

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3372 OF 2002

In the matter of:

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

And

Government of Bangladesh

... Petitioner

-Versus-

Jamir Ali and others

... Opposite parties

Mr. Md. Moshihur Rahman, Assistant Attorney General
with

Mr. Md. Mizanur Rahman, Assistant Attorney General

.... For the petitioners.

None appears

.... For the opposite party.

Heard and Judgment on 19.11.2024.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 28.08.2001 passed by the learned Joint District Judge, 1st Court, Sylhet in Title Appeal No.274 of 1987 affirming the judgment and decree dated 22.03.1986, passed by the learned Additional Munsif, Sylhet, in Title Suit No.30 of 1986 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 opposite party as plaintiff instituted above suit for declaration of title for the land comprising Sylhet Pourashava Holding No.1 as described in the schedule to the plaint alleging that proforma defendant No.4 Sylhet Pourashava on receipt of

premium from Noor Miah rented above premises as a monthly tenant. Above Noor Miah sold possession of above premise to the plaintiff and plaintiff is in possession in above property. The Government did not have any title and possession in above property but the S.A. Khatian has been erroneously recorded in the name of the Government and on the basis of above erroneous record defendant No.1 denied title of the plaintiff.

Defendant No.1 contested the suit by filing a written statement alleging that the plaintiff does not have any right, title and interest in the suit land which is a Government khas land. The Sylhet Pourashave had no authority to give rented of the suit land to the plaintiff or his predecessor Noor Miah and above land has been correctly recorded in S.A. Khatian No.1 in the name of this defendant.

At trial plaintiff examined 1 witness and his documents were marked as Exhibit No.1 and 2 series. Defendant did not examine any witness nor produce any document.

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

Being aggrieved by above judgment and decree of the trial Court defendant No.1 the Government of Bangladesh preferred Title Appeal No.2784 of 1987 to the District Judge, Sylhet which was heard by the learned Joint District Judge, Artha Rin Adalar, Sylhet who dismissed the appeal and affirmed the judgment and decree of the trial Court.

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

Mr. Moshihur Rahman, learned Assistant Attorney General for the petitioner submits that admittedly S. A. Khatian of the disputed land has been prepared in the name of defendant No.1. The plaintiff claims that above land belonged to Sylhet Pourashava and he obtained monthly tenancy from Sylhet Pourashava. But the plaintiff could not produce any document showing that Sylhet Pourashava was the rightful owner and possessor of the disputed premises nor the plaintiff produced any document showing that Sylhet Pourashava gave monthly rental or lease to his predecessor Noor Miah. The plaintiff also could not produce any document showing that above Noor Miah transferred the disputed premises to the plaintiff. As such the plaintiff could not prove his claim of title in the disputed land by legal evidence.

The learned Judges of both the Courts be failed to appreciate the evidence on record and most illegally decreed the suit and dismissed the appeal respectively which is not tenable in law.

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

I have considered the submissions of the learned Assistant Attorney General for the petitioner and carefully examined all materials on record.

At the very outset the plaintiff did not provide a description of the land of the shop by mentioning Khatian and plot Number and quantity of land for which a decree for declaration of title has been sought. It is well settled that no decree for declaration of title can be passed in respect of a property which is not sufficiently identified by mentioning khatian, plot number and in appropriate cases by describing the boundaries. Due to above deficiency in the plaint the suit was liable to be dismissed.

It is admitted that the disputed land has been recorded in S.A. Khatian No.1 in the name of defendant No.1, the Government of Bangladesh.

The plaintiff claims that the suit property belonged to Sylhet Pourashava and made Sylhet Pourashava defendant No.4 but in support of above claim the plaintiff could not produce any document. Nor defendant No.4 entered appearance in this suit and claimed title in the disputed land and endorsed the plaintiff as his monthly tenant or leasee. As such the plaintiff has failed to prove by legal evidence that the disputed land and the structure therein belonged to Sylhet Pourashava.

The plaintiff has further claimed that Noor Miah obtained monthly tenancy or lease of the disputed property from the Sylhet Pourashava. But in the plaint no date or mode of above monthly tenancy or lease has been described. At trial plaintiff could not produce

any document showing that Sylhet Pourashava gave lease or rental of the disputed premises to Noor Miah.

There is no mention in the plaint as to the date or the type of document by which he purchased possession of the disputed premises. The plaintiff could not produce any document at trail in support of above claim of purchase from Noor Miah. While giving evidence as PW1 the plaintiff produced two documents, a money receipt issued by the Syleht Pourashava showing receipt of Taka 3750/- for miscellaneous purposes and secondly three receipt of payment of holding taxes. Above documents do not prove that Sylhet Pourashava gave settlement or lease of the disputed land or rented out the same to Noor Miah or to the plaintiff.

In above view of the facts and circumstances of the case and evidence on record I hold that the plaintiff has miserably failed to prove his lawful right, lease holding or monthly tenancy or title of Sylhet Pourashava in above premise by legal evidence.

Another aspect of the suit is that on the one hand the plaintiff claims that Sylhet Pourashava was the owner of the disputed land and he is a leasee or monthly tenant under Pourashava but on the other hand plaintiff made the Sylhet Pourashava a defendant in this suit and sought a decree for declaration of title and permanent injunction. It is well settled that if any leasee or monthly tenant sets up a counter claim of title against the lessor or landlord that claim is enough for cancellation of the lease or monthly tenancy.

The learned Judge of the Court of Appeal below has totally failed to appreciate properly above facts and circumstances of the case and evidence on record and most illegally dismissed the appeal and affirmed the flawed judgment and decree of the trial Court which is not tenable in law.

I find substance in this application under Section 115(1) of the Code of Civil Procedure 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 28.08.2001 passed by the learned Joint District Judge, 1st Court, Sylhet in Title Appeal No.274 of 1987 affirming the judgment and decree dated 22.03.1986, passed by the learned Additional Munsif, Sylhet, in Title Suit No.30 of 1986 is set aside and above suit is dismissed on contest with cost.

However, there is no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER