

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 4008 OF 2015

WITH

CIVIL REVISION NO.4917 OF 2015

In the matter of:

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

And

Md. Abdul Hamid Pramanik

... Petitioner

-Versus-

Md. Abdus Shobhan Torofder

... Opposite parties

Mr. Uzzal Bhowmick with

Ms. Salina Akter, Advocates

... For the petitioner in both the civil

revisions.

Mr. Monsur Habib, Advocate

.... For the opposite party in both the

civil revisions.

Heard on 27.08.2024 and Judgment on 03.09.2024.

This Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 03.11.2015 passed by the learned Joint District Judge, 1st Court, Bogura in Other Class Appeal No.258 of 2010 passed by the learned Assistant Judge, Sariakandi, Bogura in Other Class Suit No.39 of 2006 should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

And

Another Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 03.11.2015 passed by the learned Joint District Judge, Bogura in Other Class Appeal No.259 of 2010 affirming those dated 28.09.2010 passed by the learned Assistant Judge, Sariakandi, Bogura in Other Class Suit No.44 of 2006 for specific performance of contract should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Civil Revision No.4008 of 2005 and 4917 of 2005 are between the same parties and arising out of the same identical judgment and decree dated 03.11.2015 passed by the learned Joint District Judge, 1st Court, Bogura in Other Class Appeal Nos.258 of 2010 and 259 of 2010 dismissing the appeals and affirming the judgment and decree dated 28.09.2010 passed by the learned Assistant Judge, Sariakandi, Bogura in Other Class Suit Nos.39 of 2006 and 44 of 2006 decreeing the earlier suit and dismissing the latter one, as such, above two Civil Revisions are heard analogously and being disposed of by this single judgment.

Facts in short are that the opposite party No.1 as plaintiff instituted Title Suit No.39 of 2006 for eviction of the defendant and recovery of possession of 6.5 decimal land alleging that above property was owned and possessed by the plaintiff. Defendant was a retired private of the Bangladesh Army whose house was destroyed due to river erosion. The defendant wanted to construct a dwelling house in

above land and the plaintiff gave him permission about three years back. On 10.10.2006 the plaintiff asked the defendant to remove his huts and handover vacant possession of the disputed land but the defendant refused to do so.

The defendant contested the suit by filing a written statement alleging that he was not a permissive possessor in the disputed land. He contracted to purchase above land for a consideration of Tk.84,000/- and on receipt of Tk.70,000/- the plaintiff executed a bainapatra on 10.01.2004 and delivered possession and he constructed a dwelling house.

Above defendant as plaintiff instituted Other Class Suit No.44 of 2006 for specific performance of contract dated 10.01.2004 alleging that the plaintiff of Other Class Suit No.39 of 2006 and sole defendant of Other Class Suit No.44 of 2006 constructed to sale the disputed land and on receipt of part consideration executed above bainapatra.

Above defendant contested the suit by filing a written statement alleging that above bainapatra was a forged and fraudulent document and he never executed the same nor he contacted to sale the disputed land on receipt of Tk.70,000.

Above mentioned two suits being O.C. Suit No.39 of 2-006 and O.C. Suit No.44 of 2006 were tried analogously and at trial plaintiff examined three witnesses and produced and proved documents which were marked as Exhibit Nos.1-5. On the other hand defendant

examined three witnesses and produced the unregistered deed of bainpatra dated 10.01.2004 at trial but the same was not marked as an Exhibit.

On consideration of facts and circumstances of the case and materials on record the learned Assistant Judge decreed Other Class Suit No.39 of 2006 holding that the plaintiff has succeeded to prove that the defendant was a permissive possessor in the disputed land and dismissed Other Class Suit No.44 of 2006 holding that the signature of the defendant on the impugned bainpatra varied from those of the defendant in the written statement and other documents submitted in Court.

Being aggrieved by above judgment and decree of the trial Court above defendant preferred Title Appeal Nos.258 of 2010 and 259 of 2010 to the District Judge, Bogura which were heard analogously by the learned Joint District Judge who dismissed both the appeals and upheld the judgment and decree of the trial Court.

Being aggrieved by above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court with two separate petitions under Section 115(1) of the Code of Civil Procedure giving rise to these two Civil Revisions, being Nos.4008 of 2015 and 4917 of 2015 and obtained these Rules.

Mr. Uzzal Bhowmick, learned Advocate for the petitioner submits that the plaintiff of Other Class Suit No.39 of 2006 filed above suit

under Section 9 of the Specific Relief Act for recovery of possession by eviction of the dwelling huts of the defendant. He has claimed that the defendant was a permissive possessor but he did not mention whether above permission was given orally or by any written instrument nor he could mention the date, time or place of giving of above permission. Thus the plaintiff has failed to prove that the defendant was a permissive possessor in the disputed land so he was not entitled to get a decree for recovery of possession.

The learned Judges of both Courts below concurrently held at the signatures of plaintiff Md. Abdus Shobhan Torofder on the impugned bainapatra dated 10.04.2004 varied from his signatures on the pleadings without any evidence on record. Above Md. Abdus Shobhan Torofder gave evidence as PW1 but he did not claim that his signatures were forged in the above bainapatra or he did not give any signature in the above bainapatra. As such the learned Judges of the Courts below committed serious illegality in dismissing Other Class Suit No.44 of 2006 and decreeing Other Class Suit No.39 of 2006 on the basis of above erroneous and unfounded findings of facts which is not tenable in law.

The learned Advocate lastly submits that undisputedly defendant Md. Abdul Hamid Pramanik is a retired private of the Bangladesh Army and his house was washed away by river erosion. It is very usual that he would purchase a piece of land for constructing a dwelling house. He was not a landless peasant nor a beggar that he

would construct a dwelling house to live with his family in the land of another person as a permissive possessor. The learned Judges of the Courts below have failed to take into account above circumstances and most illegally dismissed Other Class Suit No.44 of 2006 which is not tenable in law.

On the other hand Mr. Monsur Habib, learned Advocate for the opposite party submits that the learned Judges of the Courts below on consideration of oral and documentary evidence adduced by both the parties at trial rightly and concurrently held that the plaintiff has succeeded to prove by legal evidence that defendant Abudl Hamid was a permissive possessor and above defendant could not prove by legal evidence that he contracted to purchase the disputed land for a consideration of Tk.80,000/- and on receipt of Tk.70,000/- as part payment he executed an unregistered bainapatra on 10.01.2004 and accordingly decreed Other Class Suit Nos.39 of 2006 and dismissed Other Class Suit No.44 of 2006 which calls for no interference. Above findings of facts arrived by both the Courts below being based on evidence on record this Court cannot interfere with the same in its revisional jurisdiction.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the disputed land belongs to plaintiff Abdus Sobhan Torofdar and defendant Abdul Hamid is in possession of above land by constructing a dwelling house.

Above Abdus Shobhan Torofdar as plaintiff instituted Other Class Suit No.39 of 2006 for recovery of possession after evicting the defendant and removing his dwelling huts under Section 9 of the Specific Relief Act. The plaintiff did not claim that he has been dispossessed from the disputed land without his consent or forcibly by the plaintiff. It is the case of the plaintiff that he gracefully gave permission to the defendant to construct his dwelling house in the disputed land. Section 9 of the Specific Relief Act, 1877 is reproduced below:

Section 9. "Suit by person dispossessed of immovable property- If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this Section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such orders or decree be allowed.”

It is clear that a suit for recovery of possession under above provision is maintainable only if the plaintiff claims that he has been dispossessed without his consent by the defendant. In this case the plaintiff does not claim that he has been dispossessed without his consent by the defendant from the disputed land. On the contrary the plaintiff claims that he voluntarily inducted the defendant into the possession of the disputed land.

The defendant has admitted above claim of the plaintiff both in his written statement and in his plaint in Other Class Suit No.44 of 2006. He stated that he received possession of the disputed land from plaintiff Abdus Shobhan Torofdar peacefully and with his consent on 10.01.2004 and constructed his dwelling house.

In view of the admitted facts that plaintiff Abdus Sobhan willfully and voluntarily inducted defendant Abdul Hamid in the possession of the disputed land I hold that the instant Other Class Suit No.39 of 2006 under Section 9 of the Specific Relief Act, 1877 is not maintainable in law and that suit was liable to be dismissed on above ground alone. But

the learned Judges of both the Courts below most illegally decreed above suit and dismissed the appeal, respectively, which is not tenable in law.

As far as Other Class Suit No.44 of 2006 filed by defendant Md. Abdul Hamid Pramanik as plaintiff for specific performance of contract for sale dated 10.01.2004 is concerned above suit is barred by limitation. Above plaintiff instituted Other Class Suit No.44 of 2006 on 30.11.2006. Section 17A and Section 17B of the Registration Act was inserted in the above Act by Section 4 of Act No.XXV of 2004 which were made effective from 1st July 2005. Above Section 17A and Section 17B of the Registration Act is reproduced below:

17A. "Registration of contract for sale etc.-

(1) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, a contract for sale of any immovable property shall be in writing, executed by the parties thereto and registered.

(2) A contract for sale referred to in subsection (1) shall be presented for registration within thirty days from the date of execution of the contract and the

provisions regarding registration of instruments shall apply.

17B. Effect of unregistered contract for sale executed prior to Section 17A becomes effective-(1) where a contract for sale of immovable property is executed but no registered prior to coming into force of Section 17A-

(a) The parties to the contract shall, within six months from the date of coming into force of that section,-

(i) Present the instrument of sale of immovable property under the contract for registration, or

(ii) Present the contract for sale itself for registration; or,

(b) Either of the parties, if aggrieved for non-compliance with any of the provisions mentioned in clause (a), shall, notwithstanding any thing contained to the contrary in any law for the time being in force as to the

law of limitation institute a suit for specific performance or recession of the contract within six months next after the expiry of the period mentioned in clause (a), failing which the contract shall stand void.

(2) The provision of Sub-section (1) shall not apply to any contract for sale of immovable property on the basis of which a suit has been instituted in a civil Court before coming into force of Section 17A.”

Undisputedly the impugned deed of bainapatra dated 10.01.2004 executed by plaintiff Abdus Shobhan Torofder in favour of defendant Md. Abdul Hamid Pramanik is an unregistered document for sale of land. As such above document falls within the purview of Section 17A and 17B of the Registration Act. Any suit for specific performance of contract for sale of immovable property on the basis of an unregistered bainapatra must be instituted within one year from 5 July 2005 the date of coming into effect of Act No.XXV of 2004. As such the plaintiff should have instituted the suit on or before 5th July 2006. But undisputedly Abdul Hamid Pramanik instituted this suit on 30.11.2006. As such this suit was barred by limitation by more than four months. But the learned Judges

of both the Courts below have failed to appreciate above position of the law and facts and failed to dismiss the suit on the ground of limitation.

On consideration of above facts and circumstances of the case and evidence on record I hold that Other Class Suit No.39 of 2006 was barred by Section 9 of the Specific Relief Act and Other Class Suit No.44 of 2006 was barred by limitation as provided in Section 17B of the Registration Act, 1925.

The learned Judge of the trial Court most illegally decreed Other Class Suit No.39 of 2006 and the learned Judge of the Court of appeal below failed to appreciate the relevant facts and laws on record correctly and most illegally dismissed the appeal and affirmed above unlawful judgment and decree of the trial Court which is not tenable in law.

In above view of the materials on record I find substance in Civil No.4008 of 2015 and the Rule issued in this connection deserves to be made absolute but I do not find any substance in Civil Revision No.4917 of 2015 and the Rule issued in this connection is liable to be discharged.

In the result, the Rule issued in connection of Civil Revision No.4008 of 2015 is made absolute and the Rule issued in connection of Civil Revision No.4917 of 2015 is discharged.

The impugned judgment and decree dated 03.11.2015 passed by the learned Joint District Judge, 1st Court, Bogura in Other Class Appeal

No.258 of 2010 dismissing the appeal and affirming the judgment and decree of the trial Court is set aside and Other Class Suit No.39 of 2006 is dismissed on contest without cost. The judgment and decree passed by the learned joint District Judge in Other Appeal No.259 of 2010 affirming the judgment and decree of the trial Court passed in Other Class Suit No.44 of 2006 is upheld.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER