

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 2673 OF 1996

Nannu Mia alias Nanu Mia Sawdagar being
died his heirs Md. Rafiqul Islam and others

----- Plaintiff-Respondent-Petitioners

=Versus=

Md. Siddiqur Rahman Molla being died his
legal heirs Most. Forida Begum and others

----- Defendant-Appellant-Opposite Parties

Mr. Md. Rejaul Karim (Helal), Advocate

----- For the Petitioners

No one appears

----- For the Opposite Parties

Heard on: 25.07.2017

Judgment on: 09.08.2017

At the instance of the present Plaintiff-respondents- petitioners,
Nannu Mia alias Nanu Mia Sawdagar being dead his heirs Md. Rafiqul
Islam and others, this Rule has been issued calling upon the opposite
party to show cause as to why the judgment and decree complained to in
the petition moved in court should not be set aside.

The Rule is directed against the judgment dated 11.09.1995
passed by Subordinate Judge, 3rd Court, Comilla in Title Appeal No. 268
of 1992 allowing the appeal on contest without cost sending the case
back on remand for retrial reversing the judgment and decree dated
30.09.1992 passed by Upazilla Munsif, Muradnagar Upazila in
decreeing the Title Suit No. 20 of 1992.

The relevant facts for disposal of the Rule, *inter-alia*, are that the present petitioners as the plaintiffs filed the Title Suit No. 20 of 1992 in the court of learned Senior Assistant Judge, Muradnagar, Comilla for a permanent injunction regarding the suit land describe in the plaint. The plaint case is that the suit land measuring 16 decimal is a homestead of Umed Ali who died leaving behind 2(two) sons Nannu Mia and Sirajul Islam who equally got 8 decimal each by amicable settlement. Nannu Mia build Tin Sheet house on the northern side of the suit land where there is a Majar and the plaintiff is the Mutwalli of the said Majar. The other brothers of Nannu Mia namely Sirajul was in possession of the other 8 decimals of land and his heirs sold the land to different persons by different register deeds of awaj and safe Kabala but the defendant being a stranger threaten the plaintiff dispossess from the suit land which prompted to filed the suit.

The present opposite parties as the defendants contested the suit by filing a written statement and denying the statements made in the plaint. It is further contended that the above mentioned Sirajul use to live on the southern 8 decimals of land and after his death his sons transferred 5 decimals of land to the defendant by away of an exchange deed dated 09.08.1985 were the present defendant constructed a house with Varandha on the two sides of the said house and the land was recorded in the name of the defendants. There is no cause of action for filing the suit.

After hearing the parties the learned Assistant Judge Muradnagar, Comilla decreed the suit by his judgment and decree dated 30.09.1992. Being aggrieved the present opposite parties as the appellants preferred the Title Appeal No. 262 of 1992 in the court of learned District Judge which was heard by the learned the then Sub-Judge, Court No. 2, Comilla on transfer who by his judgment and decree allowed the appeal by setting aside the judgment and decree dated 11-09-1995 passed by the trial court below and also directing to send the matters on remand for re-hearing of both the parties. This revisional application has been filed challenging the legality of the said impugned judgment and decree passed by the appellate court below and the Rule was issued thereupon.

Mr. Md. Rejaul Karim (Helal), the learned Advocate, appearing for the petitioners submits that having regard to the fact that in consideration of the fact, circumstances of the case and evidences on record the learned trial court found that the defendants failed to discharge their onus in respect of the registered deeds of the plaintiffs and held that the defendants not being the parties to any of the registered deeds were not legally entitled to challenge them and the learned appellate court did not reverse this important finding causing failure of justice.

This matter has been appearing in the list for a long period of time but no one appears to oppose the Rule at any stage of hearing even today when the judgment is delivered.

Considering the above submissions made by the learned Advocates for the petitioners 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 considering the materials in the lower court records, it appears to me that the present petitioners filed the suit for permanent injunction for restraining the defendants from threatening them to dispossess from the suit land. From the given facts, it transpires that the two brothers namely Nannu Mia and Sirajul equally owned 8 decimal each but in course of time the successors of Sirajul transferred the suit land to different persons including the present defendant opposite parties who constructed a house with Varandha. Upon such construction, the present plaintiff petitioners apprehended that they will be dispossessed. I have carefully examined the plaint as well as the documentary evidence in support of the prayer for injunction but I am not satisfied that there was any actual threat or apprehension for being dispossess form the suit land.

The settle principle is that for a perpetual injunction a claimant must prove certain elements for allowing any perpetual injunction. After examining documents, I could not find presence of any of the elements as required under the provisions of law. Moreover, this suit was filed in the year of 1992 and the present Rule was issued on 26.08.1996 the present plaintiff petitioner never brought any allegation that any further threat given by the present defendant opposite parties, therefore, this

Rule became inoperative and unnecessary in course of time. Despite the facts the learned appellate court below allowed the appeal by setting aside the judgment and decree passed by the courts below and also remanding the suit for retrial but I consider that neither any permanent injunction is necessary after laps of such a long period of time nor the matter should go for remand in order to re-hear the suit afresh after more than 25 years. I am therefore of the view that this Rule does not merit any further consideration and there is no necessity for any permanent injunction as claimed in the plaint by the present petitioner as the Rule became inoperative and unnecessary.

I am inclined to examine the judgment and decree passed by the learned court below. The learned trial court came to a conclusion to decree the suit for permanent injunction when there is no sufficient cause of action for decreeing the suit on the basis of the following findings:

“বিবাদী এওয়াজ নামামূলি .৫ শতক বাবদ কবলা করা এবং ঘরির সাথি বারান্দা করার কথা বলিলিও বিবাদী এওয়াজ নামা মূলি নালিশী ভূমির অনুগর্ত .৫ শতক ভূমিত্তি কবি দখলি গেছিন জানিন না বলিছিন। এওয়াজ নামা মূলি তিনি কোন দাগ খতিয়ানির জমি দিয়াছিন জানিন না তাহারা দখলির কি কাজ করিছিন জানিন না বলিছিন।”

The learned appellate court on the other hand refused to grant any permanent injunction by allowing the appeal and setting aside the judgment and decree of the trial court however, he remanded the suit to the trial court for rehearing on the basis of the following wrongful findings:

“উভয় পক্ষের দাবীকৃত নালিশী ভূমি বিষয়ক স্বত্ব দখলের ভিত্তি স্বরূপ দলিলটি সাক্ষ্য আইনের বিধান মোতাবেক প্রমানও প্রদর্শনী চিহ্নিত করা হয় নাই। অত্রাদালতে ও কোন পক্ষ নিজ নিজ দলিলাদি অতিরিক্ত প্রমান্য (Addl. Evidence) প্রদান করিত্ব ইচ্ছা প্রকাশ করিন নাই এবং আইনানুগ সুযোগ গ্রহনের নিমিত্তে কোন পদক্ষেপ গ্রহন করেন নাই। ফলে, নালিশী ভূমি বিষয়ক কোন পক্ষই নিজ নিজ দাবীকৃত দলিলাদি আদালত দাখিলও বিধি মোতাবেক প্রমান ও প্রদর্শনী চিহ্নিত করেন নাই বলিয়া বিচার ক্রটিপূর্ণ হইয়াছে। উক্ত কারনে বিজ্ঞ নিম্ন আদালত বিচার্য বিষয়াবলীর আলোকে যথাযথ ও আইনানুগ সিদ্ধান্ত গ্রহন করিত্ব সম্পূর্ণ রূপে ব্যর্থ হইয়াছেন। ফলে, তর্কিত রায়ও ডিক্রী বাতিলযোগ্য হইত্ব এবং মোকদ্দমাটি পুনঃ বিচারের নিমিত্তে বিজ্ঞ নিম্ন আদালতে ফেরত প্রেরন করা আবশ্যিক হইত্ব।”

In view of the above discussions and the examination of this judgment and decree passed by the courts below, I consider that the learned appellate court committed an error of law by allowing the appeal and also by remanding the suit for rehearing. As I have already mentioned earlier that in the laps of time for more than 30 (thirty) years from the date of allege threat for dispossessing from the suit land without any basis for more than 25-30 years. There is no submission from the either of the parties as to the latest position of such threat the Rule became inoperative and unnecessary, I am therefore inclined to dispose of the Rule.

Accordingly the Rule is disposed of.

The judgment and decree passed by the learned trial court on 30.09.1992 and the judgment and decree passed by the learned appellate court on 11.09.92 are hereby set aside as claim for a permanent injunction has now became unnecessary in lapse of time.

Accordingly no remand of the suit is necessary for re-hearing.

The interim order of stay granted at the time of issuance of this Rule upon the proceedings of the Title Suit No. 20 of 1992 pending in the Court of learned Assistant Judge, Muradnagar, Comilla is hereby recalled and vacated.

The Section is directed to communicate this judgment and order to the concerned court and also to send down the lower court records immediately.