

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.797 of 2002.

In the matter of:

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

And

Government of Bangladesh

...Petitioner

-Versus-

Masud Mia and others

...opposite parties

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

...For the petitioner

No one appears

...For the opposite parties

Heard on: 11.11.2024

Judgment on: 12.11.2024.

This rule was issued calling upon the opposite parties NO.1-9 to show cause as to why the judgment and decree dated 02.11.2000 passed by the learned Sub-ordinate Judge, 1st Court, Brahmanbaria in Title Appeal No.127 of 1998 affirming those dated 21.07.1998 of the learned Senior Assistant Judge, Sarail, Brahmanbaria in Title Suit No.64 of 1997 should not be set aside and/or pass such other order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted about suit for declaration of title in 3 decimal land as described in the schedule to the plaint alleging that above land belonged to Gabdi who died leaving two daughters Momchand and Malek chand. Momchand died leaving a son Edris Mia and Malek Chand died leaving a son Lal Masud who transferred above land to the predecessor of the plaintiff Ismail and others by registered kobuliot on 01.03.1964 and plaintiffs are in possession in above land as heirs of Ismail by cultivation. But in the S.A. Khatian above land has been erroneously recorded in the name of the defendant and on the basis of above erroneous record defendant denied title of the plaintiff.

Defendant No.1 contest the suit by filing written statement alleging that disputed 3 decimal land of plot No.3472 belongs to the government and the same is a public road used by the public at large and the same has been rightly recorded in the name of the government.

At trial plaintiff examined two witnesses and defendant examined one. Document produced and proved by the plaintiff was marked Exhibit No.1. But the defendant did not produce and prove any document.

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

Being aggrieved by above judgment and decree of the trial court defendant preferred Title Appeal No.127 of 1998 to the District Judge, Brahambaria which was heard by the learned sub-ordinate judge, 1st Court who dismissed the appeal and affirmed judgment and decree of the trial court.

Mr. Mizanur Rahman learned Assistant Attorney General for the petitioner submits that the disputed land has not been properly specified in the plaint and the plaintiff did not mention how their predecessor gabdi acquired title in above land.

The plaintiffs have failed to prove the title of their predecessors from whom they have claimed to have purchased in 1962.

On consideration of above evidence on record the learned Judge of the court of appeal below should have allowed the appeal and set aside the flawed judgment and decree of the trial court and dismissed the suit. But the learned judge failed to appreciate above materials on record properly and most illegally dismissed the appeal and affirmed

the judgment and decree of the trial court which is not tenable in law.

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

I have considered the submissions of the learned Advocate of the petitioner and carefully examined all materials on record.

It is admitted that 3 decimal land of plot No.3472 has been recorded in S.A. khatian No.1 in the name of the defendant. The defendant claims that the suit land is a public path and used by the public at large from long before the publication of the S.A. khatian.

Plaintiff claims that above land originally belonged to Gabdi but above claim of the plaintiff has not been admitted by the defendant. As such plaintiff was required to mention the source of acquisition of title of Gabdi and produced documents in support of the same. But the plaintiff did not make any endeavor to prove that disputed land originally belonged to Gabdi.

In the schedule of the disputed land in the plaint no mention has been made of the khatian number but merely plot No.3474 has been mentioned.

There is no mention as to whether any khatian was prepared in the name of gabdi from whose successors plaintiffs allegedly purchased above land. It is true that an immovable property can be described in the plaint by mentioning of the boundaries besides mentioning khatian number and plot number. In the plaint plaintiffs have provided a boundary of disputed 3 decimal land which is as follows.

"On the north plaintiffs house, on the south road, on the east Abul Hossain and on the west Goni Miah and others."

The plaintiff has produced and proved registered kobla deed dated 21.03.1964 which is marked Exhibit No.1 and above deed provides a boundary of 3 decimal land transferred by above document which is as follows:

"On the north recipient of the deed, on the south road, on the east Esamuddin and west Sona Miah and others.

It turns out above two boundaries that on the east and west two different persons land have been mentioned. The registered kobla deed on the basis of which the plaintiff claims title provides a different boundary from that of the boundaries provided by the plaintiff for the disputed land in the plaint.

In this suit the plaintiff has challenged the legality and correctness of the S.A. khatian and it has been reputedly stated that although the S.A. khatian is prepared in the name of the defendant there is no mention in above khatian that the nature of the disputed land is public path. But the plaintiffs did not produced above S.A. Khatian or a certified copy of the same at trial.

On consideration of above facts and circumstances of the case I hold that the learned Judges of the courts below failed to appreciate that the plaintiffs have failed to establish the title of their predecessor Gabdi and further failed to provide proper identification of the disputed land by mentioning khatian number and appropriate boundaries. In his cross examination P.W.1 Showkat has stated that during survey they submitted an objection case under section 30 which was rejected and they filed an appeal against above order under section 31 which was rejected as well. As such it cannot be said that the S.A. khatian was prepared behind the back of the plaintiffs.

Above deficiencies in mentioning the source of title of Gabdi and providing specification of the disputed property properly and producing relevant khatian at trial, all caused not due to any fault

on the part of the plaintiffs but due to lack of legal skill of the appointed Advocate and those deficiencies could be made up by amendment of the plaint and producing documents and the plaintiffs should not make to suffer for the lack of professional inexperience and skill of his appointed Advocate.

In above view of the materials on record I hold that ends of the justice will be made in the impugned judgment and decree is set aside and the suit is remanded to the trial court for re-trial after giving both parties an opportunity to amend the pleadings and adduced further evidence.

In above view of the materials and recorded I find substance in this petition 115(1) of the Code of Civil procedure and the rule issued in this connection deserve to be made absolute.

In the result, the rule is made absolute.

The judgment and decree dated 02.11.2000 passed by the learned Sub-ordinate Judge, 1st Court, Brahmanbaria in Title Appeal No.127 of 1998 affirming those dated 21.07.1998 of the learned Senior Assistant Judge, Sarail, Brahmanbaria in Title Suit No.64 of 1997 is set aside and above suit is remanded back to the trial court for retrial after giving both the parties an

opportunity to amend their respective pleadings
adduce further evidence, if any.

Let the lower courts' records be transmitted
down at once.

Md. Kamrul Islam
A.B.O