

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 3474 OF 2007

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Mozammel Hoque {died leaving behind
his legal heirs: 1(a)-1(g)}.

--- Defendant-Respondent-Petitioners.

-Versus-

Md. Abdul Hamid Mollah {died leaving
behind his legal heirs: 1(Ka)-1(Chha)} and
others

--- Plaintiff-Appellant-Opposite Parties.

Mr. Rowshan Alam Khan, Advocate

--- For the Defendant-Respondent-Petitioners.

Mr. Md. Khalilur Rahman, Advocate

---For the Plaintiff-Appellant-Opposite Parties.

Mr. Abu Yahia Dulal, DAG with

Mr. Md. Humayun Kabir, AAG

---For the Government.

**Heard on: 17.07.2023, 12.10.2023,
31.10.2023, 01.11.2023, 05.11.2023 and
09.11.2023.**

Judgment on: 27.11.2023.

At the instance of the present defendant-respondent-
petitioner, Md. Mozammel Hoque who died leaving behind his
legal heirs who have been substituted and this Rule was issued
upon a revisional application filed under section 115(1) of the
Code of Civil Procedure calling upon the opposite party Nos. 1-4

to show cause as to why the judgment and decree dated 24.05.2007 passed by the learned Additional District Judge, Court No. 2, Satkhira in the Title Appeal No. 106 of 2004 allowing the appeal and thereby reversing the judgment and decree dated 12.08.2004 passed by the learned Assistant Judge, Sadar, Satkhira in the Title Suit No. 129 of 1998 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party Nos. 1-4 as the plaintiffs filed the Title Suit No. 129 of 1998 in the court of the learned Assistant Judge, Sadar, Satkhira for declaration of title and also for a declaration that the suit land is not the vested and non-resident property and the deed of exchange dated 26.06.1980 which was executed in favour of the petitioner and his father which is illegal and forged.

It is also claimed that the plaintiffs are the owners of the land measuring 1.38 acres which was originally belonged to Jotindra Nath and others have defaulted to pay *খাজনা*, as such, there was a rent suit and the said property was sold on auction under the Certificate Case No. 4034 of 1963-64. One Abdus Salam purchased the land by an auction on 10.12.1963 which

was confirmed on 10.02.1964 and the possession of the land was handed over on 11.05.1964 who mutated the land in his favour by the Mutation Case No. 997 of 1975-76 and he possessed the total land within the knowledge of the Government and others. On June 1998 the plaintiff No. 1 went to the local Tahsil Office for payment of খাজনা and he came to know that the defendant No. 5 has already mutated the name by the Mutation Case No. 588 of 1981-82 in respect of .55 acres of land. The plaintiff No. 1 came to know that the defendant No. 5 created an exchange deed and mutated his name without giving any information to the auction purchaser. The plaint further contains that the suit land was illegally listed as a vested and non-resident property by the defendant No. 1, the Government, as such, on 23.06.1998 refused to accept খাজনা। The present defendant-opposite party No. 5 has threatened the plaintiffs to dispossess them from the suit land on 22.09.1998.

The said suit was contested by the present defendant-proforma-opposite party Nos. 5-8 and also the plaintiff-appellant-opposite party No. 1 now deceased and substituted by his legal heirs: 1(a)-1(g) by filing 2 separate written statements. The written statements submitted by the defendant Nos. 1-4

contended that the suit land had originally belonged to Jotindra Nath and others who left this country for India before 1965, as such, the land was declared an enemy property or vested and non-resident property. It is further contended that the plaintiff-opposite parties had no right, title or possession of the suit land. It is also contended that the Certificate Case No. 4034 of 1963-64 was obtained by practicing fraud and purchasing the auction property is not true. Defendant No. 5 as the petitioner submitted a fresh written statement contending, *inter alia*, that he and his father Rajab Ali were residing in India. There was an exchange deed by and between himself with the said Jotindra Nath and others. Accordingly, filed the Exchange Case No. 550 of 1970-71 in the Office of the Deputy Commissioner, Khulna. Pursuant to the exchange deed owned land measuring $18.24\frac{1}{2}$ of land including .55 acres of land. The Certificate Case No. 4034 of 1963-64 is forged as there was no auction, as such, the case under auction is false. Abdus Salam did not purchase the auction land because he was not born at the time of holding the auction, as such, there is no right, title or possession in favour of the plaintiffs in the suit land.

The said suit was received by the learned Assistant Judge, Sadar, Satkhira and after hearing both the parties the learned court dismissed the suit. Being aggrieved the present plaintiff-opposite parties preferred the Title Appeal No. 106 of 2004 in the court of the learned District Judge, Satkhira which was subsequently heard by the learned Additional District Judge, Court No. 2, Satkhira who allowed the appeal and thereby reversed the judgment of the learned trial court by his judgment and decree. Being aggrieved this revisional application has been filed by the defendant-respondent-petitioner and the Rule was issued thereupon.

Mr. Rowshan Alam Khan, the learned Advocate, appearing for the petitioner, submits that in view of the fact that the plaintiff No. 1 himself as PW-1 admitted that at the time of holding the auction Abdus Salam was only 14-15 months old i.e. he was a newborn child. The alleged auction purchase and subsequently taking delivery of possession by a newborn baby is a myth one and considering that aspect of the matter the learned trial court dismissed the suit. But the last court of fact without taking into consideration that aspect of the matter erroneously reversed the findings of the learned trial court and decreed the

suit which has caused a total failure of justice, as such, the Rule should be made absolute.

The learned Advocate further submits that the learned trial court on consideration of the evidence on record, in particular, the Certificate Case, auction purchase, boynama, written delivery of possession and signature of the Certificate Officer, as appeared therein, observed that those documents have not been proved, rather, those are fraudulent and not genuine. But at the time of reversing the judgment and decree of the learned trial court, the learned appellate court failed to say anything about the genuineness and nature of those documents and as to signature of the Certificate Officer in those documents, simply holding that the plaintiffs have produced boynama as well as a writ of delivery of possession i.e. the auction has been purchased by their predecessor- Abdus Salam and decreed the suit which is an error of law resulting in an error in the decision occasioning failure of justice, so, the Rule should be made absolute.

The learned Advocate also submits that the learned trial court committed an error of law and fact by dismissing the suit after examining the documents submitted by the petitioner by disbelieving the auction purchaser by the present petitioner upon

the land measuring 1.38 which was originally owned by Jotindra Nath and others and the auction purchased arising from the rent suit and the land was properly purchase by the petitioner upon the land measuring .55 acres and other measurement of land was vested upon the Government out of 1.38 acres, thus, the learned trial court committed an error of law by dismissing the suit but the learned appellate court below rightly passed the judgment and decree, as such, the Rule should be made absolute.

Mr. Abu Yahia Dulal, the learned Deputy Attorney General, appearing along with the learned Assistant Attorney General, Mr. Md. Humayun Kabir, submits that the C. S. recorded subject Jotindra Nath and others went to India before 1965, as such, the suit property was listed as an enemy property which was subsequently listed as vested and non-residence property, as such, the Government became the owner of the suit land along with the other land, therefore, the suit property was never sold on auction in favour of Abdus Salam who was only a child aged 14/15 months and never received the certificate raising the suit, rather, it was under the Deputy Commissioner, Satkhira, as such, the learned trial court dismissed the suit on merit, thus, the Rule is liable to be discharged.

Considering the above submissions made by the learned Advocates appearing for all respective contested parties 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 learned appellate court below and also perusing the essential documents of the lower courts records which had been submitted by the respective parties in the courts below, it appears to this court that the present plaintiff-opposite party Abdul Hamid Mollah and others filed the suit claiming title upon the suit land and also for a declaration that the suit land was never vested and non-residence property and also praying a declaration that the exchange deed dated 26.06.1980 is not binding to them. The present plaintiff-opposite parties adduced and produced some documents and PWs to prove its own case along with the title and possession of the suit land on the basis of an auction and a Certificate Case being No. 4034 of 1963-64. They have further claimed that the plaintiffs submitted evidence as to the delivery of possession of the suit land measuring 55 decimals on 11.05.1965. The land was mutated in favour of the plaintiff-opposite party No. 1 who died leaving behind the present

plaintiffs as his legal heirs and the land was owned and possessed within the knowledge of the Government and others. The plaintiff further claims that he came to know from the Tahshil Office that the land was wrongly recorded in the name of the present defendant No. 5 as the petitioner on 23.06.1998 and the present suit was filed within the limitation period claiming entitlement. The plaintiff also filed that there was no valid exchange deed.

On the other hand, the present opposite parties both the Government and the defendant No. 5 contended that the original owner of the suit land of Jotindra Nath left the land and went to India, as such, the property was vested upon the Government as the enemy property.

The learned Assistant Attorney General, appearing on behalf of the defendant-opposite party Nos. 5-8 contending that the original owner left for Pakistan and went to India, thus, the property was enlisted as an enemy property and non-residence property. However, the learned Assistant Attorney General submits that 55 decimals of land along with other lands admitted by owner of the defendant No. 5 upon the land measuring 55 decimals, as such, the case of exchange of the land or obtained

through the auction purchase by the defendant-petitioner is false and contrary to the fact. The present defendant-petitioner submitted sufficient documents regarding the rent suit, auction and certificate case provided after the auction in favour of the defendant-petitioner. The learned trial court failed to substantiate the decision.

In view of the conflicting judgments passed by the learned courts below it appears to me that the present plaintiff-opposite parties could not prove their entitlement on the basis of the evidence adduced and produced by the parties, as such, the learned trial court dismissed the suit. However, the learned appellate court below considers all the sides including the Government of Bangladesh failed to prove their entitlement.

In view of the above law and facts, it appears to me that the learned trial court rightly dismissed the suit as the plaintiffs could not prove their own case. However, the learned appellate court below takes into consideration of the auction purchase by the defendant-petitioner as to his entitlement upon the suit land.

In the above-given facts, the learned appellate court below misread the evidence as to the .55 acres of land situated in Mouza- Radha Nagar, Police Station- Satkhira, District- Satkhira

C. S. Khatian No. 1093, S. A. Khatian No. 1391, thus, the learned appellate court below committed an error of law by reversing the judgment and decree passed by the learned trial court.

Now, I am going to examine the judgment and decree passed by the learned courts below:

The learned trial court came to a lawful conclusion by finding in the following manner:

...“৫ নং বিবাদী পক্ষের জেরার জবা-ব (যা প্রমাণিত হয়নি) এর ২/৩ বছর পর যতীন বাবুরা ভারতে চলে যায়। শত্রু সম্পত্তি হিসেবে সরকার প্রথমে তাদের পরিত্যক্ত ভূমি তালিকাভুক্ত করেন। পরে সরকার ৫ নং বিবাদী পক্ষের দাবীকৃত বিনিময় স্বীকার ক-র অন্যান্য জমি সহ নালিশী খতিয়া-নর ১.৩৮ এক-র ম-ধ্য ৫৫ শতক বাবদ বিনিময় রেগুলারাইজেশান দলিল ইং ২৬.০৬.১৯৮০ তারি-খ সম্পাদন ক-র দি-য়-ছেন। তাই বিনিময় সূত্রে উক্ত ৫৫ শতক ভূমিতে ৫ নং বিবাদীর স্বত্ব অর্জিত হ-য়-ছ। ৫ নং বিবাদীপক্ষ ভূমি বাবদ ৬ ফর্দ খাজনা দাখিলা দাখিল ক-র-ছেন যা প্রদঃ “ক” সিরিজ রূ-প চিহ্নিত হ-য়-ছ। নালিশী জমির বক্রী ৮৩ শতক জমি বর্তমানে অর্পিত সম্পত্তি হিসেবে সরকারের মালিকানাধীন। নালিশী জমি-ত বাদীপক্ষ সম্পূর্ণ নিঃস্বত্বান ও দখল বিহীন। ভিপি তালিকাভুক্তি ও বিনিময় সঠিক।”...

However, the learned appellate court below committed an error of law by decreeing the suit and thereby reversing the

judgment of the learned trial court on the basis of the following findings:

...“যে-হতু সরকার ৫ নং বিবাদী বরাবর বিনিময় দলিল সঠিক বলিয়া সম্পাদন করিয়া দিয়া-ছেন সেই হেতু সরকার আর নালিশী সম্পত্তি অর্পিত ও অনাগরিক সম্পত্তি মর্মে দাবী করিতে পারেন না। নালিশী জমি-ত আদাল-তর মাধ্য-ম দখল প্রাপ্ত হওয়ায় এবং বাদীপ-ক্ষর ২ ও ৩ নং সাক্ষীগণ বাদীর দখ-লর সমর্থ-ন সাক্ষ্য প্রদান করায় নালিশী সম্পত্তিতে বাদীর দখল রহিয়াছে মর্মে সিদ্ধান্ত গৃহিত হইল। বাদীপ-ক্ষর দাবীকৃত ৪০৪৩/৬৩-৬৪ নং নিলাম মামলা বহাল থাকায় অন্য কেহ নালিশী জমির স্বত্ব দাবী করি-ত পা-র না। নালিশী সম্পত্তিতে কেহ স্বত্ব দাবী করিলে বাদীকে অবশ্যই নালিশী জমি সংক্রান্ত ৪০৪৩/৬৩-৬৪ নং সি. সি. কেসের নিলাম বিক্রয় বাতিল মর্মে ঘোষণার জন্য মামলা দা-য়র করিয়া উক্ত নিলাম রদ রহিত মর্মে ঘোষণার ডিক্রী প্রাপ্ত হওয়া আবশ্যিক। নিলাম বহাল থাকায় বিবাদী প-ক্ষর নালিশী জমি-ত কোনরূপ স্ব-ত্বর উদ্ভব হয় নাই। বিজ্ঞ নিম্ন আদালত মামলাটি খারিজ করিয়া আইনগত ও তথ্যগত ভ্রুটি করিয়াছেন।”...

In view of the above conflicting findings, I consider that the learned trial court rightly found that a property sold on the basis of a rent suit and a certificate case arising thereof cannot claim any entitlement without challenging the auction purchase or the auction itself, therefore, the learned appellate court below committed an error of law by reversing the judgment of the learned trial court and finding in favour of the defendant-

petitioner. I am, therefore, inclined to interfere upon the impugned judgment, thus, the Rule should be made absolute.

Accordingly, I find merit in the Rule.

In the result, the Rule is hereby made absolute.

The judgment and decree dated 12.08.2004 passed by the learned Assistant Judge, Sadar, Satkhira in the Title Suit No. 129 of 1998 is hereby affirmed.

The judgment and decree dated 24.05.2007 passed by the learned Additional District Judge, Court No. 2, Satkhira in the Title Appeal No. 106 of 2004 is hereby *set aside*.

The interim order passed by this court at the time of issuance of this Rule to maintain the *status quo* by the respective parties of the suit land is hereby recalled and vacated.

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