

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 66 of 1993

Md. Khabiruddin Howlader

...Petitioner

-Versus-

A. Kaker Sarder and others

... Opposite parties

No one appears for either party

Judgment delivered on 27.02.2025

This rule was issued on an application under Section 115 of the Code of Civil Procedure challenging the validity of judgment and decree dated 01.07.1992 (decree signed on 06.07.1992) passed by the District Judge, Madaripur dismissing Title Appeal Number 59 of 1987 and allowing the cross-objection filed by defendant number 1 on setting aside those dated 05.01.1987 passed by the Subordinate Judge (now Joint District Judge), Madaripur decreeing Title Suit Number 16 of 1986 in part.

This rule was fixed for hearing by order dated 30.01.2025. Today it is called on for hearing, but no one for either party appears. Since this is an old matter of 1993, it is taken up for ex-parte disposal.

Facts relevant for disposal of the rule are that the petitioner instituted the suit for declaration of title over 87 decimals of land as

described in the schedule of the plaint with a further declaration that the ex-parte decree dated 16.01.1982 obtained by defendant number 1 in Title Suit Number 294 of 1980 (suit for specific performance of contract) was fraudulent, null and void and the plaintiff was not bound by that.

Plaintiff's case in short was that he had purchased the suit land from its lawful owner-in-possession Chhoto Bibi alias Anwara Bibi by two registered sale deeds number 3710 and 6670 dated 04.05.1978 and 02.11.1978 respectively. Since then he has been possessing and enjoying the land. Defendant Number 1 managed to obtain the ex-parte decree dated 16.01.1982 in a suit for specific performance of contract, namely, Title Suit Number 294 of 1980 on the basis of a fraudulent sale agreement in respect of the same suit land, which clouded his title over the suit land.

Defendant number 1 contested the suit by filing a written statement denying the material allegations of the plaint contending, *inter alia*, that the plaintiff's sale deeds were collusive and fraudulent. He (defendant 1) had entered into a lawful contract with Chhoto Bibi to purchase 78 decimals of land. Subsequently, she was gained over by the plaintiff and executed the fraudulent sale deeds in favour of the plaintiffs. The impugned decree was legally passed in his favour.

On the aforesaid pleadings, the trial court framed issues and proceeded with trial, in course of which, both the parties examined

oral witnesses and produced documentary evidences in support of their claims.

On conclusion of trial, learned Subordinate Judge decreed the suit in part by judgment and decree dated 05.01.1987 (decree signed on 11.01.1987) declaring plaintiff's title on 42 decimals of land covered by Sale Deed Number 3710 dated 04.05.1978 (vide Exhibit-1/A) and further declaring the ex-parte decree dated 16.01.1982 passed in Title Suit Number 294 of 1980 to be illegal and cancelled. Being aggrieved, the plaintiff instituted Title Appeal Number 59 of 1987 in the Court of District Judge, Madaripur while defendant number 1 filed a cross-objection against the same. Learned District Judge heard the appeal as well as the cross-objection, dismissed the appeal and allowed the latter by the impugned judgment and decree giving rise to the instant civil revision.

I have gone through the records including the judgments of the courts below and considered the grounds taken in the revisional application. It appears that the appellate court dismissed the appeal on the ground that the quantity of land covered by the plaintiff's two sale deeds (Exhibits-1/A, and 1/C) is more than that of Plot Number 1024. This finding of the appellate court is not correct inasmuch as Plot Number 1024 contains 5.89 acres of land, whereas the two sale deeds of the plaintiff contain only 87 (42 + 45) decimals of land. It seems that the appellate court arrived at such finding on arithmetical mistake.

The appellate court also observed that Chhoto Bibi and Anwara Bibi, was not the same person but committed error of law in not considering that in Sale Deed Number 3710 (Exhibit-1/A), upon which the part decree was passed, Chhoto Bibi herself was the vendor. In that view of the matter, the appellate court appears to have committed error of law in dismissing the suit as a whole and the trial court's judgment appears to have been correctly passed so far it relates to declaration of the plaintiff's title over 42 decimals of land. The trial court by its original judgment also declared the decree dated 06.01.1982 passed in Title Suit Number 294 of 1980 to be illegal and cancelled. On a careful examination of the records, it further appears that the said decree was passed against Chhoto Bibi in a suit for specific performance of contract in respect of 78 decimals of land of Khatian Number 357, which contained as many as 11 plots covering 22.92 acres of land as described in the schedule of the plaint of the previous suit. On the other hand, the schedule of the present plaint includes 23.65 acres of land in as many as 14 plots of the same khatian number 357. The 11 plots of the previous suit are also mentioned in the present suit. So, the quantity of land belonged to Chhoto Bibi was so huge that the claims of both the plaintiff in previous suit and present suit can be satisfied without hampering each other's interest. The legal heirs of Chhoto Bibi have been made defendants in the present suit, but none of them contested the suit supporting the claim of either party. In such a position, it would be prudent if the second part of the declaration is modified to

the effect that the decree dated 06.01.1982 passed in Title Suit Number 294 of 1980 was not binding upon the present plaintiff.

In the result, the rule is made absolute in part, the impugned judgment and decree of the appellate court is set aside and those of the trial court are restored with declaration of the plaintiff's title over 42 decimals of land covered by sale deed number 3710 dated 04.05.1978 and modification of another declaration to the effect that the decree dated 06.01.1982 passed in Title Suit Number 294 of 1980 is not binding upon the plaintiff in the present suit, but defendant number 1 in the said suit.

Send down the records.