

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

Civil Revision No. 490 of 2021

IN THE MATTER OF

Md. Joynal Abedin and others

..... Plaintiffs-Appellants-Petitioners

-Versus-

Md. Abbas Ali and others

..... Defendants-Respondents-Opposite parties

Ms. Tasmia Prodhan, Advocate

..... For the petitioners

Mr. Md. Taherul Islam, Advocate

..... For opposite party Nos.1-
14,21-28 and 39

Heard on 06.11.23 & 22.04.24
and judgment passed on 24.04.2024

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This rule, under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following terms-

“Records be called for. Let a rule be issued calling upon the opposite parties to show cause as to why the judgment and decree dated 14.01.2021 passed by the learned District Judge, Panchagarh, in Partition Appeal No. 62 of 2019 affirming those dated 27.05.2019 passed by the Senior Assistant Judge, Sadar, Panchagarh in Partition Suit No. 115 of 2014 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The present petitioners as the plaintiffs filed Partition Suit No. 115 of 2014 before the Court of Learned Assistant Judge, Sadar, Panchagarh against the present opposite parties as the defendants praying for a decree of declaration of title and partition.

The present contesting opposite parties as the defendants contested the suit by filing a written statement denying the averments made in the plaint for the reasons stated therein.

After the conclusion of the trial, the learned Senior Assistant Judge, Sadar, Panchagarh by judgment and decree dated 27.05.2019 dismissed the suit on the contest against the contesting defendant Nos. 2-12, 21-29, and 39 and ex-parte against the rest with cost. Being aggrieved by the same the contesting defendants as the appellants preferred an appeal before the learned District Judge, Panchagarh, and the same was numbered as Partition Appeal No. 62 of 2019. After hearing the appeal the learned Judge by judgment and decree dated 14.01.2021 disallowed the appeal by affirming those of the Trial Court. Being aggrieved by the said impugned judgment and decree dated 14.01.2021 the defendants as the petitioners had preferred the instant civil revision before this Court and obtained the present rule.

Anyway, Ms. Tasmia Prodhan, the learned Advocate appearing for the plaintiffs-petitioners submits that the impugned judgment and decree passed by the learned Judge of the Appellate Court below is purely based on a misreading, non-consideration of the material evidence on record which caused a miscarriage of justice.

Per contra, Mr. Md. Taherul Islam, the learned Advocate appearing for the defendants-opposite parties submits that both the Courts below considering the facts and circumstances of the case and the evidence on record, on concurrent findings, rightly dismissed the suit of the plaintiffs as they could not prove their only document of title, that is to say, C.S. record of rights as per the provision of law and thereby committed no illegality occasioning failure of justice.

Heard the learned Advocates of the contending parties and perused the materials on record. It appears that the present petitioners as the plaintiffs filed the instant suit for a decree of declaration of title with partition, and after hearing the same the learned Trial Judge on elaborate discussions dismissed the suit of the plaintiffs holding, amongst others, that the plaintiffs failed to prove their right, title and possession over the suit land by

evidence as the plaintiffs failed to prove their only basis of title, that is to say, the C.S. record of rights (exhibit-2)' which is a certified copy, as per the provision of law. And on appeal, the learned Judge of the Appellate Court below also disallowed the appeal on concurrent findings. However, at the time of the hearing, the learned Advocate for the petitioners failed to show any misreading or non-consideration of the material facts causing a miscarriage of justice. On top of that, it is the settled proposition of law that concurrent findings of the Courts below can not be interfered with unless there is a misreading or non-consideration of the material facts on record or an error of law to have been committed to in passing the impugned judgment and decree. I have minutely gone through the impugned judgment and decree and that of the Trial Court but I did not find such misreading or non-consideration of the material facts or any error of law to have been committed occasioning failure of justice. In the premises, there is no reason and logic to interfere with the impugned judgment and decree.

Given the above, I do not find any substance in the submissions made by the learned Advocate for the petitioners and merit in the rule. Accordingly, the rule fails.

As a result, the rule is discharged without cost.

The impugned judgment and decree dated 14.01.2021 passed by the learned District Judge, Panchagarh, in Partition Appeal No. 62 of 2019, disallowing the appeal by affirming those dated 27.05.2019 passed by the learned Senior Assistant Judge, Sadar, Panchagarh in Partition Suit No. 115 of 2014 dismissing the suit is hereby upheld.

Send a copy of this judgment along with the L.C.R to the Court below at once.

(Md. Rafiqul Alam, BO)