

Bench:

Mr. Justice Md Ruhul Quddus

Civil Revision Number 506 of 1991

Md. Atiqullah Sowdagar and others
... Petitioners

-Versus-

Abdul Ghani being dead substituted by his legal
heirs and heiresses Jakia Begum and others
... Opposite Parties

Mr. Mahbub Shafique, Advocate for Mr. Jashim
Uddin, Advocate

...for the petitioners

Mr. Md. Golam Mostafa with Mr. Sharif Uddin,
Advocates

... for the opposite parties

Hearing concluded on 27.10.2025

Judgment delivered on 29.10.2025

This rule was issued on an application under Section 115 of the Code of Civil Procedure challenging the judgment and decree dated 29.10.1990 (decree signed on 08.11.1990) passed by the Subordinate Judge, Kishoregonj in Other Class Appeal Number 216 of 1986 allowing the same on reversing those dated 10.08.1986 passed by the Upazila Munsif, Bhairab in Other Class Suit Number 125 of 1984.

The plaintiff Abdul Ghani, since deceased, instituted the suit for declaration of title and confirmation of possession on a piece of land measuring 01 decimal as described in the schedule of the plaint with a further declaration that the judgment and decree passed in Other Class Suit Number 139 of 1968 was not binding upon him.

The plaintiff's case, in brief, was that the suit land and other land original belonged to Raja Jagat Kishore Achariya. After his death, his successor Jeetendra Kishore Achariya and others become the owners-in-possession of the same. The plaintiff's father Abdul Hakim got the suit land settled in his name in 1356 BS and the subsequent ROR Khatian was published in his name. The defendants instituted Other Class Suit Number 139 of 1968 for perpetual injunction and Miscellaneous Case Number 282 of 1968 for correction of record, which was wrongly published in the name of the Government. The plaintiff was a party to that cases and was contesting the same. Meanwhile, the war of independence started and thereafter, the defendants in a secret manner obtained judgment and decree/order in those cases.

Defendants number 1 to 6 (herein petitioners) contested the suit by filing a written statement denying the allegations of the plaint contending, *inter alia*, that the earlier suit and case were filed in respect of the same suit land within the knowledge of the plaintiffs.

Those were decreed and as such the present suit was barred by *res-judicata*.

The Government of Bangladesh represented by the Deputy Commissioner, Kishoregonj being defendant number 7 filed a written statement, but ultimately did not contest the suit.

On the aforesaid pleadings, the trial court framed the issues, namely, (i) whether the suit was maintainable in its present form, (ii) whether there was any cause of action for instituting the suit, (iii) whether the suit was barred by limitation, (iv) whether suit was correctly valued and whether the trial court had jurisdiction to try and entertain the suit, (v) whether the suit was barred by the principle of *res judicata* (vi), whether the plaintiff had any right, title, interest and possession in the suit land, and (vii) whether the plaintiff was entitled to the relief as prayed for.

In course of trial, both the plaintiff and defendants recorded oral evidence and exhibited documents in support of their respective cases. On conclusion of hearing, learned Upazila Munsif, Bhairab dismissed the suit by judgment and decree dated 10.08.1968 on the ground of *res judicata*.

Being aggrieved, the plaintiff preferred Other Class Appeal Number 216 of 1968 in the Court of District Judge, Kishoregonj. Learned Subordinate Judge, Kishoregonj heard the appeal and

allowed the same by the impugned judgment and decree on the ground that the suit land was not the subject matter of the previous suit/case.

Mr. Mahbub Shafique, learned Advocate for the petitioners submits that the learned Subordinate Judge made a third case beyond the pleadings and therefore he was wrong in holding that the judgments passed in Miscellaneous Case Number 282 of 1968 and in Other Class Suit Number 139 of 1968 were not binding upon the plaintiff. In fact the earlier cases were filed in respect of the same suit land, and the decisions passed therein were binding upon him. The impugned decision of the appellate court was thus erroneous and caused failure of justice.

Mr. Md. Golam Mostafa, learned advocate for the plaintiff-opposite parties refers to the documentary evidence and submits that from a simple reading of those, it is apparent that the suit land i.e. 1 decimal of land in SA Khatian 1043, Plot Number 9444 is different from the subject matter of the previous suit instituted by the defendants. Their four decimals of land fell in the Khas Khatian Number 1 of the Government and the lower appellate court being the last court of fact, discussed the evidence independently and allowed the appeal. There is no error of law, nor failure of justice and as such the rule is liable to be discharged.

I have considered the submissions of the learned advocates of both sides and gone through the record. It appears that the appellate court being the last court of fact made an exhaustive discussion over the evidence and other materials on record, and found the land in the present suit and that in the previous suit and case were different. The appellate court thus decreed the suit allowing the appeal. The evidence and materials on record supports the finding of the appellate court. I, therefore, do not find any failure of justice in the ultimate decision of the appellate court.

Accordingly, the rule is discharged. Send down the records.