

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 4145 of 2005

Md. Ataur Rahman Bhuiyan

...Petitioner

-Versus-

Assistant Commissioner (Land), Sreenagar,
Munshigonj and others

...Opposite Parties

Mr. Jafar Alim Khan, Advocate

....For the petitioner

Ms. Shahida Khaton, AAG

...For the opposite parties

Heard on: 24.10.2024, 30.10.2024 and 31.10.2024
Judgment on: 21.11.2024

This is an application for withdrawal of Title Suit No. 115 of 2003 with permission to institute a fresh suit in respect of the self-same subject matter.

It is stated in the instant application that the present petitioner as plaintiff instituted Title Suit No. 115 of 2003 in the Court of Senior Assistant Judge, Sreenagar, Munshigonj for declaration of title in the suit land and for partition of the same. The suit was dismissed on contest on 11.11.2004 (decree signed on 25.11.2004). Title Appeal No. 09 of 2005 was dismissed on contest by the learned District

Judge, Munshigonj on 24.07.2005. Being aggrieved, the plaintiff filed the instant revisional application and obtained the Rule.

It is further stated in the instant application that it is stated in the plaint that the suit land is recorded in R.S. Khatian No. 1 as khas land. The learned Advocate appearing for the plaintiff-petitioner submits that instead of filing suit for declaration of title and partition, the plaintiff ought to have filed suit for declaration of title with a prayer for correction of the relevant R.S. Khatian. The learned Advocate further submits that the plaintiff ought to have tendered in evidence rent receipt No. A 952230 dated 02.08.1961, rent receipt No. F 877806 dated 14.05.1963 and rent receipt No. D 475216 dated 14.04.1967 in support of his case. Those rent receipts have been annexed to the instant application and marked as Annexure-A, B and C respectively. The learned Advocate further submits that in the attending facts and circumstances, if the plaintiff's application is not allowed, he shall be highly prejudiced and shall suffer irreparable loss and injury. In support of the submission, the learned Advocate refers to the cases reported in 25 DLR 485 and 54 DLR 416.

I have heard the learned Advocate of the plaintiff-applicant and the learned Assistant Attorney General. Be it mentioned that various concerned offices of the government are defendants in the case.

It is settled principle of law that there is no legal bar in granting an application for withdrawal of a suit with liberty to file a suit afresh

on the self-same matter even at a revisional stage provided the other requirements of the law are complied with.

On perusal of the revisional application, judgments passed by the Courts below and other materials on record, it appears that the suit in its present form and manner *i.e.* suit for declaration of title and partition is bound to fail. In that view of the matter, I find substance in the application.

Accordingly, the instant application is allowed. The plaintiff is permitted to withdraw Title Suit No. 115 of 2003 with liberty to institute a fresh suit in respect of the subject matter of the suit if it is not otherwise barred by limitation.

Judgment and decree dated 11.11.2004 passed by the learned Senior Assistant Judge, Sreenagar, Munshigonj in Title Suit No. 115 of 2003 dismissing the suit and those dated 24.07.2005 passed by the learned District Judge, Munshigonj in Title Appeal No. 9 of 2005 dismissing the appeal are set aside. Rule issued on 27.10.2005 in the instant civil revision is disposed of accordingly. The interim order dated 27.10.2005 directing the parties to maintain *status quo* in respect of possession of the suit land is recalled and vacated.

Send down the L.C.R.