

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 1764 OF 2020

IN THE MATTER OF:

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

(Against Decree)

-And-

IN THE MATTER OF:

Mohammad Ali Molla and another

--- Plaintiff-Appellant-Petitioners.

-Versus-

The Government of the People's Republic of
Bangladesh represented by the Deputy
Commissioner, Chapainababgonj and others

--- Defendant-Respondent-Opposite Parties.

Mr. Muhammad Abdul Halim Kafi with

Mr. Md. Jahangir Hussain, Advocates

---For the Plaintiff-Appellant-Petitioners.

Mr. Abu Yahia Dulal, DAG with

Mr. Md. Humayun Kabir, AAG

--- For the Government.

Heard on: 13.03.2024, 14.03.2024,
18.03.2024 and 19.03.2024.

Judgment on: 19.03.2024.

At the instance of the present plaintiff-appellant-petitioners, Mohammad Ali Molla and another, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite parties to show cause as to why the impugned judgment and decree dated

21.10.2020 passed by the learned Additional District Judge, Chapainababgonj in the Title Appeal No. 21 of 2015 disallowing the appeal and thereby affirming the judgment and decree dated 26.01.2015 passed by the learned Assistant Judge (In-Charge), Nachol, Chapainababgonj in the Other Class Suit No. 68 of 2013 dismissing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioners as the plaintiffs filed the Other Class Suit No. 68 of 2013 in the court of the learned Assistant Judge (In-Charge), Nachol, Chapainababgonj that the suit lands (ponds) of C. S. Khatian No. 4 was originally owned by one Sreejukta Oboni Mohon Moitro Ding as the Superior Landlord who settled the land on 15.01.1352 BS in favour of the predecessor of the present petitioner No. 1 in the year of 1946 AD. The said Abdul Mannan subsequently paid Khajna (rent) in favour of the Government after the operation of the State Acquisition & Tenancy Act of 1950. Accordingly, to P. R. from Bangla, S. A. and R. S. Record of rights collusively not prepared in the name of Abdul Mannan, thereafter, the Tahsildar refuses to take Khajna (rent), as such, Abdul Mannan filed a case being Other Class Suit No. 246 of 1977 in the court of the then learned

Subordinate Judge, Rajshahi against the Government claiming only the title upon the suit lands (ponds). The Government of Bangladesh was made the defendant in the said suit.

After hearing the parties of the Other Class Suit No. 246 of 1977 the learned the then Subordinate Judge, Rajshahi decreed the suit on contest on 12.06.1981. On the basis of the above judgment the predecessor of the petitioner, Abdul Mannan, mutated the suit properties (ponds) in his favour and paid Khajna (rent) till 1419 BS. Thereafter, the said Abdul Mannan died leaving behind his son Mohammad Ali Molla and a daughter Momena Khatun as the legal heirs. The said Mohammad Ali Molla and Momena Khatun were aged persons, as such, they made a deed of Power of Attorney on 24.02.2013 to look after the suit ponds and the petitioners are the owners of the surrounding lands (ponds). The Assistant Commissioner (Land), Nachol, Chapainababgonj took a decision to give a lease of the suit properties/ponds for farming fish. The Government Official Tahshilder threatened to dispossess the plaintiff-petitioners by settling the land properties in favour of the lessee.

The opposite party as the defendant (Government) contested the suit by filing a written statement denying the

claims made by the present plaintiff-petitioners. The opposite party as the Government contended that prior to the enactment of the State Acquisition & Tenancy Act, 1950 the suit lands belonged to the above-mentioned Jaminder/Landlord and the present suit lands/ponds were the additional property of Jaminder/Landlord beyond the sealing of the measurement of the land measuring 7.86 standard acres. The opposite party also contended that the suit lands/ponds were the additional properties of Jaminder and the Act 1950 would automatically vest upon the Government by operation of law. Accordingly, the scheduled properties were rightly entered into the S. A. Record of Rights and R. S. Record of Rights in favour of the Government. The defendant further contended that the suit ponds were used as public irrigation for the crops of the surrounding lands. The defendant also contended that the predecessor of the petitioners, Abdul Mannan, created some false documents to file the Other Class Suit No. 246 of 1977 in the court of the then learned Subordinate Judge, Rajshahi for managing and obtaining the judgment and decree in his favour as the court decreed the suit which was not challenged by the present defendant, the Government.

After hearing the parties the learned Assistant Judge (In-Charge), Nachol, Chapainababgonj came to a conclusion to dismiss the suit by his judgment and decree dated 26.01.2015. Being aggrieved the present plaintiff-petitioners preferred the Title Appeal No. 21 of 2015 before the learned District Judge, Chapainababgonj which was transferred to the learned Additional District Judge, Chapainababgonj for hearing and after examining the documents filed by the respective parties disallowed the appeal and thereby affirmed the judgment of the learned trial court.

This revisional application has been filed by the plaintiff-appellant-petitioners under section 115(1) of the Code of Civil Procedure challenging the legality of the impugned judgment and decree passed by the learned appellate court below and the Rule was issued thereupon.

Mr. Muhammad Abdul Halim Kafi, the learned Advocate, appearing along with the learned Advocate, Mr. Md. Jahangir Hussain, submits that the predecessor of the petitioners duly paid rents to the Jamindar's Serestah but the S. A. and R. S. records were wrongly recorded in the name of the Government. Subsequently, the Tahshilder refused to take rent from the

predecessor of the petitioners. After that, the predecessor of the petitioner Abdul Mannan filed a declaration suit being Other Class Suit No. 246 of 1977 on 18.01.1977 for correction of the erroneous record before the Sadar Subordinate Judge Court, Rajshahi. On 12.06.1981 the learned court decreed the suit on contest in favour of the said Abdul Mannan. Thereafter, Abdul Mannan applied for the mutation before the Additional District Commissioner (Revenue), Rajshahi. After scrutinizing the papers and possession thereof the Additional District Commissioner (Revenue), Rajshahi allowed the mutation application and ordered to open separate Khatian and Holding in favour of Abdul Mannan. Subsequently, the said Abdul Mannan paid Khajna (rent) upto 1419 BS and continued to possess the scheduled properties. After the death of Abdul Mannan his legal heirs continue the possession of the scheduled properties by registering a Power of Attorney Deed being No. 769 of 2013 in favour of the instant petitioners. But overlooking those facts of records both the courts below passed their judgment and decree which is not lawful.

He also submits that the heirs of the said Abdul Mannan possessed the scheduled properties over 60 (sixty) years and

mutated rightly in the name of the said predecessor Abdul Mannan. The petitioners also submitted the certified copy of the said judgment and decree of the Other Class Suit No. 246 of 1977 which is marked as Exhibit- 7 and submitted the rent receipts which are also marked as Exhibit- 9. But the learned trial court without taking into consideration those matters in records passed the judgment and decree which is not legal in the eye of law.

The learned Advocate further submits that the petitioners had given 06 witnesses to prove their case. Among them PW-1 was the petitioner himself and PW-2 - PW-5 were the public witnesses and they all said that the scheduled properties were possessed by the predecessor Abdul Mannan and later on his heirs and they have executed a Power of Attorney. PW-6 was the official personnel who brought the registered 02 volumes and gave statements as a witness that the petitioners' rent was paid up to 1419 BS as per the registered 02 volumes. The defendant-opposite parties were not able to stretch out negative from the plaintiffs' witnesses. Apart from that the defendant-opposite parties had given only one witness and the witness did not prove his case properly. As such, to do substantial justice by disposing

the matter on merit, as such, both the courts below should have passed their judgments and decrees by non-applying proper judicial mind.

The Rule has been opposed by the present opposite parties.

Mr. Abu Yahia Dulal, the learned Deputy Attorney General, appearing along with the learned Assistant Attorney General, Mr. Md. Humayun Kabir, on behalf of the opposite parties (the Government), submits that by operation of section 20 of the State Acquisition & Tenancy Act, 1950 a Jaminder or Rent Receiver was allowed to be owners of lands measuring 3.75 standard bighas (বিঘা) and the suit ponds are in excess of the said sealing or measurement of the lands. The said provision of law also contains that any excess of the above measurement of lands (initiate) would vest upon the Government under the provisions of the Act, 1950 and the learned trial court being satisfied with the evidence produced by the defendant (the Government) came to a conclusion to dismiss the suit against the plaintiff-petitioners and the suit ponds are excess to the measurement of lands prescribed under the original Act, 1950 and by dismissing the

suit by the learned trial court committed no error of law and there is no non-consideration as to the evidence.

The learned Deputy Attorney General also submits that the learned appellate court below disallowed the appeal preferred by the present plaintiff-petitioners by affirming the judgment and decree passed by the learned trial court as the suit ponds were recorded in favour of the Government by operation of law but the present plaintiff-petitioners produced some documents which failed to prove the entitlement of the petitioners upon the suit ponds/properties including a decree passed by the then Sadar Subordinate Judge, Rajshahi in the Other Class Title Suit No. 246 of 1977 and the learned appellate court below found that the learned trial court was right to dismiss the suit. Accordingly, the suit is liable to be discharged.

Considering the above submissions of the learned Advocates appearing for the respective 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 and also perusing the relevant materials available in the lower court records, it appears to this court that the present petitioners as the

plaintiffs filed the title suit for permanent injunction restraining the present opposite parties the Government and others from dispossessing the plaintiffs from the suit ponds which have been possessing by the present petitioners for a long period of time by way of settling the ponds by the Jaminder, namely, Sree Jukta Oboni Mohon Moitrya Ding by way of patta. It further appears that the present opposite party, the Government, appeared in the said suit and contested the suit by filing a written statement contending, *inter alia*, that the suit ponds are excess lands to the sealing provided under the provision of section 20(2) proviso that the Government becomes the owner of the excessive lands measuring 3.75 standard Bighas (বিঘা) and the same lands will enter into the Khas (খাস) Khatian in favour of the Government.

In view of the above legal and factual aspects, the present plaintiff-petitioners claimed possession of the suit lands since the suit ponds were settled in their favour by way of settlement by the Jaminder. On the other hand, the defendant-Government claimed that the suit ponds became Khas (খাস) Khatian's properties by operation of the State Acquisition & Tenancy Act, 1950.

I have carefully examined the claims made by the parties and seeking for permanent injunction. The present plaintiff-petitioners failed to challenge the Record of Rights in S. A. Khatian which has been published in the name of the Government as Khas (খাস) Khatian. I have also carefully examined Exhibits 7 and 7(1) which are the judgment and decree in favour of the plaintiff-petitioners by a civil court passing the judgment and decree in favour of the plaintiff-petitioners.

I have also carefully examined the other documents submitted by the plaintiff-petitioners. The learned appellate court below affirmed the judgment and decree on the ground that the plaintiff-petitioners could not prove their title by a settlement upon their favour by operation of the Act, 1950. The plaintiff-petitioners failed to challenge the Record of Right which was published after 1950, as such, both the courts below took the decision and dismissed the suit by the following findings against the present petitioners.

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

The learned trial court came to a conclusion on the basis of the following findings:

...“আঃ মান্না-নর ওয়ারিশান সনদ দাখিল করি নাই। আম-মোক্তারনামা দলিলের মূল কপি না পাওয়ায় জাবেদা নকল দাখিল করেছি। নালিশী দাগগুলো পুকুর। নালিশী দাগ সি/এস, এস/এ এবং আর/এস খতিয়া-ন পুকুর হিসা-বই উ-ল্লখ আ-ছ। নালিশী পুকু-রর পানি দি-য় পার্শ্ববর্তী জমির চাষাবাদ হত। মান্নানের পুত্র মোহাম্মদ আলীকে আমি আজ সাক্ষী হিসা-ব আনি নাই।” অত্র বাদীর পূর্বে নালিশী জমি বাদীর পূর্বাধিকারী কিভাবে ভোগ দখল করত সেই সংক্রান্ত কোন বিবরণ বাদীপক্ষ আরজি-ত উ-ল্লখ ক-রন নাই এবং তাহার সমর্থ-ন কোন কাগজাত আদাল-ত দাখিল ক-র নাই।”...

The learned appellate court below also concurrently found and came to a decision which reads as follows:

...“কিন্তু অত্র মোকদ্দমার ৪০ বছর বয়স্ক পি. ডব্লিউ. ২ মোঃ রেজাউল করীম জেরায় ব-লন, “আমার জ্ঞান অবধি খতিব উদ্দীনকেই নালিশী পুকুর ভোগ দখল কর-ত দেখছি, অন্য কাউ-ক নয়।” অনুরূপভা-ব পি. ডব্লিউ. ৩ মোঃ লুতুব আলীও ব-লন, “খতিব-ক প্রায় ৩০ বছর যাবৎ নালিশী পুকুর চাষ কর-ত দেখছি।” অত্র মোকদ্দমার বাদী মোঃ খতিব উদ্দীন পি. ডব্লিউ. ১ হিসাবে সাক্ষ্য প্রদানকালে জেরায় ব-লন, ‘নালিশী জমি হ-ত আঃ মান্না-নর বাড়ী ৫০/৬০ কিঃমিঃ দূ-র। আমি ২০১৩ সা-ল মান্নানের পুত্র-কন্যা কর্তৃক আম-মোক্তার নিযুক্ত হ-য়ছি। আঃ মান্না-নর ওয়ারিশান সনদ দাখিল করি নাই। আম-মোক্তারনামা দলিলের মূল কপি না পাওয়ায় জাবেদা নকল দাখিল করেছি। নালিশী দাগগুলো পুকুর। নালিশী দাগ সি/এস, এস/এ এবং আর/এস খতিয়া-ন পুকুর হিসা-বই উ-ল্লখ আ-ছ। নালিশী পুকু-রর পানি দিয়ে পার্শ্ববর্তী জমির চাষাবাদ হয়। মান্নানের পুত্র মোহাম্মদ আলীকে আমি আজ সাক্ষী হিসা-ব আনি নাই।’ অত্র বাদীর পূর্বে নালিশী জমি

বাদীর পূর্বাধিকারী কিভাবে ভোগ দখল করত সেই সংক্রান্ত কোন বিবরণ বাদীপক্ষ আরজি-ত উল্লেখ ক-রন নাই। এবং তার সমর্থ-ন কোন কাগজাত আদাল-ত দাখিল ক-র নাই। বাদী/আপীলকারী আম-মোক্তার হিসাবে ২০১৩ সালে নিযুক্ত হন। বিধায়, তার পূর্বে এই জমি খতিবের দখ-ল থাকার কথা ন-হ। দখল বিষ-য় এই সাক্ষীগণ যা ব-ল তা স-ত্যের বিপরীত মর্মে প্রতীয়মান হয় এবং উক্ত কারণে দখল বিষয়ে তাদের সাক্ষ্য বিশ্বাস-যোগ্য ন-হ।”...

In view of the above findings of the learned courts below I do not consider that there were any misreading or non-consideration to examine the documents adduced and produced by the parties, as such, the learned appellate court below passed the impugned judgment and decree in favour of the Government and the plaintiff-petitioners could not prove their entitlement upon the suit ponds/properties after operation of the provisions of State Acquisition & Tenancy Act, 1950.

I, therefore, consider that the learned appellate court below committed no error of law by affirming the judgment and decree passed by the learned trial court.

I, therefore, do not consider that this Rule needs any further consideration. I am, therefore, not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 21.10.2020 passed by the learned Additional District Judge, Chapainababgonj in the Title Appeal No. 21 of 2015 disallowing the appeal and thereby affirming the judgment and decree dated 26.01.2015 passed by the learned Assistant Judge (In-Charge), Nachol, Chapainababgonj in the Other Class Suit No. 68 of 2013 dismissing the suit is hereby upheld and confirmed.

The interim order passed by this court at the time of issuance of the Rule to maintain *status quo* in respect of the possession and position of the schedule properties of the suit land for a period of 6(six) months and subsequently the same was extended twice are 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.