

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

**Present:**

**Mr. Justice S M Kuddus Zaman**

**CIVIL REVISION NO.1255 of 2002.**

In the matter of:

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

And

Md. Abu Jafor Mollah @ Abu Fajor  
and another

**...Petitioners**

-Versus-

Sree Subash Chandra Sarker and  
others

**...opposite parties**

No one appears

**...For both the parties.**

**Heard & Judgment on 03.11.2024.**

This rule was issued calling upon the opposite parties No.1-10 to show cause as to why the judgment and decree dated 29.11.2001 of the learned Joint District Judge, Chandpur in Title Appeal No.139 of 1999 setting aside those dated 29.07.1999 of the learned Assistant Judge, Saharasti Chandpur in Title Suit No.52 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 petitioners as plaintiffs instituted above suit for recovery of possession of .7035 acres land as described in "Ga" schedule to the plaint after demolision of the

extended building of Dr. Sohidullah Memorial High School unlawfully constructed in above land.

It was alleged that the plaintiffs were lawful owners and possessors of the disputed land and the defendants without any lawful authority most illegally trespassed into above land and extended the school building on 15.03.1995. The plaintiffs requested the defendants on several occasions to remove above unlawfully constructed school building and hand over vacant possession of above land to the plaintiffs but he refused to do so.

Defendants contested above suit by filing a written statement alleging that the plaintiffs gave consent to construct extended school building in the disputed land by executing a Saronartha Lipi and Ongikarnama.

At trial plaintiff examined three witnesses and the documents produced and proved by the plaintiff were marked as Exhibit Nos.1-5 series. On the other hand defendants examined five witnesses and documents produced and proved by the defendants were marked as Exhibit No.Ka.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge decreed the suit. But instead of passing a decree for eviction of the defendants and

delivery of possession to the plaintiffs the learned Judge asked the defendants to pay Tk.15000/- as compensation for above land.

Being aggrieved by above judgment and decree plaintiffs preferred Title Appeal No.139 of 1999 to the District Judge, Chandpur which was heard by the learned Joint District Judge who allowed the appeal, set aside the judgment and decree of the trial court and remanded the suit back to the trial court of retrial.

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

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

It is admitted that the plaintiffs are the lawful owners and possessors of the disputed land and the defendant constructed the extended building of Dr. Sahidullah Memorial High School in the above land.

It has been alleged by the defendants that above school building was constructed with the consent of the plaintiffs accorded by executing a Saronartha Lipi and Ongikarnama. But the learned

Judge of the trial court held that the defendants failed to prove due and lawful execution of above two documents. I have carefully examined the evidence on record and found that above findings of the learned Judges of the courts below are based on evidence on record.

As such the plaintiffs have succeeded to prove that the defendants have constructed the extended building of Dr. Sahidullah Memorial High School in their land without any lawful authority.

As mentioned above the plaintiffs instituted this suit only for recovery of khas possession of the "Ga" schedule land after demolition of the unlawfully constructed extended building of above school. The plaintiffs did not seek any relief as to their title in the above land. As such it is crystal clear that this is a suit under Section 9 of the Specific Relief Act, 1877 and not a suit under section 8 of the above Act. It is well settled that the period of limitation for filing a suit under section 9 of the Specific Relief Act is six months from the date of dispossession. At paragraph No.7 of the plaint it has been stated that the defendants dispossessed the plaintiff from above land by constructing above extended building on 15.03.1995. Plaintiff Nos.2 Fatema Begum while

giving evidence as P.W.1 reiterated above claim as to the date of dispossession and stated that the defendants forcibly dispossessed them from the disputed land on 15.03.1995 by constructing an extended building of the school.

It turns out from the record that this suit for recovery of possession under section 9 of the Specific Relief Act, 1877 was filed on 01.12.1997 after more than two years from the date of dispossession. As such the instant suit was hopelessly barred by limitation.

But the learned Judges of both the courts below have failed to appreciate above aspect of this suit and most illegally the trial court decreed above sit and the court of appeal below instead of setting aside above judgment and dismissing the suit most illegally remanded the suit for retrial which is not tenable in law.

In above view of the materials on record I find substance in the civil revision and the rule issued in this connection deserves to be made absolute.

In the result, the rule is made absolute.

The impugned judgment and decree dated 29.11.2001 passed by the learned Joint District Judge, Chandpur in Title Appeal No.139 of 1999 setting aside those dated 29.07.1999 of the learned

Assistant Judge, Saharasti Chandpur in Title Suit No.52 of 1997 is set aside and above suit is dismissed on contested without cost.

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

Md. Kamrul Islam  
A.B.O