

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

**Present:**

**Mr. Justice S M Kuddus Zaman**

**CIVIL REVISION NO.688 of 2002.**

**In the matter of:**

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

And

Rakhal Chandra Majumder

**...Petitioner**

-Versus-

Lalita Bala Majumder and others  
and others

**...opposite parties**

Mr. Sherder Abul Hossain,  
Advocate

**...For the petitioner**

No one appears

**...For the opposite parties.**

**Heard on 07.11.2024**

**Judgment on 10.11.2024.**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 17.06.2001 of the learned Subordinate Judge and Artha Rin Adalat Noakhali in Title Appeal No.37 of 1990 affirming those dated 22.02.1990 of the learned Assistant Judge, Companiganj, Noakhali in Title Suit No.33 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 declaration that the judgment and decree passed by the learned Upazila Munsif, Companiganj in Title Suit No.357 of 1983 on 13.12.1983 is void, illegal and not binding upon the plaintiff.

It was alleged that Lalita Bala Majumder was the rightful owner and possessor of the disputed land who transferred the same to the plaintiff by a registered voguttar deed on 23.10.1976 and the plaintiff is in possession in above land by constructing a dwelling house. But the defendant as plaintiff of Title Suit No.357 of 1983 obtained an ex-parte judgment and decree on 13.12.1983 by suppression of summons of above suit and registered deed of the plaintiff. Above defendant also fraudulently created Misc. Case No.15 of 1985 under Order 9 Rule 13 of the Code of Civil Procedure showing this plaintiff as petitioner for setting aside above ex-parte judgment and decree of Title Suit No.357 of 1983. But actually this plaintiff did not file above Misc. Case under Order 9 Rule 13 of the Code of Civil Procedure. On 02.05.1888 the defendant disclosed the existence of above

impugned ex-parte judgment and decree of Title Suit No.357 of 1983.

Defendant contested the suit by filing a written statement alleging that the defendant is an illiterate village woman of 90 years of age and she did not have any son. She has only one daughter who is living in the house of her husband. Defendant acquired 70 decimal land by inheritance from her deceased including his dwelling house. The plaintiff was a domestic servant of the defendant and taking advantage of helplessness of the old and illiterate defendant the plaintiff has created above forged registered voguttar deed. But on the basis of above forged document plaintiff never got possession of the disputed land. After getting information about above forged document the plaintiff instituted Title Suit No.357 of 1983 and obtained impugned judgment and decree ex-parte in accordance with law.

At trial plaintiff and defendant examined two witnesses each and documents produced and proved by the plaintiff were marked as Exhibit No.1-2 but defendant did not exhibit any document.

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

Being aggrieved by above judgment and decree of the learned Assistant Judge the plaintiff as appellant preferred Title Appeal No.37 of 1990 to the District Judge, Noakhali which was heard by the learned Subordinate Judge, Artha Rin Adalat who dismissed the appeal and affirmed the judgment and decree of the trial court.

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

Mr. Sharder Abul Hossain learned Advocate for the petitioner submits that the plaintiff was the defendant of Title Suit No.357 of 1983 and above suit was decreed ex-parte on 13.12.1983. No summons of above suit was served upon the defendant nor he had any knowledge about above judgment and decree. For the first time the defendant came to know about above ex-parte judgment and decree on 29.03.1988 when defendant Padma Mala disclosed the same. Above defendant also filed Miscellaneous Case No.15 of 1985 in the name of the plaintiff under Order 9 Rule 13

for setting aside above ex-parte decree but in fact this plaintiff did not file above case. Plaintiff himself gave consistent evidence as P.W.1 in support of above claims. P.W.2 Suresh Chandra has given evidence as to the possession of the plaintiff in the disputed land and due execution of impugned registered voguttar deed. Above P.Ws were cross examined by the defendant but their evidence remained mutually supportive and credence inspiring. On the other hand the defendant did not make any endeavor to prove that the summons of Title Suit NO.357 of 1983 was properly served upon the defendant by legal evidence. In view of above facts and circumstances of the case and evidence on record the learned Judge of the court of appeal below should have allowed the appeal, set aside the flawed the judgment and decree of the trial court and decreed the suit. But the learned Subordinate Judge failed to appreciate above evidence on record properly and most illegally dismissed the appeal and upheld the erroneous judgment and decree of the trial court which is not tenable in law.

No one appears on behalf of the opposite party at the time of hearing of this civil

revision although the matter appeared in the list for hearing for several dates.

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

It is admitted that disputed 70 decimal land belonged to defendant Padma Mala.

It is also admitted that above Padma Mala as plaintiff instituted Title Suit No.357 of 1983 for declaration that above voguttar deed dated 23.10.1976 was obtained by fraud and the same was not binding upon the plaintiff and above suit was decreed ex-parte on 13.12.1983.

While giving evidence as P.W.1 Rakhal Chandra Majumder stated in cross examination that defendant Padma Mala is an illiterate and old village woman of 90 years of age. He has stated that above Padma Mala is a widow and she did not have any son but she has only one daughter who lives in the house of her husband. He further stated that above Padma Mala was not his relative.

The plaintiff has claimed that no notice of Title Suit No.357 of 1983 was served upon him and the defendant in collusion with the process server of the court submitted a false service

report and fraudulently obtained the impugned judgment and decree ex-parte. But the plaintiff did not call for the record of Title Suit NO.357 of 1983 to show above false or forged service of summon.

As to the date of his knowledge about above ex-parte judgment and decree plaintiff stated in the plaint that on 29.03.1988 he came to know about above impugned judgment and decree when the defendant disclosed the existence of the same. The plaintiff did not mention the place, time or the persons in whose presence the defendant made above disclosure. In his evidence as P.W.1 he further stated that he came to know about the impugned decree for the first time on 23.03.1988 which appears to be contradictory with the date of his knowledge as stated in the plaint.

The plaintiff further claimed that he did not institute Misc Case No.15 of 1985 for setting aside above ex-parte decree. But he did not call for the record of above Miscellaneous case to show that the signature of the petitioner of above case was different from that of the plaintiff on the plaint of this suit.

On consideration of above facts and circumstance of the case and evidence on record I

hold that the concurrently findings of the learned Judges of the courts below that the plaintiff could not prove by legal evidence that defendant Padma Mala fraudulently obtained the impugned ex-parte judgment and decree of Title Suit No.357 of 1983 by suppression of summon of the plaintiff or she fraudulently filed Misc. Case No.15 of 1985 under Order 9 Rule 13 of the Code of Civil Procedure in the name of the plaintiff for setting aside above ex-parte judgment and decree are based on evidence on record and in the absence of any allegation of non consideration or misreading of any material evidence on record this court cannot interfere with above concurrent findings of facts in its revisional jurisdiction.

In above view of the materials on record I am unable to find any substance in this civil revision and the rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged without any order as to costs.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.