

**Present:*****Mr. Justice Md. Kamrul Hossain Mollah*****Civil Revision No.4804 of 2014****IN THE MATTER OF:**

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

- AND -

**IN THE MATTER OF:**

Md. Salahuddin

....Plaintiff -petitioner

-Versus –

The Deputy Commission, Dhaka and others

...Defendant-Opposite Parties

Mr. Sirajul Islam Bhuiyan, Advocate with

Mr. Hasibul Islam Bhuiyan, Advocate

.... For the petitioner

Mrs. Umme Masumun Nesa, A.A.G

.....For the Opposite-Parties

**Heard on 16.10.2023 and  
Judgment on 17.10.2023****Md. Kamrul Hossain Mollah, J:**

On an application by the petitioners, under section 115(1) of the Code of Civil Procedure, this Rule was issued in the following terms:

Let a Rule be issued calling upon the opposite parties to show cause as to why the judgment and decree dated 11.05.2014 (decree signed on 22.05.2014) passed by the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka in Title Appeal No.100 of 2011 dismissing the said appeal and

thereby affirming the judgment and decree dated 21.09.2010 (decree signed on 29.09.2010) passed by the learned Senior Assistant Judge, Dhamrai Court, Dhaka in Title Suit No.2152 of 2008 dismissing the suit should not be set aside and or pass such other order or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court directed the parties to maintain status-quo in respect of possession and position of the suit land for a period of 06(six) months.

Facts necessary for disposal of the Rule, in short are that, 0.03 acres of land out of C.S. plot No.102 recorded in C.S. Khatian No.1 of Mouja Zinjira under P.S. Keraniganj, District, Dhaka along with other lands of other plots were the land under Touji No.8345 of Dhaka Collectorate. One Hajee Hafez Mohammad Hossain was the superior landlord of the said touji and the aforesaid lands were the khas khamar land of the said Hajee Hafez Mohammad Hossain. The aforesaid land with other land were duly and correctly recorded into the name of said Hajee Hafez Mohammad Hossain in C.S. Khatian No.1 of Mouja Jinzira. After C.S. operation Hajee Hafez Mohammad Hossain while owning and possessing the aforesaid land and other lands died leaving Ahmad Hossain and Mobarak Hossain as his two sons, Shahar Banu and Meher Banu as two daughters and Hasna Banu as his wife to inherit the aforesaid property as his heirs and successors. After the death of Hajee Hafez Mohammad Hossain there was an amicable partition among the aforesaid heirs of the property which was left out by him. By such amicable partition .0125 acres of land along with chouchala tin hut out of the C.S. plot No.102 along with other lands of other plots in

cluded exclusive saham of Meher Banu and she used to possess the same. Meher Banu while was owner in possession of .0125 acres of land along with chouchala tin hut of C.S. plot No.102 she transferred the same in favour of Hajee Naser @ Hajee Kalachand Miah, the father of the plaintiff vide registered saf kabala No.2091 dated 20.08.1985 for valuable consideration and put Hajee Naser @ Hajee Kalachand Mia into possession. Hajee Naser @ Hajee Kalachand Mia while was owner in possession of the aforesaid land by purchase, as sixteen annas owner's he constructed five storied building thereon. Meher Banu although was owner and possessing of the aforesaid land previously, but her name was not recorded in S.A. operation due to a bona fide mistake the said S.A. record was wrongly prepared in the name of the defendant No.1 in S.A. khatian No.1 and R.S. khatian was also prepared accordingly following the S.A. khatian and as such both S.A. and R.S. khatians were palpably wrong. Hajee Naser @ Hajee Kalachand Mia while was owner and in possession of the said land by purchase from Meher Banu, he tried to mutate his name in the record of rights for the purpose of payment of rent but the officers and staffs of the Tahshil office refused either to mutate his name or to receive rent from him on the plea. S.A. and R.S. records have been prepared in the name of the defendant No.1 and informed accordingly. Thereafter, Hajee Naser @ Kalachand Hajee filed Title Sit No.213 of 1986 in the Court of 2<sup>nd</sup> Sub-Judge now Joint District Judge, Dhaka against the defendants praying for a decree declaring that he is the sixteen annas owner of the said land and accordingly, he got a decree. In pursuance of the said decree Hajee Naser @ Kalachand Hajee mutated his name and paid rent

vide Miscellaneous Case No.135/88-89 in the office of the defendant No.3. In the manner aforesaid, Hajee Naser @ Kalachand Hajee while was owning and possessing the aforesaid land he transferred the same in favour of his son the present plaintiff vide registered Heba Bil Ewaj deed No.2329 dated 16.04.1990 and put the plaintiff into possession and since then the plaintiff has been owning and possessing the said land and the plaintiff also mutated his name vide Mutation and Separation Case No.1321/90-91 and paid rent and the name of the plaintiff has also been recorded in the present record of rights vide D.P. khatian No.2489 on the basis of right title interest and possession of the plaintiff and the said record is now awaiting for final publication. The aforesaid land, hereinafter called the suit land is the personal property of the plaintiff having right title interest and exclusive possession therein and as such the suit land is neither khas land nor Chandina Viti of the government and there is a five storied homestead building of the plaintiff on that land at present. The defendant No. 1 neither had nor have any right title interest or possession at any point of time in the suit land and the defendants did never manage, maintain or control the said suit land at any point of time but yet the defendant No.3 directed the Assistant Land Officer Ruhitpur Union Under Assistant Commissioner of Land Keraniganj vide memo no. উ:ভূ:অ:কে:/২০০৭, তারিখ-০৫.০৫.২০০৮, “কেরানীগঞ্জ উপজেলাধীন জিনজিরা বাজারের ব্যবসায়ীদের নিকট থেকে চান্দিনা ভিটির দরখাস্ত আহবান প্রসঙ্গে শিরোনামে আগামী ০৭.০৬.২০০৭ ইং তারিখের মধ্যে কেরানীগঞ্জ উপজেলাধীন জিনজিরা বাজারের প্রকৃত ব্যবসায়ীদের নিকট হইতে ১০(দশ) টাকার কোর্ট ফি এবং ব্যবসায়ী হিসাবে সনদ/ট্রেড লাইসেন্স সংযুক্ত দরখাস্ত গ্রহন পূর্বক নিম্ন স্বাক্ষরকারীর অর্থাৎ ৩ নং বিবাদীর কার্যালয়ে প্রেরন করার জন্য বলা হইয়াছে।” The suit land has been enlisted in the said memo as item

No.16. Thereafter, the plaintiff went to the office of the defendant No.3 and Union Land Assistant Officer, Ruhitpur Union Land Office Keraniganj where they advised the plaintiff to take lease of the scheduled property as a businessman as Chandina Viti from the office of the defendant No.3. Thereafter, the plaintiff on 02.07.2007 filed an application before the defendant No.3 praying for the release of the suit land from the ambit of Chandina Viti as the plaintiffs the sixteen annas owner of the suit property supported by all of his documents of title and the said application was heard by the defendant No.3 who directed the kanango and surveyor to investigate the suit property and to submit a report but neither kanango nor surveyor took any steps to that extent. On the other hand, the Assistant Land Officer refused to receive rents from the plaintiff for the year 1415 B.S. in respect of the suit property on the plea that the suit property has been enlisted as Chandina Viti. The suit property is neither khas property nor Chandina Viti of the government and when the defendant No.3 refused to receive rent from the plaintiff for the year 1415 B.S. and also refused to strike out the suit property from the list of Chandina Viti, a cloud has been cast upon the good and indefeasible title of the plaintiff in the suit land and to remove the said cloud so cast the plaintiff has been constrained to file the suit. The defendant did not contest the suit by filing any written statement.

The learned trial Court on the basis of the pleadings and both oral and documentary evidences of the plaintiff dismissed the suit exparte on the plea that the suit is barred by the principle of Res Judicata by his judgment and decree dated 21.09.2010 (decree signed on 29.09.2010).

Being aggrieved by and dissatisfied with the judgment and decree dated 21.09.2010 (decree signed on 29.09.2010) passed by the learned Senior Assistant Judge, Dhamrai Court, Dhaka in Title Suit No.2152 of 2008 the plaintiff-petitioner filed Title Appeal No.100 of 2011 before the learned District Judge, Dhaka. Thereafter, the same was transferred to the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka. After hearing both the parties and considering all materials on record dismissed the Title Appeal No.100 of 2011 by his judgment and decree dated 11.05.2014 (decree signed on 22.05.2014).

Being aggrieved by and dissatisfied with the judgment and decree dated 11.05.2014 (decree signed on 22.05.2014) passed by the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka in Title Appeal No.100 of 2011 dismissing the Appeal and thereby affirming the judgment and decree dated 21.09.2010 (decree signed on 29.09.2010) passed by the learned Senior Assistant Judge, Dhamrai Court, Dhaka in Title Suit No.2152 dismissing the suit the plaintiff-petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of status-quo.

Mr. Serajul Islam Bhuiyan, the learned Advocate appearing for the petitioner at the very outset submits that the facts and circumstances and cause of action of the earlier Title Suit No.213 of 1986 and those of the present suit are quite distinguishable and both the Courts below acted illegally and came to a finding that the judgment and decree passed in Title Suit No.213 of 1986 operated as Res Judicata upon the present suit and as such they arrived at a wrong decision in dismissing the present suit.

He further submits that the issues involved and decided in Title Suit No.213 of 1986 and the issues involved in the present suit are not the same and the earlier issues decided in the said suit cannot operate as Res Judicata in the present suit and as such the judgment and decree passed by the learned Court of Appeal below are totally misconceived.

The learned Advocate lastly submits that the learned Appellate Court below misconceived both the facts as stated in the plaint as well as reliefs claimed by the plaintiff and he also misconstrued the provisions of law of Res Judicata and he arrived at a wrong decision in dismissing the appeal and affirming the judgment of the trial Court and as such there is an error of law and error in his decision which occasioned a failure of justice for which the impugned judgment and decree are liable to be set-aside. Accordingly, he prays for making the Rule absolute.

On the other hand, Mrs. Umme Masumun Nesa, the learned Assistant Attorney General for the opposite parties submits that regarding the suit property a suit for declaration of title was filed in 2<sup>nd</sup> Sub-Judge Court as Title Suit No.213 of 1986 and it was decreed on exparte. The plaintiff's father Hajee Md. Naser was the plaintiff in that suit. Therefore, the same suit for declaration of title regarding the same property is not maintainable. The present suit is barred by the principle of Res Judicata. So, the learned Appellate Court as well as the trial Court rightly passed the judgment and decree dated 11.05.2014 (decree signed on 22.05.2014), which is maintainable in the eye of law. Therefore, he prays for discharging the Rule.

I have considered the submission of the learned Advocate for the parties minutely, perused the revisional application, the impugned judgment and decree of the Courts below, the papers and documents as available on the record.

It is found from the lower Court record that 0.03 acres of land out of C.S. plot No.102 recorded in C.S. Khatian No.1 of Mouja Zinjira under P.S. Keraniganj, District, Dhaka along with other lands of other plots were the land under Touji No.8345 of Dhaka Collectorate. One Hajee Hafez Mohammad Hossain was the superior landlord of the said touji and the aforesaid lands were the khas khamar land of the said Hajee Hafez Mohammad Hossain. The aforesaid land with other land was duly and correctly recorded in the name of said Hajee Hafez Mohammad Hossain in C.S. Khatian No.1 of Mouja Jinzira. After C.S. operation Hajee Hafez Mohammad Hossain while owning and possessing the aforesaid land and other lands died leaving Ahmad Hossain and Mobarak Hossain as his two sons, Shahar Banu and Meher Banu as two daughters and Hasna Banu as his wife to inherit the aforesaid property as his heirs and successors. After the death of Hajee Hafez Mohammad Hossain there was an amicable partition among the aforesaid heirs of the property which was left out by him. By such amicable partition .0125 acres of land along with chouchala tin hut out of the C.S. plot No.102 along with other lands of other plots including in exclusive saham of Meher Banu and she used to possess the same. Meher Banu while was owner and in possession of .0125 acres of land along with chouchala tin hut of C.S. plot No.102 she transferred the same in favour of Hajee Naser @ Hajee Kalachand Miah, the father of the



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application before the defendant No.3 praying for the release of the suit land from the ambit of Chandina Viti as the plaintiffs the sixteen annas owner of the suit property supported by all of his documents of title and the said application was heard by the defendant No.3 who directed the kanango and surveyor to investigate the suit property and to submit a report but neither kanango nor surveyor took any steps to that extent. On the other hand, the Assistant Land Officer refused to receive rents from the plaintiff for the year 1415 B.S. in respect of the suit property on the plea that the suit property has been enlisted as Chandina Viti. The suit property is neither khas property nor Chandina Viti of the government and when the defendant No.3 refused to receive rent form the plaintiff for the year 1415 B.S. and also refused to strike out the suit property from the list of Chandina Viti, a cloud has been cast upon the good and indefeasible title of the plaintiff in the suit land and to remove the said cloud so cast the plaintiff has been constrained to file the suit.

It appears from the record that the learned trial Court after hearing both the parties, on the basis of the pleadings and both oral and documentary evidences of the plaintiff dismissed the suit on the plea that the suit is barred by the principle of Res Judicata. Being aggrieved by and dissatisfied with the judgment and decree dated 21.09.2010 (decree signed on 29.09.2010) passed by the learned Senior Assistant Judge, Dhamrai Court, Dhaka in Title Suit No.2152 of 2008 the plaintiff-petitioner filed Title Appeal No.100 of 2011 before the learned District Judge, Dhaka. Thereafter, the same was transferred to the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka. After hearing both the parties and considering all

materials on record dismissed the Title Appeal No.100 of 2011 by his judgment and decree dated 11.05.2014 (decree signed on 22.05.2014), which is not maintainable in the eye of law.

Considering the above facts and circumstances, it is found that cause of action of the earlier Title No. 213 of 1986 and those of the present suit are quite distinguishable and both the courts below acted wrongly and came to a finding that the judgment and decree passed in Title suit No. 213 of 1986 operated as Res Judicata upon the present suit is not proper and legal. It is also found that the issues involved and decided in Title Suit No. 213 of 1986 and the issues involved in the present suit are not the same and the earlier issues decided in the said suit cannot operate as Res Judicata in the present Suit.

Moreover, it is found from the record that the plaintiff-petitioner filed this suit for declaration of title and a further declaration to the effect that the enlistment of the suit property in the list vide memo No.05/05/07 by the defendant No.3 is illegal, unlawful and not binding upon the plaintiff-petitioner.

It is also found that the plaintiff-petitioner to prove his case examined P.Ws and documents (exhibit-1 to 6) and ex-parte order was passed as because the defendants did not contested the suit by filing the written statement.

Considering the P.Ws. and documents (exhibit-1 to 6) it is found that the plaintiff-petitioner proved the case in respect of plaintiff's claim that the plaintiff succeeded the case.

In the light of the above discussion, it appears that the learned Additional District Judge, 8<sup>th</sup> Court Dhaka passed the impugned judgment and decree dated 11.05.2014 (decree signed on 22.05.2014) in Title Appeal No. 100 of 2011 wrongly, which is not maintainable in the eye of law.

Accordingly, I find cogent and legal ground in the submissions of the learned Advocate for the petitioner and find merit in the instant Rule.

In the result, the Rule is made absolute.

The impugned judgment and decree dated 11.05.2014 (decree signed on 22.05.2014) passed by the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka in Title Appeal No.100 of 2011 dismissing the said appeal and affirming the judgment and decree dated 21.09.2010 (decree signed on 29.09.2010) passed by the learned Senior Assistant Judge, Dhamrai Court, Dhaka in Title Suit No.2152 of 2008 dismissing the suit is hereby set-aside.

The suit be decreed in favour of the plaintiff-petitioner and the enlistment of the suit property in the list vide memo No.05/05/07 by the defendant No.3 is illegal, unlawful and not binding upon the plaintiff-petitioner.

The order of status-quo granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

Send down the lower Court records along with a copy of this judgment and order to the concerned Court below at once for necessary action.