

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 998 OF 2022

IN THE MATTER OF:

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

(Against Decree)

-And-

IN THE MATTER OF:

Deputy Commissioner, Narayangonj and
others represented by the People's Republic
of Bangladesh.

--- Defendant-Respondent-Petitioners.

-Versus-

Hazi Abul Kashem died leaving behind his
legal heirs: 1(i)-1(iii) {(O.P. Nos. 10 and 11
also died leaving behind their heirs: 10(a)-
10(k) and 11(a)-11(h) and others

--- Plaintiff-Appellant-Opposite Parties.

Mr. Abu Yahia Dulal, DAG with

Mr. Md. Humayun Kabir, AAG

--- For the Petitioners (Government).

Mr. Uzzal Kumar Bhowmick with

Mr. Monoj Kumar Kirtania, Advocates

---For the Plaintiff-Appellant-Opposite Parties.

Heard on: 16.11.2023, 19.11.2023,
29.11.2023, 04.12.2023, 03.01.2024,
11.01.2024, 17.01.2024 and 15.02.2024.

Judgment on: 15.02.2024 and 18.02.2024.

At the instance of the Deputy Commissioner, Narayangonj
and others, 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 02.06.2003 passed by the learned Additional District Judge, Court No. 1, Narayangonj in the Title Appeal No. 211 of 2001 allowing the appeal and thereby reversing the judgment and decree dated 04.11.2001 passed by the then learned Additional Subordinate Judge (now Joint District Judge), Additional Court, Narayangonj in the Title Suit No. 21 of 2000 dismissing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party No. 1, Hazi Abul Kashem (now deceased) and others as the plaintiffs filed the Title Suit No. 21 of 2000 in the court of the then learned Additional Subordinate Judge (now Joint District Judge), Narayangonj against the defendant-opposite parties claiming a declaration of title in respect/relation to the schedule land described in the plaint. The plaint contains that the suit land was originally belonged to one Hazi Mokshed Ali (the predecessor of the plaintiffs) and accordingly C. S. Record of right was prepared in the name of the plaintiffs. The suit land was disappeared into the Dholeshwari River and the plaintiffs had been possessing the suit land for more than 65 years. The suit land was wrongly recorded

in the name of the Government in the khas (খাস) Khatian No. 1 but the plaintiffs claimed that they have been possessing the suit land for more than 60 years, as such, the title has been created in their names.

The present petitioners as the defendants contested the suit by filing a written statement contending, *inter alia*, that the suit land is admittedly a Char (চর) which was disappeared under the Dholeshwari River and Record of right in the S. A. Khatian was prepared in the name of Government as Khas (খাস) Khatian No. 1 under the provisions of the State Acquisition & Tenancy Act, 1950. The defendants further contended that the suit land was never possessed by the plaintiff-opposite parties and under the provisions of law Char (চর) land was rightly recorded in the name of the Government of Bangladesh and recorded in the Khas (খাস) Khatian No. 1. The Government, thereafter, settled the land by way of the lease in favour of the different landless persons permanently as per the Government Policy who are in possession of the suit land on behalf of the Government.

After receiving the said suit as being the Title Suit No. 21 of 2000, the then-learned Additional Subordinate Judge (now Joint District Judge), Narayangonj heard the parties and also

obtained both documentary evidence and oral evidence by way of depositions as PWs and DWs and after the conclusion of the hearing the suit was dismissed by his judgment and decree dated 04.11.2001. Being aggrieved the present plaintiff-opposite parties preferred the Title Appeal No. 211 of 2001 in the court of the learned District Judge, Narayangonj which was subsequently heard by the learned Additional District Judge, Court No. 1, Narayangonj who allowed the same and thereby reversing the judgment and decree of the learned trial court by his impugned judgment and decree dated 02.06.2003. Being aggrieved the defendant petitioners as the Government filed this revisional application under section 115(1) of the Code of Civil Procedure challenging the legality and propriety of the impugned judgment and decree and this Rule was issued thereupon.

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 petitioners as the Government, submits that the learned appellate court below committed an error of law resulting in an error in the decision occasioning failure of justice without considering the written statement when it was very crystal clear that the suit land is the

bank of the Dhaleshwari River which once went into the bed of it before 65/70 years and elevated later on but S. A. and R. S. Record were not prepared in the name of the predecessor of the plaintiffs in the year of 1961-62 even they did not oppose their said right during operation of the Khatian and the learned appellate court below illegally allowed the appeal, as such, it would be liable to be *set aside*.

The learned Deputy Attorney General also submits that on the basis of the record of the right in S. A. and R. S. Khatians were prepared in the name of the Government as a Khas (খাস) Khatian No.1 as the C. S. Record of right shows that the deluviated land was under water, as such, there was no C. S. Record of right in the name of the plaintiff-opposite parties and the plaintiffs could not prove their possession at any point of time but the present opposite parties as the plaintiffs filed the suit in the year 1991 beyond the limitation period, as such, the learned trial court committed no error of law by dismissing the suit filed by the plaintiff-opposite parties, as such, the Rule should be made absolute.

The Rule has been opposed by the present opposite parties.

Mr. Uzzal Kumar Bhowmick, the learned Advocate, appearing along with the learned Advocate Mr. Monoz Kumar Kirtania, submits that the plaintiffs adduced sufficient evidence before the learned courts below that C. S. Record was prepared in the name of the predecessor of the present opposite parties and the suit land was elevated in the year 1925, thus, the learned trial court committed an error of law by dismissing the suit filed by the plaintiffs on the ground of limitation period but the learned appellate court below decreeing the suit by reversing the judgment of the learned trial court, as such, there is no necessity for interfering upon the impugned judgment and decree passed by the learned appellate court below and the Rule should be discharged.

The learned Advocate also submits that the correct statement of fact is that the 'Ka' schedule land measuring 39 decimals as stated in the plaint belonged to one Haji Mokshed Ali, the predecessor of the plaintiffs. Accordingly, C. S. Record was prepared in the name of the plaintiffs as the tenants and immediately after the preparation of C. S. Record of the 'Ka' schedule land disappeared into the Dholeshwari River. However, the said land was elevated in situ as a Char-land in the same

position after few years later that was in the year of 1925. Furthermore, the 'Kha' schedule land adjacent to the 'Ka' schedule land was accreted (alluvion) at the same time by way of accretion out of the Dhaleshwari River. The predecessor of plaintiffs as well as the plaintiffs since 1925 have been possessing the scheduled lands continuously and peacefully with the knowledge of the then Landlord/Jaminder Lalit Babu and subsequently with the knowledge of the then Government Officials as well as the local people for more than 65 years though the 'Ka' schedule land, later on, was recorded in S. A. Khatian in the name of the father of the plaintiffs and the 'Kha' schedule land was wrongly prepared in the Khas Khatian No. 1 of the Government. The 'Kha' schedule land was never been leased out to any landless people since the plaintiffs and their predecessor have been possessing the schedule land since its accretion in 1925.

Considering the above submissions made by 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 passed by the

learned appellate court below and also considering the important materials available in the lower courts records, it appears to me that the present opposite parties as the plaintiffs filed a suit claiming that Haji Mokshed Ali, the predecessor of the plaintiff-opposite parties, was a C. S. recorded owner and the suit land reappeared/relevated from the Dholeshwari River in the year of 1925 and the plaintiffs are in possession more than 65 years there and they used to cultivate paddy there in the name of the plaintiffs' father who was an illiterate person, therefore, he had no knowledge as to S. A. and R. S. Khatian in his name and the present suit was filed in October 1991 when he came to know the land was leased out by the present defendant-petitioner (the Government) and the plaintiff-opposite parties accrued the right on the basis of possession for more than 60 years and the plaintiffs claimed the title on the ground of an adverse possession upon the suit land.

The said title suit was contested by the present petitioners as the defendants claiming the suit is barred by limitation as the Government possesses the suit land as it prepared in the Khas Khatian No. 1 both in S. A. and R. S., as such, the predecessor of the plaintiff-opposite parties were never in possession and never

possessed the suit land by cultivating paddy in the suit land. It further appears that there is a dispute as to the present alleviation of the suit land because the plaintiff-opposite parties claimed the suit land reappeared/reelevated in the year 1925.

On the other hand, the present defendant as the Government contested the suit that the suit land reappeared/reelevated immediately before 1965 and since then the suit land has been recorded in the S. A. and R. S. Khatians. It also appears that the plaintiff-opposite parties submitted Exhibits-1-4 to prove the title and possession and as to the petty settlement in favour of the present opposite parties.

On the other hand, the present defendant-petitioner Nos. 1-3 claimed that the suit land has been settled by the Government in favour of some landless people as per the policy of the then Government in the year 1988-89 and they are used to residing houses on the land and also some lands used to the purpose of agricultural after the reappearance/reelevated of the land immediate after 1950.

In view of the above, this court has to take a decision as to the title and possession by way of acquiring right and title on the basis of adverse possession. The plaintiffs produced Exhibits-1-6

being a record of rights prepared in the name of the predecessor of the plaintiffs and the plaintiffs could prove their title on the basis of adverse possession.

I have carefully examined the documents adduced and produced by the parties, in particular, the record of right and I found only the record of right as Exhibits-1-6 is the record of petty settlement and payment of khajna/TAX by the plaintiffs. I consider that the only record of right cannot be a basis of title which the plaintiffs have been trying in the courts below. In this regard, the learned trial court came to a conclusion to dismiss the suit filed by the present plaintiff-opposite parties. The learned trial court came to a conclusion to dismiss the suit on the basis of the following findings:

...“It is the land of the Bank of the River Dhaleshwari which once went into the bad of it before 65/70 years and alluriand later on but SA and RS are not made in the name of the plaintiffs’ predecessors where SA is made in the year 1961-62 but this suit is filed in the yhear 1991 beyond six years of the knowledge of the SA Record and as such it is barred by limitation and party defects are not there as it is not asked in the cross made by the

defendant and the plaintiffs knowing the occurrence of SA Record being silent for more than 30/thirty years and as admittedly by the PWs and DWs that the land goes into the bed of the River Dhaleshwari and ultimately the record is made in the name of the Government correctly and without any oppose 30/thirty years are gone, so, the case is Grossly barred by limitation and the map of the suit land shows that it is the land of the River Dhaleshwari, so, no right, title, interest and possession are lying with the plaintiffs' predecessors on for the plaintiffs which is perfectly of the Government as asserted in the written statement by them but by the earlier court the issues to that extent of waiver, acquiescences and estoppel is not made but by this court later on 01.11.2001.”...

On the other hand, the learned appellate court below came to a conclusion to decree the suit in favour of the present plaintiff-opposite parties on the basis of the following findings:

...“বিজ্ঞ নিম্ন আদালত সাক্ষীদের বক্তব্য বিস্তারিতভাবে তার রায়ে উল্লেখ করেছেন। বিজ্ঞ নিম্ন আদালত তার রা-য় উল্লেখ ক-রন যে, এস. এ. খতিয়ান ১৯৬১-৬২ স-ন প্রস্তুত হ-য়-ছ এবং এই মামলাটি ১৯৯১ স-ন দা-য়র করা হ-য়-ছ। ৬ বৎসর সীমার ম-ধ্য এই মামলাটি দা-য়র করা হয়নি উল্লেখ করে বিজ্ঞ নিম্ন আদালত মামলাটি তামাদিতে বারিত হিসা-ব সিদ্ধান্ত দিয়েছেন। এই ছাড়া বিজ্ঞ নিম্ন আদালত নালিশী

সম্পত্তিতে বাদী আপীলকারীগণের স্বত্ব-স্বার্থ ও দখল নেই হি-স-ব উল্ল-খর পাশাপাশি মামলাটি ও-য়ভার, একুই-সন্স ও এ-স্টা-পল দ্বারা বারিত হিসেবে উল্লেখ করেছেন। বিজ্ঞ নিম্ন আদাল-তর এই সিদ্ধান্ত আইন সংগত নয়। পূ-র্বই উল্ল-খ করা হ-য়-ছ এই মামলাটি বিরুদ্ধ দখলজনিত স্বত্ব ঘোষণার মামলা। এই মামলায় প্রথ-ম আমা-দর জানার বিষয় হ-লা এ্যাডভার্স প-জশন কি এবং এই অধিকার প্রতিষ্ঠার মূল নেয়ামক সমূহ কি কি MATHARAM MURTY এর LAW of Adverse Possession অনুসা-র, “Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person is in denial or the owner’s right excludes him from the enjoyment of his property”.”...

From the above findings by the learned courts below the learned appellate court below passed the decree calculating the period of time to file the suit in the year 1991 claiming that the plaintiffs were illiterate persons and they were not aware of filing the suit within the limitation period by the provisions of law.

In view of the above, I consider that the learned appellate court below committed an error of law by decreeing the suit despite the findings of the learned trial court on the basis of the limitation period in filing the present suit. The learned appellate court also committed an error of law by not considering that an

adverse possession can provide a title if the possession of the defendants, because, adverse to the plaintiffs after 12 years under Article 144 of the Limitation Act. Article 149 of the Limitation Act also provides:

“ Article 149- The period of limitation for a suit by the Government is 60 years.

The period of limitation for any suit instituted by the Central or any Provincial Government for the recovery of money advanced is 60 years under Article 149 of the Limitation Act *Province of East Bengal vs Bakergonj Central Co-operative*.
12 DLR 219.

Article 149- Limitation for suit by or on behalf of the Government- Article 149 of the Act provided for the State a long lease of life for filing suits. This the Legislature did consciously considering the State's limitations as a litigant that exercises its executive functions through officers subordinate to it and classified it rather as a slow-moving juristic person. The classification is rational, reasonable and not arbitrary. *Afsar Ali Chowdhury vs Bangladesh* 43 DLR 593.”

The above provisions of law under the Limitation Act of 1908. Regarding this matter, the learned trial court dismissed the suit lawfully on the basis of the S. A. and R. S. Record of right

prepared in the year of 1961-62 but the present suit was filed in the year of 1991 beyond the limitation period as per the Limitation Act. I, therefore, consider that the judgment and decree of the learned appellate court is not based on the evidence which is liable to be *set aside*.

I also consider that the learned trial court lawfully came to a conclusion and dismissed the suit filed by the present plaintiff-opposite parties, therefore, I am inclined to find that the learned trial court correctly dismissed the suit, thus, I am not inclined upon the judgment that the judgment of the learned appellate court below is liable to be *set aside* and the judgment of the learned trial court is passed on the basis of law, therefore, I am inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below or the court of appeal below.

Accordingly, I find merit in the Rule.

In the result, the Rule is hereby made absolute.

The judgment and decree dated 04.11.2001 properly passed by the then learned Subordinate Judge, Additional Court, Narayangonj in the Title Suit No. 21 of 2000 is hereby affirmed and upheld.

The impugned judgment and decree dated 02.06.2003 wrongfully passed by the learned Additional District Judge, Court No. 1, Narayangonj in the Title Appeal No. 211 of 2001 is hereby *set aside*.

The interim order passed by this court at the time of issuance of this Rule staying the operation of the impugned judgment and decree dated 02.06.2003 passed by the learned Additional District Judge, Court No. 1, Narayangonj for a period of 06 (four) months is hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower courts records along with a copy of this judgment and order to the learned courts below at once.