

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 2529 OF 2022

C. Rule No. 447 (Con)/2021

IN THE MATTER OF:

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

(Against Decree)

-And-

IN THE MATTER OF:

Ali Ahammed Bokshi (Petitioner Nos. 1, 2, 6,
8, 9, 10, 11 and 12 died leaving behind their
legal heirs) and others

--- Plaintiff-Appellant-Petitioners.

-Versus-

Moksed Ali Bokshi died leaving behind his
legal heirs and others

--- Defendant-Respondent-Opposite Parties.

Mr. Sasti Sarker, Advocate

---For the Plaintiff-Appellant-Petitioners.

Mr. Sabya Sachi Mondal with

Mr. Raju Sen, Advocates

--- For the Defendant-Respondent- Opposite
Party No. 2.

Heard on: 28.11.2023, 03.12.2023,
10.22.2023, 02.01.2024, 22.01.2024,
25.02.2024 and 29.02.2024.

Judgment on: 12.03.2024.

At the instance of the present plaintiff-appellant-petitioner,
Ali Ahammed Bokshi (Petitioner Nos. 1, 2, 6, 8, 9, 10, 11 and 12
died leaving behind their legal heirs) 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 party No. 2 to show cause as to why the impugned judgment and decree dated 30.11.2020 passed by the learned Additional District Judge, Court No. 3, Khulna in the Title Appeal No. 116 of 2007 dismissing the appeal on contest and affirming the judgment and decree dated 08.03.2007 passed by the learned Joint District Judge, Court No. 1, Khulna in the Title Suit No. 24 of 1996 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 Title Suit No. 24 of 1996 in the court of the then learned Subordinate Judge, Court No. 1, Khulna praying for a preliminary decree of title and partition of the suit land described in the schedule of the plaint. The plaint contains that one Shitanath Podder was the owner and possessor of the suit land measuring 0.37 acres situated at Khatian No. 86 No. 1, Mouza- Soto Boira, Police Station- Sonadanga, District- Khulna. The said Shitanath Podder mortgaged the suit land along with other lands for getting a loan from one Korman Sheikh by registered deed of Patta dated 04.04.1924 who executed a deed of Ekrarnama but the possession was not handed over to Korman Sheikh, thus, the

possession was under Shitanath Podder. The said Shitanath Podder died leaving behind a minor son Dharendra Nath Podder as his heir. Thereafter, Tarok Nath Podder filed the Certificate Case No. 05 of 1927 praying for guardianship. Accordingly, he obtained a certificate appointing him as a guardian of Dharendra Nath Podder. A Kaeem Joma Settlement of 0.37 acres of land including other lands of suit Khatian was made a transfer deed in favour of Saem Bokshi vide registered deed of Patta being No. 5247 dated 15.06.1927 and possession was handed over. After the death of the said Saem Bokshi the said deed of Patta was lost but a certificate copy was collected in the year 1989 but the said Saem Bokshi enjoyed the possession of the said land individually by cultivating thereof and paying the rent (খাজনা) regularly. He transferred the suit land including Malekee (মালিকী) title of other Joma by using the name of his middle son i.e. defendant No. 1 vide deed of Kabala being No. 3575 dated 27.08.1946 and at that time the defendant No. 1 was a minor and by that deed of Kabala Dharendra Nath Podder transferred the right of recovery of rents of suit land which was obtained vide deed of Patta being No. 5247 dated 15.06.1927. The said Saem Bokshi's property was inherited by his son, namely, Sekander Ali Bokshi and daughter

Bodu Bibi. The 2nd wife of Saem Bokshi had 2 sons being the plaintiff No. 1 and the defendant No. 1 and a daughter being plaintiff No. 2 as his heirs. Sekander died leaving behind plaintiff Nos. 3-9 and the said Bodu Bibi died leaving behind the plaintiff Nos. 10-17 as her heirs. The plaintiffs were in possession for more than 12 years, as such, they have acquired title/right upon the suit land by way of **adverse possession**. In the meantime, S. A. Khatian No. 92 was collusively prepared in the name of the defendant No. 1 instead of the plaintiffs and they never acquired the title/right to sell the property by the deed dated 31.03.1962 and the purchaser of this land transferred in favour of the defendant No. 2, namely, Hosne-Ara-Begum by way of registered deed No. 18222 dated 05.10.1979 which is illegal and fabricated document. The defendant No. 2 was never enjoying the suit land situated at Mouza- Soto Bora, under Police Station- Sonadanga, Khulna. The land was recorded in the name of the defendant No. 2 but he did not have any right and possession over the suit land.

The present opposite party No. 2 as the defendant contested the suit by filing a written statement contending that Shitanath Podder was the owner of the suit land measuring 0.37

acres of the suit land who died leaving behind a son being Dharendra Nath Podder who inherited the land as a minor under the guardianship and he transferred the suit land to Moksed Ali Bokshi (Defendant No. 1) vide the sale deed being No. 3575 dated 27.08.1946 and S. A. Record was published in his name as the S. A. Khatian No. 92. The said Moksed Ali Bokshi transferred the suit land to one Asia Khatun vide registered deed No. 2129 dated 31.03.1962 and the said Asia Khatun sold to Hosne-Ara-Begum (Defendant No. 2) vide registered deed No. 18222 dated 05.10.1979 and the record of right was published in her name by a Mutation Case No. 262 of 1979-80 and she was in possession of the suit land and living there by constructing 2 rooms made by Golpata (গোলপাতা) along with her other family members. In the D. P. Khatian No. 4420 was recorded in the name of the defendant through the Miscellaneous Case No. 08 of 1981-82 which was proved by the investigation report submitted by Kanungo (কানুনগো/Public Surveyor) on 18.07.1981. The present plaintiff-petitioners created and forged a Certificate Case No. 05 of 1927 and transferred by the plaintiff by forged and fabricated document, thus, prayed for dismissal of the suit.

After hearing the parties and examining the evidence both by way of depositions and documents the learned Joint District Judge, Court No. 1, Khulna dismissed the suit by his judgment and decree dated 08.03.2007. Being aggrieved the present plaintiff-petitioners preferred the Title Appeal No. 116 of 2007 in the court of the learned District Judge, Khulna and subsequently the same was transferred and heard by the learned Additional District Judge, Court No. 3, Khulna who after hearing the parties and examining the documents dismissed the appeal and thereby affirmed the judgment and decree of the learned trial court by the impugned judgment and decree dated 30.11.2020. Being aggrieved this revisional application has been filed by the plaintiff-appellant-petitioners under section 115(1) of the Code of Civil Procedure challenging the legality and propriety of the impugned judgment and decree passed by the learned appellate court below and this Rule was issued thereupon.

Mr. Sasti Sarker, the learned Advocate, appearing for the plaintiff-appellant-petitioners submits that the learned courts below should have considered that the patta deed being No. 5247 dated 15.06.1927 as Exhibit 3(Kha) is more than 30 years old document which contains about the certificate case by which

Sree Tarok Nath Podder was appointed as a guardian of minor Dhirendro Nath Podder recital of such an old document should not be disbelieved, thus, the learned courts below committed an error of law resulting in an error in the decision occasioning failure of justice.

He also submits that the learned courts below committed an error in considering that Dhirendro Nath Podder never challenged the patta deed No. 5247 dated 15.06.1927 during his lifetime, so, it could not be challenged after about 80 years, thus, the learned courts below committed an error of law resulting in an error in dismissing the suit occasioning failure of justice, therefore, the Rule should be made absolute.

The Rule has been opposed by the present opposite party No. 2.

Mr. Sabya Sachi Mondal, the learned Advocate, appearing along with the learned Advocate, Mr. Raju Sen, on behalf of the opposite party No. 2, submits that the plaintiff-petitioners failed to prove their case as to the entitlement and possession upon the suit land described in the schedule of the plaint by producing settlement of land by way of Patta, thus, the learned trial court found that the plaintiffs failed to produce ownership in the name

of Dharendra Nath Podder (a minor) and he claimed to have a registered guardianship, therefore, any transfer or settlement on 15.06.19927 by executing a patta being No. 5247 but the plaintiffs failed to produce any document as the said patta and containing Mouza at Soto Boira but there was no Soto Boira Mouza in the year 1957, therefore, the learned trial court dismissed the suit, as such, which was affirmed by the learned appellate court as to inconsistency of the claim of the plaintiffs, as such, the learned courts below committed no error of law by passing both judgments, thus, the Rule is liable to be discharged.

The learned Advocate further submits that the learned appellate court below examined the documents adduced and produced by the parties and passed the impugned judgment by dismissing the appeal and thereby affirming the judgment and decree of the learned trial court and concurrently found that the documents produced by the plaintiffs regarding education tax (শিক্ষা কর) by way of the deed of patta and also the record of right were not successfully proved by the plaintiff-petitioners, as such, both the courts below concurrently decided that the plaintiffs could not prove and did not have any title upon the suit land, as such, no question as to the prayer of the partition of the suit land,

thus, no need for interference is required from this court and the Rule should be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed by the plaintiff-appellant-petitioners 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 perusing the huge volume of relevant materials available in the lower court records, it appears to this court that the present plaintiff-petitioners filed the title suit claiming title and possession upon the suit land measuring 0.37 acres on the ground of a patta deed being No. 5247 dated 15.06.1927 but the plaintiffs could not produce the said deed of patta in order to prove their entitlement. It further appears that the plaintiffs also claimed possession upon the suit land but failed to the manner of proving possession of the suit land because the present defendant-opposite party No. 2 successfully proved her possession upon the suit land by constructing houses on her possession upon the suit land.

I carefully examined the documents adduced and produced by the parties and I consider that the learned courts below committed no error of law by passing the impugned judgments and decrees and the learned courts below applied their judicial mind by examining the documents and came to a lawful decision and conclusion to dismiss the title suit filed by the present plaintiff-petitioners. I have also carefully examined the facts of the documents of this case regarding a claim of an education cess (শিক্ষা কর) and the patta for settling the land in favour of the present plaintiff-petitioners on 15.06.1927 and also sold or transferred approximately 100 years ago but failed to produce a deed of patta as claimed by the plaintiff-petitioners. Moreover, the plaintiff-petitioners failed to produce a patta deed in their favour and from 1927 up to the present time in order to prove their possession and the learned courts below thoroughly examined the claim of the plaintiff-petitioners, therefore, the learned courts below came to a lawful conclusion to find a concurrent decision and passed the concurrent judgments and decrees.

Now, I am going to examine the findings of the judgments and decrees passed by the learned courts below.

The learned trial court came to a conclusion by dismissing the suit filed by the present plaintiff-petitioners on the basis of the following right findings:

...“বাদীপক্ষ ১৫.০৬.১৯২৭ তারিখের পাট্টা দলিলখানা বিধি মোতাবেক প্রমাণ করিতে সক্ষম হন নাই। কারণ, তারক নাথ দে নাবালক ধীরেন্দ্র নাথ পোদারের অভিভাবক নিযুক্ত হওয়ার সমর্থনে কোন ডকুমেন্টস দাখিল করিতে ব্যর্থ হন, সেই কারণে, ধীরেন্দ্র নাথ পোদারের অভিভাবক নিযুক্ত হওয়ার বিষয়টি বাদীপক্ষ কর্তৃক যথারীতি ও আইন সংগত ভাবে প্রমাণিত হয় নাই। তারক নাথ দে ধীরেন্দ্র নাথ পোদারের অভিভাবক নিযুক্তির বিষয়টি বাদীপক্ষ প্রমাণ করিতে ব্যর্থ হওয়ায় তারক নাথ দে কর্তৃক হস্তান্তরিত দলিলের কোন আইনগত কোন ভিত্তি থাকে না। ইহা ব্যতীত ১৫.০৬.১৯২৭ ইং তারিখের পাট্টা দলিলের তপশীল মৌজা হিসাবে বয়রা উল্লিখ থাকে। বয়রা এবং ছোট বয়রা মৌজা ২টি আলাদা।”...

The learned appellate court below also came to a lawful conclusion concurrently against the present plaintiff-appellant-petitioners to dismiss the appeal preferred by the plaintiff-appellant-petitioners and thereby affirmed the judgment of the learned trial court on the basis of the following findings:

...“অপরদিকে, রেসপন্ডেন্ট ২ নং বিবাদীপক্ষের দাখিলীয় প্রদর্শনী চিহ্নিত কাগজপত্র সহ উপস্থাপিত সাক্ষ্য প্রমাণ পর্যালোচনায় নালিশী জমিতে রেসপন্ডেন্ট বিবাদীপক্ষের দখল রয়েছে মর্মে অত্র আদালতের নিকট বিবেচিত হয়।

উপর্যুক্ত সার্বিক পর্যালোচনায় দেখা যায় যে, নালিশী জমিতে আপীলকারী বাদীপক্ষের স্বত্ব ও দখল আপীলকারী বাদীপক্ষ আইনসঙ্গত ভাবে প্রমাণ করতে সক্ষম হননি। পক্ষান্তরে, রেসপন্ডেন্ট বিবাদীপক্ষ নালিশী জমিতে তাদের স্বত্ব এবং দখল বিধি মোতাবেক দালিলিক সাক্ষ্য দ্বারা প্রমাণ করিতে সক্ষম হইয়াছেন।”...

In view of the above concurrent findings of the learned courts below I consider that the learned trial court dismissed the suit rightly and the learned appellant court below concurrently found and dismissed the appeal thereby lawfully affirmed the judgment and decree of the learned trial court, therefore, this is not a proper case for interference from this revisional court, as such, this Rule does not require any further consideration.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 30.11.2020 respectively passed by the learned Additional District Judge, Court No. 3, Khulna in the Title Appeal No. 116 of 2007 dismissing the appeal and thereby affirming the judgment and decree dated 08.03.2007 respectively passed by the learned Joint District Judge, Court No. 1, Khulna in the Title Suit No. 24 of 1996 dismissing the suit is hereby upheld and confirmed.

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 immediately.