Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.4190 OF 1999.

Md. Ansar Ali, being dead, his legal heirs:
Md. Barek Ali and others.
..... Defendant-Petitioners.

-VERSUS-

Md. Md. Abu Bakar Siddique and others.
..... Plaintiff-Opposite parties.

Ms. Runa Nahrin, Advocate
--------For the petitioners.

No one appears
For the plaintiff-opposite party No.1.

Heard on 26.02.2025, 16.03.2025, 17.03.2025 and 18.03.2025.

Judgment on 06.05.2025.

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and decree dated 26.09.1999 passed by the learned Sub-judge (now Joint District Judge), 1st Court, Chuadanga in Title Appeal No.68 of 1997 allowing the appeal and reversing the Judgment and decree dated 30.04.1997 passed by the learned Assistant Judge, Alamdanga, Chuadanga in Title Suit No.56 of 1992

dismissing the suit 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 facts, in brief, for the disposal of Rule are that the opposite party No.1 as plaintiff instituted Title Suit No.56 of 1992 for declaration of title and recovery of khas possession, contending inter alia, that the lands measuring 66 decimals appertaining to C.S. Khatian No.139 belonged to Banku Behari. Bishu Mondal was a tenant under Banku Behari. After the death of Bishu Mondal, his brother Hazari Mondal and wife Rahatunnessa inherited the land. Hazari Mondal died, leaving four sons: Sadeq Ali, Ayenuddin, Abusaddin, and Abdur Rashid. Sadeq Ali died, leaving two sons, namely Nasir Hossain and Nasiruddin, as heirs. Ayenuddin and others sold 66 decimals of land to the plaintiff vide a kabala dated 16.3.1992. The defendant No.1 on 21.07.1974 threatened to dispossess the plaintiff of the suit land. The defendant purchased that land from Nirmal Kumar, an heir of Banku Behari. On 28.04.1992, the petitioner forcibly dispossessed the plaintiff and occupied the land. Hence, the suit for the declaration of title and recovery of khas possession. The plaintiff also prayed that the Judgment

and decree passed in Title Suit No.693 of 1974, which had been decided earlier, were not binding upon him.

The defendants Nos. 1, 3, 4, and 5 contested the suit by filing separate written statements.

The defendant No.1 in his written contented inter alia that Bishu Mondal was a tenant for 7 years under Banku Behari regarding the suit land. Bishu Mondel surrendered the suit land to its owner. Then Banku Behari cultivated the land in Khas through a bargader. Thereafter, his brother Khitish Chandra got the land through amicable partition. Khitish Chandra died, leaving his only son and heir, Nirmal Kumar, who sold the land of the defendant No.1 vide Kabala dated 21.7.1974. The defendant No.1, as the plaintiff previously filed the Title Suit No.693 of 1974 and got the decree. Upon an appeal being No.69 of 1977, the learned Judge of the Appellate Court by the Judgment and decree dated 15.05.1981 upheld the judgment and decree passed in T.S. No.693 of 1974. Then the defendant No.1 mutated his name vide Mutation Case No. 1/XIII/82-83 and has been paying rent. The plaintiff has no title in the spit land. The father and uncle of the plaintiff were parties in the previous suit and were defeated. The previous Judgment and decree are binding upon the plaintiff. Hence, the suit of the

plaintiff is not maintainable and should be dismissed with costs.

The defendant No.3, Government of Bangladesh, contested the suit by filing a written statement stating inter alia, that the owners of the land had left this country and had been living permanently in India. The land has become vested and non-resident property. It has been recorded in the Khash Khatian of the Government as per Ordinance No.45 of 1974. The government has leased out the land to different persons.

The defendant No.4 filed a written statement but did not contest the suit. The learned trial court did not discuss his written statement.

The defendant No.5 filed a written statement stating inter alia that Banku Behari was the superior landlord of the suit Khatian No.139. Bishu Mondal was the Korfa tenant under him. Bishu Mondal submitted Istafa and surrendered the land to Banku Behari. After the death of Banku Behari, his only son, Mahadev, and after the death of Mahadev, his only son, Biksh Chandra, became heir of the suit land. The land has not been recorded in the S.A. operation. The R.S. record is wrong. Neither the plaintiff nor the defendant No.1 has title over the suit land. The suit is liable to be dismissed.

The learned Assistant Judge, Alamdanga, Chuadanga framed the necessary issues to determine the dispute among the parties.

Subsequently, the learned Assistant Judge, Alamdanga, Chuadanga, dismissed the suit by the Judgment and decree dated 30.04.1997.

Being aggrieved by and dissatisfied with the above Judgment and decree dated 30.04.1997, the plaintiff, as appellant, preferred Title Appeal No.68 of 1997 before the District Judge, Chuadanga. Subsequently, the learned Sub-judge (now Joint District Judge), 1st Court, Chuadanga, by the Judgment and decree dated 26.09.1999 allowed the appeal, thereby reversing the Judgment and decree passed by the learned Judge of the trial Court.

Being aggrieved by and dissatisfied with the above Judgment and decree dated 26.09.1999, the defendants as petitioners preferred this Civil Revision under section 115 (1) of the Code of Civil Procedure before this court and obtained the instant Rule with an order of stay, which was extended time to time.

Ms. Runa Nahrin, the learned Counsel appearing on behalf of the defendant-petitioners, submits that the learned

Judge of the appellate Court below as a last Court of facts, without refuting the Judgment of the trial Court decreed the suit therefore committed an error of law resulted in an error in the decision occasioning failure of justice in allowing the appeal and as such the impugned Judgment and decree is not a proper judgment of reversal. Thus, she prays to make the Rule absolute.

No one appears on behalf of the opposite party No.1.

I have anxiously considered the submissions advanced by the Bar, perused the Judgment of the courts below, and oral and documentary evidence on the records. It manifests that the opposite party No.1, the plaintiff, instituted the instant suit for a declaration of title and recovery of khas possession. The trial Court, considering the evidence on record, dismissed the suit. On appeal preferred by the plaintiff, opposite party No.1, the learned Judge of the appellate Court below allowed the appeal after reversing the Judgment and decree passed by the trial Court below.

While dismissing the suit, the trial Court below says the plaintiff failed to prove his title over the suit land, the suit is barred by res judicata and limitation, and the plaintiff failed to prove his dispossessing of the suit land by the defendant.

It further appears that the learned Judge of the appellate Court below, while allowing the appeal, says that the plaintiff successfully proved his title to the suit land, the suit of the plaintiff is not barred by res judicata and limitation, and he successfully proved his dispossession by the defendants of the suit land.

In order to prove the case, the plaintiff side examined as many as 5 (five) P.Ws and exhibited the material evidence; the defendant side also examined 5 D.Ws to prove the case and exhibited the material evidence. I have anxiously scrutinized each deposition and cross-examination of the witnesses. It appears that, admittedly, the lands measuring 66 decimals appertaining to C.S. Khatian No.139 belonged to Banku Behari. The plaintiff claimed that Bishu Mondal was a tenant under Banku Behari. After the death of Bishu Mondal, his brother Hazari Mondal and wife Rahatunnessa inherited the land. Hazari Mondal died, leaving four sons: Sadeq Ali, Ayenuddin, Abusaddin, and Abdur Rashid. Sadeq Ali died, leaving two sons, namely Nasir Hossain and Nasiruddin, as heirs. Ayenuddin and others sold 66 decimals of land to the plaintiff vide a kabala dated 16.3.1992. Rather, during the S.A. operation, the land was recorded in the name of the government, but neither the

plaintiff nor his predecessors took any steps to rectify the records. On perusal of the trial court's Judgment, it appears that the court considered the oral and documentary evidence adduced by the parties and concluded that the plaintiff has failed to prove his possession title, his alleged date of dispossession from the suit land. While concluding as to the possession of the plaintiff till his dispossession, the first court of fact considered the evidence adduced by the parties vividly, but from the Judgment and decree of the appellate court, it appears that the appellate court without taking into consideration of the evidence as quoted by the trial court abruptly reversed the finding as to the possession of the plaintiff till his dispossession from the suit land. In the plaint, the plaintiff stated that he was dispossessed by the defendant No.1 on 24.04.1994 from the suit land. The plaintiff was examined as P.W. 1, who in his evidence did not utter a word about the alleged date of dispossession. Similarly, his other two witnesses, P.W. 2 and P.W. 3, have also said nothing about the date of dispossession of the plaintiff from the suit land. Therefore, it appears that the conclusion arrived at by the trial court is correct.

Further, it appears from the record that the defendant's title had been decided in title suit No. 375 of 1974 and 693 of

1974, and title appeal No. 69 of 1977 and 80 of 1977, wherein the father and uncle of the plaintiff were parties to those suits. So, it is presumed that the plaintiff-opposite party was aware of the Kabala dated 21.07.74. In this regard, the trial court, having assessed the oral and documentary evidence on record, says that:-

> "দেং আপীল ৬৯/৭৭ নং মামলা মঞ্জুর পূর্বক ৮০/৭৭নং আপীল খারিজ হয়ে নিম্ন আদালত এর দেং ৬৯৩/৭৪নং মামলার রায় বহাল থাকে কিনা তিনি জানেন না। এই মামলার নালিশী জমি ও দেং ৩৭৫/৭৪ এবং ৬৯৩/৭৪নং মামলার বিরোধীয় জমি ও পক্ষ এক কিনা তিনি বলতে পারেন না। মামলার জমি আগে বংকু বিহারীর ছিল তাহা সত্য ঐ বংকু থেকে ইহা ৭ বৎসর মেয়াদী বন্দোবস্ত নেয় কিনা তিনি জানেন না। ঐ বন্দোবস্ত ১৩৩৩ সালের ২৮শে আষাঢ় মোতাবেক ১৩/৭/২৬ইং তারিখে মালেক বরাবর ইস্তফা দেয় কিনা তিনি বলতে পারেন না। ইস্তফা দেওয়ার পর মামলার জমি আপোষ ছাহামে ক্ষিতিশ পায় কিনা তিনি বলতে পারেন না। বা ক্ষিতিশের মৃত্যুর পর নির্মল পায় কিনা তিনি জানেন না। ঐ নির্মল মামলার জমি ২১/৭/৭৪ইং তারিখে ১নং বিবাদীর কাছে বিক্রি করেছে কিনা তিনি বলতে পারেন না। অপর দিকে ১নং বিবাদী মামলার জমি নির্মল কুমার থেকে ২১/৭/৭৪ইং তারিখের কবলা মূলে খরিদ সূত্রে দাবী করেন এবং উক্ত কবলা প্রদঃ-'ঘ' মতে দাখিল পূর্বক প্রমানে ব্যবহার করেন এবং মামলার জমির এস/এ রেকর্ড ছুট হওয়ায় দেং ৬৯৩/৭৪ নং মামলা করিয়া ডিক্রী প্রাপ্ত হন। যাহার আরজি ও রায় ডিক্রীর জাবেদা নকল প্রদঃ 'ক' সিরিজ মতে দাখিল করেন। তাছাড়া দেং

৩৭৫/৭৪ নং মামলার আরজি রায় ডিক্রী এবং তাহাতে প্রদত্ত বিবাদীদের জবাবের জাবেদা নকল থেকে প্রতীয়মান হয় যে, তাহাতে বর্তমান বাদীর পূর্ববর্তী পিতা ও চাচারা যথাক্রমে ২-৫ নং বিবাদী শ্রেনী ভুক্ত ছিল ও তাহারা জবাব দিয়াছিল। উক্ত দেওয়ানী মামলার রায়ের বিরুদ্ধে দেং আপীল ৬৯/৭৭ ও ৮০/৭৭ দায়ের হয় এবং তাহা একত্রে বিচার হয়ে ১৪/৫/৮১ তারিখে মাননীয় আপীল আদালতের থেকে নিষ্পত্তি হয়। যাহাতে বর্তমান মামলার ১নং বিবাদীর দাখিলী দেং ৬৯৩/৭৪ নং মামলার নিম্ন আদালতের রায় ডিক্রী বহাল থাকে। উক্ত আপীল আদালতের রায়ের পর ১নং বিবাদী নালিশী জমি বাবদ ১/XIII/৮২-৮৩ নং নাম পত্তন কেসে নাম পত্তন পূর্বক সরকারী সেরেস্তায় খাজনা প্রদানে দাখিলা প্রাপ্ত হন। যাহা থেকে প্রতীয়মান হয় যে, মামলার জমিতে বাদীর বা বাদীর পূর্বাধিকারী পিতা চাচাদের নয় বরং ইহাতে ১নং বিবাদীরই স্বত্ব দখল বিদ্যমান। উল্লেখ্য পূর্ববর্তী অবস্থার আলোকে ইতি পূর্বেই সিদ্ধান্ত প্রদান করা হইয়াছে বাদীর বর্তমান মামলা রেসজুডিকেটা নীতি অনুযায়ী এবং তামাদী আইনের বিধান মতে বারিত। এমতাবস্থায় বাদী কর্তৃক আনীত অত্র মামলা আইনতঃ ও ন্যায়তঃ চলিতে পারেনা এবং অত্র মামলায় বাদী প্রার্থীত মতে কোন প্রতিকার পাইতে পারে না।”

Considering the above facts and circumstances, I am of the firm view that the trial court has exhaustively considered the pleading, oral, and material evidence adduced and produced by the parties, and the Judgment of the title suit Nos. 375 of 1974 and 693 of 1974, and title appeal Nos. 69 of 1977 and 80 of 1977, held that the predecessors of the plaintiff were parties

to those suits. Therefore, it appears to me that the trial court took the correct view that the instant suit is barred by the principle of res judicata and limitation. Rather, from the Judgment and decree of the appellate court, it appears that the appellate court below, without considering the evidence as quoted by the trial court, abruptly reversed the finding as to the previous title suit No. 693 of 1974, which was filed by the defendant No.1 and got a decree and title suit No.375 of 1974 which was filed by the defendant No.2 and the suit was dismissed, and the Judgment and decree of title appeal No. 69 of 1977. It is well settled that when a suit is barred by law, the court can dismiss the suit under Order 7 Rule 11 and also take recourse to section 151 of the Code of Civil Procedure. Here in the present case, from the available materials, particularly the plaint itself, it appears the defendants got a decree against the predecessors of the plaintiff in their earlier suit, which was excepted up to the appellate court. Accordingly, the defendant has mutated their name and regularly pays revenue to the government. Therefore, the plaintiff cannot proceed with the present suit simply as a suit for declaration of title and recovery of khas possession, and the Judgment and decree of title suit No. 693 of 1974 are not binding upon him.

Notably, the appellate court below, considering the evidence on record, thought that there were certain weaknesses in the defence version of the case, but the fact remains that if the plaintiff wants a decree, he must stand on his own legs. It appears that the appellate court below, while disposing of the matter, did not thoroughly consider the oral and documentary evidence and came to the wrong finding that the trial court had committed an error in dismissing the suit.

Considering the above facts, circumstances of the case, and discussions made herein above, I am of the firm view that the appellate court below did not correctly appreciate and construe the documents and materials on record in accordance with the law in allowing the appeal, setting aside the Judgment of the trial Court below. Moreover, the appellate court did not advert to the reasoning of the trial court below, and this hit the root of the merit of the suit. Therefore, it is not a proper judgment of reversal and has occasioned a failure of justice. Consequently, I find merit in the Rule.

Resultantly, the Rule is made absolute.

The impugned Judgment and decree dated 26.09.1999 passed by the learned Sub-judge (Joint District Judge), 1st Court, Chuadanga in Title Appeal No.68 of 1997 is set aside,

and the Judgment and decree dated 30.04.1997 passed by the learned Assistant Judge, Alamdanga, Chuadanga in Title Suit No.56 of 1992 is hereby affirmed.

Communicate the Judgment and send down Lower Court Records at once.

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(Md. Salim, J).

Kabir/BO