

“Plaintiff opposite party has forgave his claim in the suit property as mentioned in Tile Suit No 20 of 1995 and in lieu thereof he has received take 50,000/- (Fifty thousand) from the defendant and relinquishes all his interest in the suit land. The plaintiff opposite party, his heirs and sub-heirs have no claim in the disputed property. Any Claim that will be raised in future will not be acceptable by any court of law. The terms of the compromise herein before will be binding on him and his heirs.

Plaintiff opposite party secured decree dated 10.10.96 in the Court of the Assistant Judge, Parshuram in Title Suit No.20 of 1995 would be set aside and nothing would accrue to the plaintiff respondent opposite Party and the order No 29 dated 6.6.2000 passed by the Additional District Judge, Feni dismissing the Title Appeal No. 79 of 1996 will be set aside.

Co plaintiff have no interest in the suit property as found by the Assistant Judge, Parshuram, while deciding issue No 3 in Title Suit No 20 of 1995, they have also not preferred Appeal challenging the said finding of the Trial Court.”

Both the parties prayed for accepting the compromise petition and set aside the order No. 29 dated 6.6.2000 passed by the Additional District Judge, Feni in Title Appeal No. 79 of 1996 and also to set aside the judgment and decree dated 10.10.1996 passed by the Assistant Judge, Parshuram, Feni in Title Suit No. 20 of 1995.

I have gone through the materials on record, perused the Revisional application, injunction application as well as the application for compromise. The defendant petitioner obtained an order of injunction against the opposite parties in relation of the suit land on 10.01.2001 and thereafter both the parties settled the dispute out of court and accordingly filed an application for compromise on 15.05.2001. Since the parties have amicably settled the dispute out of Court and filed the application for compromise before this Court I am inclined to allow the same.

In the result the Rule is **disposed of**. The application for compromise filed by the petitioner and the opposite party no.1 is allowed. The order No. 29 dated 6.6.2000 passed by the Additional District Judge, Feni in Title Appeal No. 79 of 1996 is set aside and the judgment and decree dated 10.10.1996 passed by the Assistant Judge,

Parshuram, Feni in Title Suit No. 20 of 1995 is also set aside. Title Suit No.20 of 1995 is dismissed as per terms and conditions of the compromise petition. The application for compromise do form part of the decree.

Communicate this judgment to the court concerned at once.