

Present:  
Mr. Justice Md. Iqbal Kabir  
And  
Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 3259 of 1994

Anjana Diu presently Afroza Begum  
....Petitioner

Versus  
Luchina Diu @ Rongi Din  
....Opposite Party

Mr. Md. Mozammel Haque (Rana), Advocate  
....For the Petitioner

No one appears  
.... For the Opposite Party

Judgment on 01.02.2026

Md. Iqbal Kabir, J:

This Rule was issued at the instance of the petitioner, calling upon the opposite party to show cause as to why the impugned judgment and decree dated 18.06.1994 and 06.08.1994 respectively passed by the learned Additional District Judge, First Court, Mymensingh in Other Class Appeal No. 260 of 1990, should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts remain that the plaintiff-appellant/ opposite party instituted Other Class Suit No. 242 of 1985 in the Court of Subordinate Judge, Second Court, Mymensingh, for a declaration of title over the suit land as described in the Schedule.

The defendant No. 1/respondent/petitioner contested the suit by filing a written statement and denied all the material allegations made in the plaint and claimed that the suit is not maintainable and liable to be dismissed for non-payment of the proper Court fee, and also barred under section 42 of the Specific Relief Act.

However, the trial Court framed the issues, and upon hearing, the parties dismissed the suit by its judgment and decree dated 12.09.1990 and 22.09.1990, respectively.

The record shows the dismissal was based on clear findings that the suit was not maintainable in its present form, as the plaintiff failed to prove her possession over the suit land and also failed to pay the proper advalorem Court fee. Consequently, the plaintiff was not entitled to any decree as prayed for in the plaint.

Being aggrieved by the aforesaid judgment and decree dated 12.09.1990 and 22.09.1990 passed by the Trial Court in Other Class Suit No. 242 of 1985,

the plaintiff-opposite party preferred Other Class Appeal No. 260 of 1990 before the learned District Judge, Mymensingh.

This appeal was heard by the learned Additional District Judge, First Court, Mymensingh, and upon hearing the parties, the appellate Court allowed the appeal by its judgment and decree dated 18.06.1994 and 06.08.1994 respectively, setting aside the judgment and decree of the learned trial Court, and remanded the case to the trial Court for fresh adjudication.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree dated 18.06.1994 and 06.08.1994 respectively, passed by the learned Additional District Judge, Mymensingh, in Other Class Appeal No. 360 of 1990, the present petitioner filed the Revisional Application and obtained the instant Rule.

Mr. Md. Mozammel Haque (Rana), the learned Advocate for the petitioner contended that the appellate Court below committed an error of law and facts occasioning failure of justice in allowing the appeal, setting aside the judgment and decree of the learned Trial Court and remanding the case, without rebutting the specific and clear findings of the Trial Court that the plaintiff failed to prove possession in the suit land and in the absence of a prayer for recovery of khas possession upon payment of ad valorem Court fee, the suit itself was not maintainable and the plaintiff was not entitled to any decree as prayed for.

He further submits that the appellate Court committed a grave illegality in allowing the appeal despite expressly observing that it agreed with the findings of the Trial Court to the effect that the plaintiff ought to have instituted the suit with a prayer for recovery of khas possession. Having concurred with the Trial Court on the fundamental issue of maintainability, the Appellate Court acted inconsistently and contrary to law in setting aside the judgment and decree.

He submits Trial Court, upon framing the issues, meticulously evaluating the oral and documentary evidence on record, and arrived at a clear and categorical finding that in the absence of a specific prayer for recovery of khas possession coupled with payment of proper ad valorem Court fee, the suit as framed was not maintainable in law. On such a finding, the learned Trial Court rightly dismissed the suit.

According to him, when the suit itself was barred under section 42 of the Specific Relief Act and was not maintainable in its present form for non-payment of proper ad valorem Court fee, the learned Trial Court was not required to enter into or record findings on the question of title or other substantive issues. Therefore, the impugned judgment of the Appellate Court is

liable to be set aside for having been passed in clear misapplication of law and in disregard of settled principles governing maintainability of suits.

In the given circumstances, the learned Appellate Court, instead of interfering with the well-reasoned judgment of dismissal, ought to have dismissed the appeal.

It is pertinent to note that this is a long-pending Rule. By this time, 30 years have elapsed, and no one taken the initiative for its disposal. However, no one appears to contest the Rule on behalf of the opposite parties while it appears in the list for hearing.

It is pertinent to note that the plaintiff sought a declaration of title over the suit land and further prayed for a declaratory decree to the effect that defendant No. 1/2 has no title in the suit land.

However, the trial Court, by its judgment, dismissed the suit. The judgment clearly states that the plaintiff did not own the suit land; she ought to have filed the suit by incorporating a prayer for recovery of khas possession. However, on scrutiny, it appears that the trial Court did not pronounce its judgment in accordance with the prayers made by the plaintiff. In particular, the trial Court did not make any finding as to whether the plaintiff had title to the suit land or whether the defendants had any title therein. It further appears that the trial Court mentioned several provisions of law in its judgment. But it did not express any opinion as to how those provisions affected the fate of the plaintiff's case.

In pertinent to note that such disposal of the suit discloses a clear failure on the part of the trial Court to exercise the jurisdiction vested in it by law. The trial Court was nonetheless legally bound to adjudicate the substantive issues arising from the pleadings, evidence, and issues framed, particularly when full evidence, both oral and documentary, had already been adduced by the parties. The trial Court did not record any finding as to whether the plaintiff had a valid title to the suit land, nor did it decide whether the defendants had acquired any lawful title thereto. The complete absence of findings on these vital issues amounts to a material irregularity in the exercise of jurisdiction and has resulted in a manifest miscarriage of justice.

It is at this juncture, by avoiding adjudication of the core issues, that the trial Court effectively deprived the parties of a meaningful appellate scrutiny, thereby causing serious prejudice to the plaintiff.

In the above context, the trial Court was not justified in disposing of the suit merely by observing a single issue. Upon perusal of the documentary evidence and the oral testimony of the witnesses examined on behalf of both the plaintiff and the defendants, the trial Court was in a position to decide the

case on the merits, yet it failed to undertake such examination. However, it is well settled that a suit cannot be dismissed merely on a technical ground when the Court is otherwise competent to decide the real controversy between the parties based on evidence already on record. The trial Court was under a legal obligation to decide the suit on the merits or, at the very least, to allow the plaintiff to amend the plaint. Furthermore, the pivotal issue in the suit was whether defendant No. 1, Anjana alias "Afroza Begum," by marrying defendant No. 2, Nuru Mia, and residing in his household, acquired any right of inheritance over the suit land, thereby extinguishing the plaintiff's ownership, and such a crucial issue was entirely unaddressed by the trial Court.

From the above, a suit should not be dismissed merely on technical grounds when the Court is competent to decide the controversy based on the evidence on record. The Trial Court had an obligation to decide the suit on its merits or allow the plaintiff to amend the plaint. Therefore, we find that the Appellate Court acted correctly in sending the suit back for proper adjudication.

In view of the above, we find no merit in this Rule.

Accordingly, the Rule is discharged without any order as to cost.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

Let a copy of this judgment, along with the lower Court records, be communicated to the Court concerned forthwith.

Md. Riaz Uddin Khan, J:

I agree.