

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1775 OF 2002

In the matter of:

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

And

Mohammad Salamat Ali Ghupi

... Petitioner

-Versus-

Saydul Hoque and others

... Opposite parties

None appears

...For both the parties.

Heard and Judgment on 26.11.2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the judgment and decree dated 14.01.2002 passed by the learned Joint District Judge, Second Artha Rin Adalat and Commercial Court, Sadar, Chittagong in Other Appeal No.01 of 1997 reversing the judgment and decree dated 28.11.1996 passed by the learned Senior Assistant Judge, Rawjan, Chittagong in Other Suit No.45 of 1988 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 the petitioner as plaintiff instituted above suit for a decree of perpetual injunction for 13 decimal land appertaining to R. S. Plot No.497 and R. S. Khatian No.434 alleging that

above land belonged to Rais Uddin, Imam Uddin and their mother Fuljan and the same was correctly recorded in above R. S. Khatian. Above Fuljan died leaving two sons Rais Uddin and Imam Uddin and Imam Uddin died leaving the plaintiff and proforma defendant No.8. Rais Uddin died leaving behind 4 daughters namely Goltaz Khatun, Momtaz Khatun, Solema Khatun and proforma defendant No.9 Sufia. The son of Sufia namely Jafor lives in the southern part of the disputed plot. Plaintiff and proforma defendant possessed the land of Goltaz Khatun, Momotaz Khatun and Solema Khatun by cultivation and by growing vegetables. On 10.06.1968 defendants threatened the plaintiffs with dispossession.

Defendant No.1-7 contested the suit by filing written statement alleging that defendants as plaintiffs filed Title Suit No.130 of 1922 for the land of C.S. Plot Nos.295, 296 and other land and obtained a decree which was upheld by the High Court Division and the Appellate Division. In above judgment it was mentioned that the heirs of Hadia Bibi namely Wize Bibi, were in possession in the land of C.S. Plot No.295. Defendant No.3 Chand Box as heir of Hadia Bibi has title and possession in the disputed plot. Abdul Mazid was also possessing a part of the disputed plot and his heirs namely Sayed Miah and others sold some land to the defendant No.1 vide registered kabala deed dated 08.01.1987. Defendants have their dwelling huts in the disputed land. Plaintiff does not have any possession in the above land.

At trial plaintiff and defendants examined 4 witnesses each. Documents of the plaintiffs were marked as Exhibit Nos.1-7 and those of the defendants were marked as Exhibit Nos.'Ka'-'Cha'.

On consideration of the facts and circumstances of the case and evidence on record the learned Assistant Judge decreed the suit.

Being aggrieved by above judgment and decree of the trial Court above defendants preferred Other Class Appeal No.1 of 1997 to the District Judge, Chattogram which was heard by the learned Joint District Judge, 2nd Court who allowed the appeal and set aside the judgment and decree of the trial Court and dismissed the suit.

Being aggrieved by and dissatisfied with the above judgment and decree of the Court of Appeal below above respondent as petitioner moved to this Court and obtained this Rule.

No one appears on behalf of the petitioner or opposite parties when this Rule was taken up for hearing although this matter appeared in the list for hearing on several dates.

I have carefully examined the pleadings, judgments of the Courts below, evidence and other materials on record.

It is admitted that disputed 30 decimal land belonged to Rais Uddin, Imam Uddin and Fuljan and in the relevant S.A. and B.S. Khatian have been recorded in the name of the plaintiff and defendants. In the plaint it has been stated that Jafor son of defendant No.9 is possessing land from the southern part of the disputed plot but above Jafor was not made a party as plaintiff or defendants in this suit. It has

been further stated that three daughters of Rais Uddin namely Goltaz Khatun, Momtaz Khatun and Solema Khatun possessed above land by taking usufructs. But they were not made party in this suit. The plaintiff is the son of mentioned Imam Uddin but he alone is not the owner of the disputed land and above land has not been partitioned by meets and bounds. His brother is defendant No.8. It is not understandable in the absence of a claim of amicable partition how the plaintiff alone could claim possession in total 13 decimal land in the disputed plot.

In the schedule of the plaint the nature of the land has been described to be viti. But the plaintiff's claim that they are possession 13 decimal land by cultivation and growing vegetables and planting trees. The report of the Advocate Commissioner mentions that in above viti land the dwelling huts of the defendants are situated. It is the case of the defendants that they have their dwelling huts and gola ghor in above land and by adducing mutually supportive and credence inspire evidence of 4 witnesses the defendants have succeeded to prove above claim.

The learned Judge of the Court of Appeal below analyzed the evidence both oral and documentary adduced by both the parties at trial and rightly concluded that the plaintiff could not prove their juristic possession in the disputed land and the defendants have succeeded to prove that they have their dwelling huts in the disputed land and on the basis of above correct analysis of evidence of record

rightly allowed the appeal and set aside the flawed judgment and decree of the trial Court and dismissed the suit.

In above view of the materials on record I am unable to find any illegality or infirmity in the impugned judgment and decree of the learned Judge of the Court of Appeal below and this civil revisional application under Section 115(1) of the Code of Civil Procedure is devoid of any substance and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged. The order of status-quo granted at the time of issuance of the Rule is hereby vacated.

However, there is no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER