

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.363 OF 2002

In the matter of:

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

And

Sufia Khatun and others

... Petitioners

-Versus-

Muksud Ali and others

... Opposite parties

None appears

... For the petitioners.

Mr. Md. Moshihur Rahman, Assistant Attorney General

With

Mr. Md. Mizanur Rahman, Assistant Attorney General

.... For the opposite party No.2.

Heard and Judgment on 09.12.2024.

This Rule was issued calling upon the opposite party Nos.1 and 2 to show cause as to why the impugned judgment and decree dated 23.07.2001 passed by the learned Additional District Judge, 1st Court, Brahmanbaria in Title Appeal No.61 of 1996 reversing the judgment and decree dated 29.06.1996 passed by the learned Sub-ordinate Judge, 2nd Court, Brahmanbaria in Title Suit No.111 of 1994 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 petitioners as plaintiffs instituted above suit for declaration of title for 59.96 acre land appertaining to C.S. Plot Nos.252 and 494 alleging that above property belonged to Shaamacharan, Kartik, Dulal, Ram Doyal, Ram Kumar, and Krishna Mohal Kapali in separate shares under the Moharaj of Tripura and the heirs of above tenants filed Partition Suit No.26 of 1950 for partition of above land which was decreed and Lalit Kumar and others got separate saham for 6.13 acre land. They also purchased some other land and became owner of 8.60 acres land and exchanged the same with Turab Ali Sarker predecessor of the plaintiff in 1938. Above Turab Ali Sarker transferred 8.60 acre land of Plot No.252 to Shamsul Hoque and others vide deed dated 24.11.1969 . Plaintiffs claim title and possession by successive purchase but above land was erroneously recorded in the name of defendant Nos.67 Government of Bangladesh in S.A. Khatian No.1.

Defendant Nos.67 and 27 contested the suit by filing two separate written statements. Defendant No.67 Government of Bangladesh claims that 26.21 acre land of Plot No.252 and 3.20 acre land of Plot No.494 were rightly recorded in S.A. Khatian No.1 in the name of the Government and the plaintiffs do not have any right, title, interest and possession in the above land.

Defendant No.27 claims that C.S. recorded tenant surrendered their land to landlord Suresh Chandra Chowdhury who gave settlement of 21.52 acre land of Plot No.252 to Ismail Miah who purchased 1.13 acre land from Hashirani and others by registered kabala deed dated 21.11.195. Khatian No.296 was rightly prepared in the name of Ismail who died leaving defendant No.27-34 as heirs and successors and by amicable partition defendant No.27 is in possession of above land. The land of plot No.252 is a huge water body and the defendant is cultivating some portion of above land.

At trial plaintiffs examined 11 PWs and their documents were marked as Exhibit No.1-3 series. Defendant No.27 examined patta deed and two dhakhilas and their documents were marked as Exhibit No.'Ga', 'Uma'-'Uma(1)' respectively and defendant No.67 examined 1 witness and his documents were marked as exhibit No.'Ka'.

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

Being aggrieved by above judgment and decree of the trial Court plaintiffs (excepting plaintiff No.23) preferred Title Appeal No.61 of 1996 to the District Judge, Cumilla which was heard by the learned Additional District Judge, 1st Court who allowed the appeal, set aside the judgment and decree of the trial Court and decreed the suit in part for 25.22 acre land.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of appeal below above appellants as petitioners moved to this Court and obtained this Rule.

No one appears for the petitioners at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

Mr. Md. Moshihur Rahman, Assistant Attorney General for the opposite party No.2 submits that the trial Court on a detailed analysis of the evidence on record rightly held that the petitioners could not prove their claim of exchange of above land by Lalit Mohan and others with plaintiff's predecessor Torab Ali by legal evidence. 31 persons as plaintiffs instituted above suit but they could not prove their title and possession in the above land by making out a consistent case and producing appropriate evidence. Some plaintiffs have produced and proved registered kabala deeds showing purchase of land but they could not produce any document showing that their sellers had title in above land. It is admitted that total land of plot No.252 was recorded in the name of the Government in S.A. Khatian No.1 and defendant No.27 has admitted in their written statement that above land is in fact a huge water body which was not cultivable at all. As such the claim of the plaintiffs to possess above land by cultivation is not true. As far as plot No.494 is concerned 3.28 acre land of above plot has been record in S.A. Khatian No.1 in the name of the Government of Bangladesh and the

Government is in the process of leasing out above land to landless peasants. On correct appreciation of above evidence on record the learned Judge of the trial Court rightly dismissed the suit but the learned Judge of the Court of appeal below without reversing any material findings of the trial Court most illegally allowed the appeal and decreed the suit in part for appellant No.1-14 and 17-18 for 25.22 acre land which is not tenable in law.

I have considered the submissions of the learned Assistant Attorney General for opposite party No.2 and carefully examined the pleadings, judgments of the Courts below and all other materials on record.

It is admitted that 26.21 acre land of Plot No.252 and 20 acres land of plot No.494 have been recorded in S.A. Khatian No.1 in the name of the Government of Bangladesh. The Government claims that above property is in possession of the Government and the plaintiffs do not have any, righty title, interest and possession in above land. As far as the remaining 20 acre land of Plot No.494 is concerned defendant No.67 or the Government of Bangladesh does not have any claim over above land.

It turns out from the plaint that 31 persons as plaintiffs have jointly filed this suit but there is no community of interest among above plaintiffs. A group of plaintiffs claim that the S.A. record is erroneous but the other group of plaintiff claimed title on the basis of purchase by

registered kabala deeds from the heirs of S.A. recorded tenants accepting the S.A. Khatian as correct.

It turns out from the list of documents produced at trial that the plaintiffs did not produce and prove the C.S. Khatian of the disputed land although they claim that their title is supported by C.S. Khatian. It has been alleged by the plaintiffs that above property belonged to shycharan, Kartik, Dulal, Ram Dayai, Ram Kumar and Krishno Mohan Kapali under Maharaja of Tripura. But in the absence of C.S. Khatian it is difficult to accept above claim of the plaintiffs as true.

It has been further stated that by virtue of decree of Partition Suit No.26 of 1950 Lalita Kumer and others got a saham for 6.13 acre land but he transferred 8.60 acre land by a deed of exchange to Torab Ali predecessor of the plaintiffs. It has been alleged that Lalita Kumar acquired by purchase other land. But no description has been provided as to the mode of acquisition of above land nor any relevant document was produced at trial.

As far as the exchange of above land by Lalita Kumar to Torab Ali is concerned no such deed of exchange was produced at trial. Learned Judge of the Court of Appeal below accepted above exchange and decreed the suit in part on an erroneous perception of law.

The plaintiffs have produced a series of registered kabala deeds and made claims of purchase of the land but they did not mention the source of title and possession of the executants of above documents. But

as mentioned above the contesting defendant, the Government of Bangladesh does not have any claim over 20 acres land of Plot No.494 and above land has been claimed by some plaintiffs and defendant No.27. The deficiencies in the drafting of the plaint and adducing of evidence as stated above occurred due to lack of professional skill of the appointed Advocate of the plaintiffs at trial Court and the plaintiffs and the defendant No.27 who were village people having no knowledge of law should not be made to suffer for above professional inexperience of their appointed Advocate.

In above view of the facts and circumstances of the case and evidence on record I hold that the ends of Justice will be met if the impugned judgment and decree of the Court of Appeal below is set aside and the suit is remanded to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence.

In above view of the materials on record I find substance in this revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 23.07.2001 passed by the learned Additional District Judge, 1st Court, Brahmanbaria in Title Appeal No.61 of 1996 reversing the judgment and decree dated

29.06.1996 passed by the learned Sub-ordinate Judge, 2nd Court, Brahmanbaria in Title Suit No.111 of 1994 is set aside and above suit is remanded to the trial Court for retrial after giving both sides an opportunity to amend their respective pleadings and adduce further evidence.

However, there is no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER