

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 2041 OF 2014

IN THE MATTER OF:

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

(Against Decree)

-And-

IN THE MATTER OF:

Zahidul Islam and others

--- Plaintiff-Appellant-Petitioners.

-Versus-

Hosne Ara Begum and others

--- Defendant-Respondent-Opposite Parties.

Mr. Md. Sagir Hossain, Advocate

---For the Plaintiff-Appellant-Petitioners.

Mr. Abul Kalam Chowdhury with

Mr. Md. Golam Noor, Advocates

--- For the Opposite Party No. 1.

Heard on: 20.11.2023, 10.12.2023,
13.12.2023, 14.12.2023 and 02.01.2024.

Judgment on: 09.01.2024.

At the instance of the present plaintiff-appellant-petitioners, Zahidul Islam and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite parties to show cause as to why the impugned judgment and decree complained of in the petition moved in court should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioners as the plaintiffs filed the Other Suit No. 138 of 2007 in the court of the learned Assistant Judge, Debigonj, Panchagarh for cancellation of the registered deed No. 1840 dated 08.03.1983. The plaint contains that the suit land measuring 2.54 acres was owned by 4 Annas Dulai Mardi, 4 annas Chadur Mardi, 4 annas Naba Mardi. The said Chadur Mardi died leaving behind a bachelor and his share got Naba Mardi. Naba Mardi died leaving behind 2 sons, namely, Kamala Mardi and Balaram Mardi. They obtained permission from the Additional Deputy Commissioner/Collector (Revenue), Panchagarh to sell 70 acres of land in Dag No. 387, Khatian No. 112 at Mouza Nagar Changti. The said Kamala Mardi and Balaram Mardi sold 85 decimals of land on 15.08.2006 by the registered deed No. 2620 to the plaintiff Nos. 1 and 2 and on the same date also sold 85 decimals to the plaintiff Nos. 3-5 by the registered deed No. 2621. Therefore, they mutated their names. The present defendant-opposite parties created a deed of sale being deed No. 1840 dated 08.03.1983 showing the defendant Nos. 2-6 as the heirs of Naba Mardi without obtaining the required permission from the Additional Deputy

Commissioner/Collector (Revenue). The said deed was registered in the Khanshama Upazilla Sub-Registry Office instead of the Debigonj Sub-Registry Office. The plaint further contains that the suit land was not possessed by the defendants. The defendant No. 1 filed a false partition suit being Partition Suit No. 57 of 2006 and the plaintiffs came to know about the said sale deed from the notice by the same partition suit, thus, the said sale deed is void and not binding upon the plaintiffs.

The suit was contested by the defendant No. 1 by filing a written statement denying the claims of the plaintiffs. The defendants contended that Dolai Mardi, Naba Mardi and others were the original owners of the suit land. Chatur Mardi died leaving behind a son Dhowa Mardi and Naba Mardi. Naba Mardi died leaving behind 4 sons, namely, Tularam Mardi, Kamala Kanta Mandal, Budharai Ram and Balaram Mardi and a wife, namely, Barki Ram Mardi. The said Chatur Mardi and Naba Mardi sold 1.70 acres of land by the deed No. 1840 dated 08.03.1983 to the defendant No. 1 who mutated his name and paid khajna (rent) and has been possessing by cultivating mango and other fruit trees. The said deed in question was registered at the Sub-registry Office of Khanshama Upazilla and adjacent or

nearest to the suit land. The defendants further contended that the plaintiffs obtained disputed permission on 07.08.2006 from the Additional Deputy Commissioner/Collector (Revenue) of Panchagarh in order to sell the suit land but it was canceled when an objection petition was filed. The present defendants filed a suit for partition being Partition Suit No. 57 of 2006 which is pending in the court of the learned Assistant Judge, Tetulia, Panchagarh regarding D. P. Khatian in the name of the defendants.

On receipt of the said other class suit the learned Assistant Judge, Debigonj, Panchagarh heard both the parties and considered the evidence adduced and produced by the parties dismissed the suit by his judgment and decree dated 14.03.2012. Being aggrieved the present plaintiff-petitioners preferred the Other Appeal No. 45 of 2012 in the court of the learned District Judge, Panchagarh who also heard the parties came to a decision disallowed the appeal and thereby affirming the judgment and decree dated 14.03.2012 passed by the learned trial court.

This matter has been appearing in the daily cause list for a long period of time but no one appears to support the Rule. However, Mr. Md. Sagir Hossain, the learned Advocate appeared

in court today and submitted that the suit file was taken back by his client with a no objection certificate, as such, he could not come to this court to support the Rule and since desires of this court, he has come before this court. However, the learned Advocate submits that the learned courts below committed an error of law resulting in an error in such decree occasioning failure of justice in failing to appreciate that the plaintiff-petitioners in the deposition of witnesses clearly stated that they purchased the land by the permission as taken by the vendors as per tribe owner and they have been possessing the suit land and acquired right and title which the learned courts below failed to consider occasioning failure of justice, as such, the impugned judgment and decree is liable to be *set aside*.

The learned Advocate also submits that the plaintiff-petitioners filed the suit and claimed that the alleged deed No. 1840 dated 08.03.1983 was registered in another District Sub-Registration Office which was out of jurisdiction for registration and proved the case but the learned courts below failed to consider the same occasioning the failure of justice, as such, the impugned judgment and decree is liable to be *set aside*.

The Rule has been opposed by the present defendant-opposite party No. 1, namely, Hosne Ara Begum.

Mr. Abul Kalam Chowdhury, the learned Advocate, appearing along with the learned Advocate, Mr. Md. Golam Nur, on behalf of the defendant -opposite party No. 1, submits that the other class suit was filed by the present plaintiff-petitioners for a declaration that the deed No. 1840 dated 08.03.1983 (Exhibit-Ka) is illegal and not binding upon the plaintiff-petitioners but the learned trial court heard the parties and came to a decision and conclusion to dismiss the suit and the learned appellate court below also after hearing the parties disallowed the appeal and affirmed the judgment and decree passed by the learned trial court by the judgment and decree dated 15.01.2014 against the plaintiff-petitioners and thereby the learned courts below did not commit any illegality and there is no matter of non-consideration of the documents adduced and produced by the parties but the learned Advocate for the petitioners obtained the Rule by misleading the court, thus, the Rule is liable to be discharged.

The learned Advocate further submits that the original vendor of the suit land was a Hindu believer, as such, there was no requirement of obtaining permission from the relevant

authority and the concerned deed was registered in the Sub-Registry Office of Khanshama Sub-Registry Office as per provisions of the Registration Act prevailing in the year of 1983, as such, the deed No. 1840 dated 08.03.1983 was properly executed and registered, as such, the plaintiffs could not prove its own case before the learned trial court and the learned appellate court below who concurrently decided and passed the judgments against the plaintiff-petitioners and therefore the Rule is liable to be discharged.

Considering the above submissions of the learned Advocates appearing for the respective parties and also considering the revisional application filed under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the appellate court below and also perusing the relevant materials available in the lower court records, it appears to this court that the present petitioners as the plaintiffs filed the title suit claiming that the sale deed No. 1840 dated 08.03.1983 being Exhibit- 'Ka' was liable to be canceled as being illegal and not binding upon the plaintiffs. It further appears that the plaintiffs' claimed that the deed No. 1840 dated 08.03.1983 was wrongfully registered in

a Sub-Registry Office outside the jurisdiction under the provision of the Registration Act prevailing in the year 1983.

The further claim of the plaintiffs is that before registering the said sale deed the defendants did not obtain permission from the concerned authority from the Additional Deputy Commissioner/Collector (Revenue) as the property belonged to the original vendor. The learned trial court and the learned appellate court below considered the claim of the plaintiffs by filing a plaint of the plaintiffs and examined the relevant documents adduced and produced by the parties. The learned courts below found concurrently against the present plaintiff-petitioners as to the claims of the plaintiffs in the plaint. The learned courts below concurrently found that the original owner of the suit land belonged to Hindu believer, as such, there was no requirement for permission before selling the land in the year 1983. The learned trial court also considered the concerned Sub-Registry Officer where registered the deed No. 1840 dated 08.03.1983.

In this regard, the learned courts below concurrently found that there was no illegality in registering the deed in question at Khanshama Sub-Registry Office because before the amendment

of the Registration Act and the deed was registered as some portion of lands are situated within the jurisdiction of Khanshama Sub-Registry Office, as such, there is no illegality as to the registration of the said deed which the plaintiffs claimed as illegal and void but the plaintiffs could not prove its own case in the learned trial court and also in the learned appellate court below.

In view of the above findings and the decisions of the learned courts below I consider that the impugned judgment and decree passed by the learned appellate court below by affirming the judgment and decree of the learned trial court did not commit any error of law. Moreover, the plaintiffs are under an obligation to prove their own case on the standard of the balance of probability, as such, the learned courts below considered and examined properly all the evidence adduced and produced by the parties, as such, the impugned judgment and decree passed within the framework of the law and I do not consider that this is a proper case/Rule for interference from this court.

Now, I will examine the findings of the learned courts below:

The learned trial court came to a conclusion to dismiss the suit filed by the present plaintiff-petitioners and concluded against the plaintiffs on the basis of the following findings:

...“অপরদি-ক ১ নং বিবাদীর পক্ষ মৌখিক ও দালিলিক সাক্ষ্য প্রমাণ পর্যা-লাচনায় দেখা যায় বিবাদী নবমার্তির ওয়ারিশান সনদ দাখিল করতঃ নালিশী কবলা মূ-ল ০৮/০৩/১৯৮৩ ইং তারি-খ জমি ক্রয়ের পরে ১৬১ নং খারিজ খতিয়ান খো-লন। খারিজ খতিয়ান করার প-র ১৯৯০ ইং সন হই-ত পরবর্তী সরকার-র মোট ১৫টি খাজনার দাখিলা দাখিল করিয়া-ছেন। সাক্ষ্য প্রমা-ণ বিবাদীর ভোগ-দখল ইত্যাদি প্রমাণিত হইয়া-ছে। এমতাবস্থায়, সাক্ষ্য প্রমাণ পর্যা-লাচনায় নালিশী কবলা ভূয়া ও তথ্যকতামূলকভা-ব বিবাদী কর্তৃক সৃষ্টি করা হইয়া-ছে প্রমাণিত হয় নাই। বিবাদী ১৯৮৩ সা-লর পর হই-ত জমি পৃথক খারিজ খতিয়ান খোলার প-র প্রতিবছর খাজনা পরি-শোধ সহ ভোগ দখ-লর প-র বাদী জমি ক্রয়ের তারিখ হই-ত ২৩ দিন প-র নালিশী কবলার বিষয় জ্ঞাত হন তথা মোকদ্দমায় নালি-শর কারণ উদ্ভব হওয়ার এবং প্রকৃত প-ক্ষ বাদী জমির দখল প্রাপ্ত না হওয়ায় নালিশী কবলাটি ভূয়া ও তথ্যকীয় মর্মে প্রমাণিত হয় নাই। বিরোধীয় কবলাটি দেবীগঞ্জ সাব-রেজিস্ট্রি অফি-সর বাহি-র এখতিয়ার বিহীন সাব-রেজিস্ট্রি করা সংক্রা-ন্ত বাদীর দাবী প্রমা-ণর জন্য বাদী প্র-য়োজনীয় কোন পদ-ক্ষপ গ্রহণ ক-র নাই।”...

The learned appellate court below concurrently found that the petitioners as the plaintiffs could not prove their case as to the religion of the original vendor and also as to the proper Sub-Registry Office for registering the deed, thus, the learned

appellate court below passing the impugned judgment and decree on the basis of the following findings:

...“It has been claimed that the deed of the defendant was registered outside the territory of the local Sub-Registry Office. On that point, the plea of the defendant is that the concerned Sub-Registry Office nearest to their locality then of own police station Sub-Registry Office and part of the land situated in the area of Sub-Registry Office got registration of the deed. On that, the plaintiffs' side also failed to disprove the claim of the defendant.”...

In view of the above concurrent findings by the learned courts below I do not consider that there is no illegality or non-consideration of the evidence adduced and produced by the respective parties and the plaintiffs failed to prove their case, thus, the Rule does not require any further consideration by this court.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 15.01.2014 passed by the learned District Judge, Panchagarh in the Other

Appeal No. 45 of 2012 disallowing the appeal and thereby affirming the judgment and decree dated 14.03.2012 passed by the learned Assistant Judge, Debigonj, Panchagarh in the Other Suit No. 138 of 2007 dismissing the suit is hereby upheld and confirmed.

The interim order passed by this court at the time of issuance of the Rule staying the operation of the impugned judgment and decree dated 15.01.2014 passed by the learned District Judge, Panchagarh in the Other Appeal No. 45 of 2012 for a period of 1 (one) year and subsequently the same was extended time to time are hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower court records along with a copy of this judgment and order to the learned courts below immediately.