

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO. 2813 OF 1998.

Amjad Ahamed and others
..... *Defendant-Respondent-Petitioner.*

-VERSUS-

Samuj Ali and others
... *Plaintiff-Appellant-Opposite Parties.*

Mr. Sk. Reajul Hoque, Advocate
..... *For the Petitioner.*
Ms. Ainun Naher, D.A.G
..... *For the Opposite Parties.*

Heard on: 13.08.2025, 20.08.2025 and 27.08.2025

Judgment on 03.09.2025

By this Rule, the opposite parties were called upon to show cause as to why the judgment and decree dated 27.04.1998 passed by the learned Subordinate Judge, 1st Court, Brahmanbaria in Title Appeal No.70 of 1996, allowing the appeal and reversing the judgment and decree dated 25.07.1996 passed by the learned Senior Assistant Judge, Sarail, Brahmanbaria in Title Suit No. 45 of 1994 dismissing the suit 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 brief for the disposal of the Rule are that the opposite party Nos.1-3 herein as plaintiffs instituted Title Suit

No. 45 of 1994 before the Assistant Judge, Sarail, Brahmanbaria for permanent injunction, contending inter-alia that Government is the owner of the schedule land described in the Schedule No.1 and the Government excavated the Pond and its banks were raised to make it flood free, so that the People can take its water; plaintiffs took lease of the said Pond and after expiry of the lease period they applied for renewal and same is pending before the defendant No.13 (Chairman Union Parishad). Though the lease of plaintiffs has not renewed as yet but they are possessing the said Pond based on the right of holding over and they have got fish reared up in the said Pond; That the plaintiffs owners of the land of Schedule No. 21 i.e. 437, 372, 374, and 375 and those Plots are situated contiguous to the aforesaid Plot No. 435 of Schedule No.1; The homestead of the Principal defendant are situated near the suit pond and to remove the water of their homestead they are trying to create a let-out and to create a drainage System by cutting earth of the bank of the suit pond and the land of the Plaintiffs mentioned in schedule No. 2; If the Principal defendant succeed in creating the drainage system the plaintiffs will suffer irreparable loss and injury and as such the plaintiff are compelled to file the instant suit.

Defendant Nos. 1-10 contested the suit by filing a joint written statement contending inter alia that the suit pond is situated in a rural area and the Government is owner of the Suit Pond, so the plaintiffs has no subsisting interest to the suit land. There is no specific drainage system for letting out the rain water and other water, but in the natural course, the water comes from the highland to the lowland through a small canal over the Pond, etc. A Government Road runs from north to south, situated adjacent to the last of the suit Ponds. That to the north of Plot No. 398 and 397 and other plots there is a Government plot which has been recorded as Plot No. 339 and said road runs east to west and same has joined with the road (Plot No. 371); That the Plot No. 256, 255, 2673, 253, 252, 238, 240, 250 are situated to the northern portion of said road and rain water of those Plots comes down towards the south and there is a pipe under the road of Plot No. 239 for removal of the water and the said water after coming through the said pipe, falls on Plot No. 398, and thereafter flows over the land of Plot No. 426 and 434 and comes to the suit pond through a small channel which is commonly known as Nala or Jam and there after the excess water comes down and falls to the channel which runs parallel to the Government Road of Plot No. 371; That in the same manner the water of Plot No. 406, 407, 405, 404, 403, 402,

400, 399 and 401 comes towards the best direction and falls on plot no. 398 and in the aforesaid manner comes to the channel of Plot No. 371; That the excess water of Plot No. 332, 331, 433, 429, 428, and 427 comes to the east, direction and in the aforesaid manner falls in the said channel; That since the inception of his earth the excess water of the locality is running in the abovementioned manner and the balance has been maintained in the environment; That to stop the natural flow of excess water the plaintiffs tried to stop the Nala locally known as Jan) of the suit plot fill it up by cutting earth of its bank and from other Plots and when the local People obstructed them they stopped such illegal works. That the defendant and the other people of the locality informed the Thana Nirbahi Officer about the unlawful activities of plaintiffs filing an application and on inspection it was found that if the plaintiff stop the natural flow of the water there will be serious water logging in the area and the said officer asked the local Union Parishad member to solve the Problem; and it was decided that the flow of the excess water shall not be disturbed; That the plaintiff ignoring the said decision again tried to stop the natural flow of the excess water and in that situation the defendant again informed the Thana Nirbahi Officer and when Thana Nirbahi Officer directed the Police to take necessary step against the plaintiff he filed the Instant

suit; that the water of the suit Pond was never used by the people of the locality for drinking purpose rather same was used for cultivation purpose and through the said pond excess water of the locality used to let out; That the suit plot has been record in the C.S. record as unused Pond and in S.A. Khatian as Khal and same is being used for running the excess water of the their locality.

The learned Senior Assistant Judge of Sarail, Brahmanbaria, framed the necessary issues to substantiate the dispute between the parties.

Subsequently, the learned Senior Assistant Judge of Sarail, Brahmanbaria, dismissed the suit by judgment and decree dated 25.06. 1996.

Being aggrieved, the plaintiff, as appellant, preferred Title Appeal No. 70 of 1996 before the District Judge of Brahmanbaria. Eventually, the learned Subordinate Judge of the 1st Court, Brahmanbaria (now Joint District Judge), allowed the appeal and reversed the judgment and decree dated 27.04. 1998, passed by the trial Court.

Being aggrieved, the defendant-respondent, as petitioner, filed this Civil Revision under Section 115(1) of the Code of Civil Procedure before this court and obtained the instant Rule.

Mr. Sk. Reajul Hoque, the learned advocate appearing on behalf of the petitioner, submits that the plaintiffs, being a lessee, are not capable of filing the instant suit. Moreover, after his lease period, he filed the instant suit. However, the appellate court below failed to consider this, erroneously decreeing the suit; thus, it committed an error of law, resulting in an incorrect decision and a failure of justice.

No one appears to oppose the Rule on behalf of the plaintiff-opposite parties. On the other hand, Ms. Ainun Naher, the learned Deputy Attorney General for the Government of Bangladesh, submits that the suit is not maintainable as the plaintiffs had no subsisting interest in the suit pond but the appellate court below failed to consider this, erroneously decreeing the suit; thus, it committed an error of law, resulting in an incorrect decision and a failure of justice.

We have anxiously considered the submission of the learned advocate and perused the impugned judgment as well as oral and documentary evidence. It appears that the opposite parties herein, as plaintiffs, instituted the instant suit for a permanent injunction with the contention that the Government is the owner of suit pond and plaintiffs were lease of that Pond and though the lease of plaintiffs has not renewed as yet but they are possessing the said Pond based

on the right of holding over and they have got fish reared up in the said Pond of proving the case. However, the defendants are attempting to forcefully create a let-out and establish a drainage system by excavating the bank of the suit pond. On the contrary, the defendant claimed that the plaintiffs are not the lessors of the suit land and, making some untrue statements, filed the instant suit. To stop the natural flow of excess water, the plaintiffs attempted to block the Nala, also known as Jan, of the suit plot by filling it in with earth from its banks and other plots on the plaintiff's side.

To prove the suit, the plaintiffs' side examined as many as three witnesses and presented the relevant documents. On the other hand, the defendants' side, to prove their respective case, examined three witnesses and presented the material evidence on record.

We have scrutinized each deposition and cross-examination. It appears that the trial court below considered the above evidence on record, dismissed the suit, and found that the Government is the owner of the suit pond. The trial court further found that the plaintiffs failed to prove that they are the lessors of the suit pond and that they also failed to prove their lawful possession over the suit pond.

It is evident to note that P. W. 1 –P. W. 3, in their examination-in-chief, tried to corroborate their pleading case,

but all of them were discarded in their cross-examination. Besides this, having reviewed the testimonies of D. W. 1 – D. W. 3, they corroborated one another in respect of the pleading of the case of the defendants. Except for some minor discrepancies, no such material contradiction or omission is noticed, by dint of which these witnesses can be disbelieved.

Analyzing the case record and the evidence from the respective parties, we have reason to draw the inference that, admittedly, the plaintiffs are not the owners of the suit pond, and they also failed to prove that they are the lessee of the suit pond from the Government. Moreover, they failed to prove their possession of the suit pond. Therefore, the plaintiffs failed to prove their prima facie title and exclusive possession of the suit pond. The trial court below, in its observation and findings, correctly held that the plaintiffs failed to prove their prima facie title and lawful possession of the suit pond.

It further appears that the plaintiffs, who took a year-to-year lease of the suit pond from the Government. Moreover, their lease period had ended a long time before they filed the instant suit. Therefore, plaintiffs have no subsisting interest in the suit pond. Consequently, we hold that the plaintiffs, being year-to-year leaseholders, had no locus standi to bring any suit before any jurisdiction of the courts of the country.

Considering the above facts and circumstances, it is evident that the appellate court below, as the last court of fact, did not consider the suit in the proper perspective of facts and the law, instead decreeing the suit in allowing the appeal, thereby committing an error of law resulting in an error in the decision occasioning a failure of justice.

In view of the above facts and circumstances, it appears that the learned Judge of the trial court, after properly assessing the evidence and other materials on record, very rightly and judiciously dismissed the suit. On the other hand, the learned Judge of the appellate Court below, without considering all aspects of the case's facts and law, as well as without properly evaluating the evidence on record, reversed the trial court's findings. Therefore, the impugned judgment and decree of the appellate court is not based on a correct evaluation of the facts and materials of the case nor a proper appreciation of the evidence on record, and as the same is not an appropriate judgment of reversal, it does not deserve to be sustained.

Resultantly, the Rule is made absolute without any order as to costs. The impugned judgment and decree dated 27.04.1998 passed by the learned Subordinate Judge, 1st Court, Brahmanbaria in Title Appeal No.70 of 1996, is hereby set aside. However, the judgment and decree dated 25.06.

1996, passed by the learned Senior Assistant Judge, Sarail, Brahmanbaria, in Title Suit No. 45 of 1994, is affirmed.

The order of stay granted at the time of issuance of the Rule by this court stands vacated.

Communicate the judgment and send down the lower Court records.

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(Md. Salim, J).