

Present :
Mr. Justice Ashish Ranjan Das.

Civil Revision No. 3920 of 2015

In the matter of:

Sheikh Nasir Uddin being dead his heirs of
1(a) Sheikh Rakibuzzamwean and others
..... Petitioners

-Versus-

Mr. Major Masud Ahmed and others
..... Opposite parties.
Mr. Bikash Chandra Biswas, Advocate
.....For the petitioners.
Mr. Md. Nurul Amin, Advocate
... For the opposite parties

Heard on : 24.02.2020

Judgment on: 01.03.2020

Ashish Ranjan Das, J:

In a suit for declaration of title, confirmation and possession in respect of a small piece of land the plaintiff brought title suit no. 11 of 1996 that was decreed on 26.08.2010. The contesting defendant being aggrieved preferred title appeal no. 91 of 2010 in the court of District Judge, Jessore and on transferred the learned Additional District Judge, 2nd Court Jessore dismissed the title appeal finding. The appellant repeatedly absent and holding that they were not interested in prosecuting the appeal. Being further aggrieved the contesting defendant brought this civil revisional application under section 115 (1) of the Code of Civil Procedure.

I have heard the learned advocates for the contesting parties in details and perused the materials annexed including the Lower Court

Records.

Short facts relevant for the purpose of disposal of the Rule may be summarized as under:-

The opposite parties had brought the suit for declaration of title and confirmation possession in respect of only 5 decimals of land described in the schedule to the plaint wherein the petitioner defendants contested. It appears that both the parties asserted their conflicting cases of title and possession. However, both the parties claimed that they had acquired title by way of oral settlement from the landlords before promulgation of State Acquisition and Tenancy Act. The learned Joint District Judge, First Court, Jessore found the case of acquiring title and possession of the plaintiff side proved and decreed the suit. Contesting defendant's that is the present petitioners preferred appeal before the District judge and on transfer it was heard by the learned Joint District Judge, 2nd Court, Jessore. It appears from the order dated 07.10.2015 (page-34) that the appellant side was taking continuous adjournment and the learned lower appellate court finally found that the appellants were not interested in prosecuting the appeal and a last date of hearing was fixed. Hearing on the part of the respondents was already concluded. But the appellant side found once again absent, hence the learned appellate court dismissed the appeal with the comment that the appellant seems not interested in prosecution of the appeal.

Now it has been a rather settled principle that such a dismissal

of the appeal was not dismissal on merit since the appellant or his pleader or any other competent person for him was at all not heard and the judgment too does not throw any light to any issue or merit of the suits. But challenging the order of such dismissed of the appeal the appellant brought this civil revisional application under section 115 (1) of the Code of Civil Procedure as if the appeal was dismissed on merit. Rather it seems to have been a matter of readmission of the appeal under order 41 rule 19 of the Code of Civil Procedure.

As a result technically I find no merit in the rule and the same is discharged.

The order of stay and injunction granted earlier by this court is hereby recalled and vacated.

Send down the L.C.Records at once.

However, there is no order as to costs.

The office is directed to communicate the judgment and order to the court below at once.

Justice Ashish Ranjan Das.