

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

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 2322 OF 2014**

**IN THE MATTER OF:**

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

-And-

**IN THE MATTER OF:**

Sadequl and others

--- Defendant-Respondent-Petitioners.

-Versus-

Sadir Ahmmod and others

---Plaintiff-Appellant-Opposite Parties.

No one appears

--For the Defendant-Respondent-Petitioners.

Mr. Syed Khalaquzzaman, Advocate

--For the Plaintiff-Appellant-Opposite Parties.

**Heard on: 27.02.2024, 29.02.2024 and  
04.03.2024.**

**Judgment on: 04.03.2024.**

At the instance of the present defendant-respondent-petitioners, Sadiqul and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure এই ম-র্ম ১ নং অপরপ-ক্ষর প্রতি কারণ दर्शा-ना पूर्वक रूळ जारी करा हईल, केन चाँपाइनबावग-ङ्गर विज्ज युग्ग जेला जज, प्रथम आदालत एर देओयानी ८८/ २०११ नं आपी-ल प्रचारित ०२/०३/२०१४ तारि-खर तर्कित राय एबं ०६/०३/२०१४ तारिखेर स्वाक्षरित डिक्रि रद ओ रहित करा हईबे ना, -य राय ओ

ডিক্রিমূলে চাঁপাইনবাবগঞ্জ জেলার নাচোলের বিজ্ঞ সহকারী জজ আদালত এর অন্য প্রকার ৮৭/ ২০০৯ নং মোকদ্দমায় প্রচারিত ২৩/০৫/২০১১ তারি-খর রায় এবং ২৬/০৫/২০১১ তারিখের স্বাক্ষরিত ডিক্রি পরিবর্তন পূর্বক আপীলটি মঞ্জুর হইয়া-ছ এবং দরখাস্তকারীগণ অত্র আদালত এর বিবেচনায় আর যে সকল প্রতিকার পাই-ত পা-রন তাহারও আ-দশ কেন দেওয়া হই-ব না।

The relevant and important facts for disposal of this Rule, *inter-alia*, are that the present opposite party No. 1 (Sadir Ahmmod now deceased and substituted) as the plaintiff filed the Other Class Suit No. 87 of 2009 in the court of the learned Assistant Judge, Nachole, Chapainawabgonj for declaration of title and recovery of khas (খাস) possession. The plaint contains that Ohi Bhushan Roy, Bibhuti Bhushan Roy and Foni Bhushan Roy were the Zamindars who settled the land in favour of Ayesh Uddin on 8<sup>th</sup> June, 1944 (২৫ জ্যৈষ্ঠ, ১৩৫১ বাংলা সন) and the possession of the suit land was handed over described in the plaint. The said Ayesh Uddin paid rent (খাজনা) to the aforementioned Superior Landlords. However, when the settlement record was prepared erroneously the measurement of land was written as 74 decimals instead of the land measuring as 64 decimals in the Plot No. 346 and as a result, the total area of land was recorded in the settlement record erroneously written as

2.00 acres instead of 1.90 acres. The S. A. Record of Rights was also mistakenly published in the names of Superior Landlord, Ohi Bhushan Roy and others. The predecessor of the present plaintiff- opposite party, Ayesha Uddin, filed earlier the Other Class Suit No. 277 of 1978 in the court of the learned Munsif, Nawabgonj, Chapainawabgonj and the suit was decreed on 22.04.1980. When the decree was in existence one Abul Hossain and Omar Faruk as the plaintiffs filed Other Class Suit No. 323 of 1980 in the court of the learned Munsif, Nawabgonj, Chapainawabgonj challenging the decree passed earlier in the Other Class Suit No. 277 of 1978. In the Other Class Suit No. 323 of 1980 a compromise petition was filed and upon compromise petition, the suit was dismissed as per the prayer of the parties. The R. S. record of rights was mistakenly published in the name of Hossain Ali and Omar Faruk as to the measurement of land. The said predecessor (Ayesha Uddin) of the plaintiff-opposite party transferred 1.20 acres of land vide a deed of exchange dated 19.09.1984. The plaintiff-opposite party No. 1 got another land measuring 56 decimals by way of exchange deed No. 8796 dated 30.12.1989 (Exhibit- 2). The plaintiff mutated the land in his favour and was in possession. The

defendant-petitioners dispossessed the plaintiff- opposite party No. 1 on 03.06.2009 under threat.

The present petitioners as the defendants contested the suit by filing a written statement denying the claim of the plaintiff-opposite parties. The present defendant-petitioners contended that the suit land was khas land and Zaminder given settlement by paying salami (সালামী) on ২৫ জৈষ্ঠ্য, ১৩৫২ and possession of the land was handed over in favour of Ayesha Uddin. The petitioners also contended that the Other Class Suit No. 277 of 1978 and the Other Class Suit No. 323 of 1980 were created by false personation. The compromise petition is not binding upon the petitioners as the plaintiff-opposite parties did not have any possessions because the defendant-petitioners were in possession.

The learned Judge, Nachole, Chapainawabgonj heard the parties and obtained evidence from the opposite parties and dismissed the suit on 23.06.2011. Being aggrieved the present plaintiff-opposite parties preferred the Other Class Appeal No. 88 of 2011 in the court of the learned District Judge, Chapainawabgonj which was heard by the learned Joint District Judge, Court No. 1, Chapainawabgonj who after hearing the

parties allowed the appeal by the impugned judgment dated 02.03.2014 by reversing the judgment of the learned trial court.

This matter has been appearing in the daily cause list of this court for a long period of time but no one appears to support the Rule, however, the present petitioners taken a ground that the learned appellate court below upon misconception of law misreading the evidence erroneously allowed the appeal by reversing the judgment and decree of the learned trial court and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

The Rule has been opposed by the legal heirs of the present plaintiff- opposite party No. 1, Sadir Ahmmod (now deceased and substituted).

Mr. Syed Khalaquzzaman, the learned Advocate, appearing on behalf of the opposite party No. 1 (now deceased and substituted) submits that the plaintiffs the judgment passed in the Other Class Title Suit No. 277 of 1978 and also Other Class Suit No. 323 of 1980 have been exhibited which were regarding the exchange deed dated 19.09.1984 and the exchange deed dated 30.12.1989 (as Exhibits- 2 and 7) which are the exchange deeds by and between Ayesh Uddin and present

opposite party No. 1. Regarding the suit land measuring 1.90 acres appertaining to at Mouza- Megh Dohor, R. S. Khatian No. 229, Police Station- Nachole, Chapainawabgonj but the learned trial court failed to consider the exhibits produced and submitted by the plaintiff-opposite parties and therefore came to a wrongful conclusion to dismiss the suit. However, the learned appellate court below properly considered the deed of the plaintiffs, as such, lawfully allowed the appeal and thereby reversing the judgment of the learned trial court but the present petitioners obtained the Rule by misleading the court, as such, the Rule is liable to be discharged.

The learned Advocate also submits that the plaintiff-opposite parties were dispossessed by force which compelled them to file this title suit after obtaining title and possession by the exchange deeds mentioned above.

Considering the above submissions made by the learned Advocate appearing on behalf of the plaintiff-opposite party No. 1 (leaving behind his legal heirs) and also considering the revisional application filed by the present defendant-respondent-petitioners 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 learned appellate court below allowing the appeal and thereby reversing the judgment and decree of the learned trial court and also perusing the relevant and required documents available in the lower courts records, it appears to me that the present opposite party No. 1 as the plaintiff filed the Other Class Suit No. 87 of 2009 in the court of the learned Assistant Judge, Nachole, Chapainawabgonj for declaration of title and also for recovery of khas (খাস) possession upon the suit land described in the schedule of the plaint. It also appears that the predecessor of the plaintiff-opposite party No. 1 earlier filed the Other Class Suit No. 277 of 1978 claiming title of the suit land measuring 1.90 acres and the same predecessor of the plaintiff-opposite party No. 1 filed this title suit after getting the suit land by exchanging of lands deed on 19.09.1984 and also the exchange deed dated 30.12.1989 which have been filed as the exhibits by the plaintiff-petitioners but the record of rights was published erroneously in the name of other persons disregarding the above mentioned 2 exchange deeds. The learned trial court misread and failed to consider the exchange deeds filed by the plaintiff-opposite party because of non-application of the judicial mind. The learned appellate court below allowed the appeal

preferred by the present plaintiff-opposite party No. 1 against the judgment and decree of the learned trial court.

Now, I am going to examine the findings of the learned courts below:

The learned trial court came to a wrongful conclusion to dismiss the suit on the basis of the following findings:

...“The other PW- 5 did not to each other in respect of dispossession of the plaintiff by the defendants. That plaintiff party as put himself deposed that the latest record of right has not been prepared after the name of him or his predecessor in interest. That no document of settlement has also been by him. In this circumstance, heavy burden upon the plaintiff lies upon to prove his title but he failed to do this which led this court to and decide that the plaintiff has no proper title and possession over the suit land.”...

On the other hand, the learned appellate court below came to a lawful conclusion to allow the appeal by passing the impugned judgment and thereby reversing the impugned judgment on the basis of the following findings:

...“বিবাদী পক্ষের দাবির সমর্থন ডি. ডব্লিউ-১ মোঃ মাইনুল ইসলাম জবাবের বক্তব্য সমর্থন করিয়া সাক্ষ্য প্রদান করিয়াছেন। তিনি বলিয়াছেন ১২ বছর-র অধিককাল যাবৎ ধরিয়া নালিশী জমি-ত বাড়ী-ঘর নির্মাণ করিয়া বসবাস করিতেছেন। তাহার উক্ত বক্তব্য সমর্থন করিয়া ডি.



ডব্লিউ-২ ফজলুর রহমান জবানবন্দি-ত বলিয়া-ছন নালিশী জমি-ত বিবাদী-দর বাড়ী আ-ছ ১০/১২ বছর হই-ত। ডি. ডব্লিউ-৩ জবানবন্দি-ত বলিয়া-ছন নালিশী জহিম-ত বাড়ী আ-ছ নূন্যতম ৮/৯ বছর হইল। বিবাদী পক্ষের সাক্ষী-দর বক্তব্য দৃষ্ট ছেখা যায় সকল বিবাদী ১২ বছর-রর বেশী সময় হই-ত দখল ক-র ম-র্ম দাবি ক-র নাই। বিবাদী পক্ষের সাক্ষীগণ-ক বাদী পক্ষ জেরা করিয়া-ছ। বিবাদী পক্ষের সাক্ষীগণ জেরায় বাদী পক্ষের কেস স্বীকার না করিলেও বিবাদী পক্ষের সাক্ষীদের বক্তব্য দ্বারা বিবাদী পক্ষ তাহাদের কেস প্রমাণ করিতে সক্ষম হয় নাই মর্মে অত্রাদালতের নিকট প্রতীয়মাণ হইতেছে। যেহেতু, নালিশী তপশীল বর্ণিত সম্পত্তিতে বাদী-আপীলকারী পক্ষ স্বত্ব এবং ইং ০৩/০৬/০৯ তারিখ পর্যন্ত দখল প্রমাণ করি-ত সক্ষম হইয়া-ছ, সেই-হতু, বাদী-আপীলকারী পক্ষ মূল মোকদ্দমার ডিক্রি পাইতে হকদার হইতেছে মর্মে এবং মূল মোকদ্দমাটি আরজির বর্ণিত আকা-র রক্ষণীয় ম-র্ম সিদ্ধান্ত করা হইল।”...

In view of the above conflicting decisions, I have carefully examined the judgments and decrees passed by both the courts below and I found that the learned trial court failed to examine the relevant exchange deeds dated 19.09.1984 and also 30.12.1989 which were transferred by way of the Superior Landlord, as such, the deeds contains that the plaintiff-opposite party No. 1 had proper title. I have also examined the judgments and decrees as to the findings of the possession by the plaintiff-opposite party No. 1 upon the suit land which was dispossessed by force by the present defendant-petitioners. Accordingly, the learned trial court committed an error of law by misreading and

non-considering the prayer of the present plaintiff-opposite party No. 1. On the other hand, the learned appellate court below examined the validity of the documents in support of the plaintiffs' case. The learned appellate court below came to a lawful conclusion to allow the appeal by finding that the plaintiffs could prove their case as to the title and possession after cross-examining the defense witnesses as to the title and also possession until 03.06.2009 and dispossession therefore. As such, the plaintiffs claimed both the title and recovery of khas (খাস) possession.

In view of the above conflicting facts and circumstances as well as conflicting decisions passed by the learned courts below and also exchange deeds executed by the one Ayesha Uddin in favour of the present plaintiff-opposite party No. 1 as mentioned above, I am therefore not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below who allowed the appeal and thereby reversing the judgment and decree passed by the learned trial court.

In view of the above, I do not consider that this is an appropriate and proper case for interference from this court and I do not consider that this Rule requires any further consideration.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The judgment dated 02.03.2014 passed by the learned Joint District Judge, Court No. 1, Chapainawabgonj in the Title Appeal No. 88 of 2011 allowing the appeal and thereby reversing the judgment dated 23.05.2011 passed by the learned Assistant Judge, Nachole, Chapainawabgonj in the Other Class Suit No. 87 of 2009 by dismissing the suit is hereby confirmed and upheld.

The interim order passed by this court at the time of issuance of the Rule staying the operation of the Title Appeal No. 88 of 2011 for a period of 6 (six) months and subsequently the same was extended from time to time and lastly, it was extended until disposal of the Rule are hereby recalled and vacated.

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