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

Civil Revision No. 781 of 1992
In the matter of:

Abdur Razzaque Munshi and another.
...Petitioners.
-Vs-
Abdul Kader Munshi being dead his legal heirs; 1(a) Sufia Begum and others.
....Opposite parties.

Present
Mr. Justice Mamnoon Rahman

Mr. Alal Uddin, Adv. with
Mr. Jalal Uddin Ahmed with
Ms. Rubaya Sultana, Adv.
…For the petitioners.
Mr. Md. Ashraf Ali, Adv.
…For the opposite parties.

Heard on: ***19.01.2025***
And
Judgment on: ***The 16th February, 2025***

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the principle-opposite parties to show cause as to why the impugned judgment and decree dated 31.08.1991 and 05.09.1991 passed by the learned subordinate Judge, Madaripur, in Title Appeal No. 78 of 1989 dismissing the appeal and upholding the judgment and decree of the trial court dated 30.04.1989 and 03.05.1989 passed in Title Suit No. 172 of 1987 decreeing the suit by the learned Assistant Judge, Shibchar, 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 short facts relevant for the disposal of the instant rule, is that, the predecessor in interest of the opposite parties filed Title Suit No. 172 of 1987 in the court of Assistant Judge, Shibchar, Madaripur impleading the petitioners as defendants for a declaration that the *exparte* decree dated

13.08.1986 passed in Title Suit No. 161 of 1985 in favour of the present petitioners and subsequent registration of sale deed No. 1952 dated 19.03.1987 executed through execution process based on the *exparte* decree is illegal, fraudulent and void. The further case of the opposite party-plaintiffs, are that, they are the owner and possessor of the suit property but the present petitioner-defendants created forged bainanama, filed the aforementioned suit by suppressing summons as much as after obtaining *exparte* decree proceeded with the execution case wherein summons were not even issued upon the opposite parties and as such they obtained the *exparte* decree which is liable to be set aside for ends of justice. The case of the present petitioners who contested the suit by filing written statement alleging *inter-alia* that the bainapatra was genuine and duly executed by the plaintiffs of the instant suit and since after taking the substantial amount and since the present plaintiffs failed to execute the sale deed they filed the suit being Title Suit No. 172 of 1987 and summons were duly served upon the present plaintiffs as much as on due process the present petitioner-defendants obtained registered documents by *virtue* of execution case and as such the claim of the present plaintiff-opposite parties are not tenable in the eye of law.

During trial both the parties adduced evidences both oral and documentary. The trial court framed as many as four Issues. The trial court after hearing the parties, considering the facts and circumstances, evidence both oral and documentary, decreed the suit. Being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the trial court the petitioners moved before the District Judge by way of appeal being

Title Appeal No. 78 of 1989 and eventually the same was heard and disposed of by the Subordinate Judge, Madaripur who vide the impugned judgment dismissed the appeal and thereby affirmed the judgment and decree passed by the trial court. Being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the lower appellate court the petitioners moved before this court and obtained the present rule.

Mr. Alal Uddin, the learned counsel appearing on behalf of the petitioners submits that both the courts below without applying their judicial mind and without considering the facts and circumstances, most illegally and in an arbitrary manner, passed the impugned judgment and decree which requires interference by this court. He submits that both the courts below erred in law as well as facts in deciding the suit in favour of the plaintiffs despite sufficient evidence and material showing the genuineness of the bainapatra, service of summons in due compliance as well as execution of the decree in question and thus the impugned judgment and decree passed by courts below which requires interference by this court. The learned counsel submits that the petitioners not only obtained the decree but obtained the deed by *virtue* of execution process and the same is a first and closed transaction as much as the present defendants proved the service of summons in due process which requires interference by this court. He submits that though the summons were served by hanging but at the same time as per the provisions of law there was simultaneous service by a postal and in view of the service in two times, namely by hanging as well as by a postal it cannot be said that there

is no service at all in the eye of law and as such the instant rule is required to be made absolute for ends of justice.

Mr. Md. Ashraf Ali, the learned counsel appearing on behalf of the opposite parties-plaintiffs vehemently opposes the rule. He submits that both the courts below on proper appreciation of the facts and circumstances, materials on record, evidence both oral and documentary by a concurrent findings of fact and law passed the impugned judgment and decree which requires no interference by this court. He further submits that both the courts below considered the evidence of the parties both oral and documentary *side by side* and came to a clear conclusion regarding non-service of summons, not even issuance of summons in execution case as well as genuineness of the bainapatra in question. He further submits that the court below on *vivid* discussion of the facts and circumstances and evidence came to a clear conclusion to that effect which requires no interference by this court. The learned counsel prays for discharging the rule for ends of justice.

I have heard the learned Advocates for the petitioners as well as opposite parties. I have perused the impugned judgment and decree passed by the trial court as well as appellate court, perused the revisional application, ground taken thereon, L.C. Records as well as necessary papers and documents annexed herewith.

On meticulous perusal of the papers and documents, it transpires that the present opposite party as plaintiffs instituted Title Suit No. 161 of 1985 in the trial court impleading the petitioners as defendants for a declaration to the effect that the judgment and decree *exparte* obtained by the

defendants in the said suit dated 13.08.1986 is collusive void and not binding upon the plaintiffs. It further transpires that the present petitioners who are the defendants contested the suit by filing written statement denying all the material allegations made in the plaint. It also transpires that both the parties adduced evidence both oral and documentary and the trial court framed Issues and disposed of the suit in favour of the plaintiffs. On appeal the lower appellate court also affirmed the judgment and decree passed by the trial court. It transpires that in the present case in hand the opposite party-plaintiffs vigorously challenged the *exparte* decree passed by the trial court in Title Suit No. 161 of 1985. Admittedly, that suit relates to Specific Performance of Contract based on an unregistered bainapatra alleged to be executed by the predecessor in interest of the present plaintiffs. It further transpires that at the very outset discussed the service of summons in the suit for Specific Performance of Contract. On *vivid* discussion of the facts and circumstances, evidence both oral and documentary the trial court came to a clear conclusion that the plaintiff-opposite parties are not residing in the address shown as the address of the defendants in Title Suit No. 161 of 1985. It also transpires that the trial court further came to a conclusion that the present defendants who obtained decree *exparte* suppressed the present address of the plaintiffs of the present suit and the same was duly proved by the present plaintiffs by adducing sufficient oral and documentary evidence. The plaintiffs of the present suit submitted several documents showing their present place of residence including Exhibit No. 2 and also it is the clear finding of the trial

court that the parties are closed relations and the defendants have cleared knowledge about the present residence of the plaintiffs.

It transpires from the judgment and decree passed by the trial court that after obtaining the *exparte* decree the present defendants filed Execution Case No. 10 of 1986. But on meticulous perusal of the order sheet of the said execution case by the trial court, it transpires that even summons were not issued in favour of the present defendants in the execution case. So, there is a clear finding of the trial court to that effect. It also transpires that the trial court also considered the unregistered bainanama and came to a conclusion which runs as follows;

> *এবার আসা যাক, বিবাদীগনের দাবীকৃত দাখিলী অরেজিস্ট্রিকৃত বায়না পত্র দলিলের সত্যতা যাচাই প্রসংগে। উভয় পক্ষের স্বাক্ষীদের প্রদত্ত জবান বন্দি এবং দাখিলী কাগজ পত্র ও বায়না পত্র দলিল পুংক্ষানুপুংখ রূপে পয়ালোচনা করে আমি তঞ্চকি মত পোষন করিছে যে, বিবাদীগণের দাখিলী অরেজিষ্টীকৃত বায়নাপত্র দলিল প্রদশনী নং 'ক' ভাক্ত, ভুয়া, বানোয়াট এবং যড়যন্ত্রমূলক ভাবে সৃষ্টি, আমার এহেন অভিমতের সমর্থনের যে সমস্ত যুক্তি প্রমান রয়েছে তাহ্য নিম্নে তুলে ধরা হলোঃ- প্রথমতঃ বিরোধীয় বায়না পত্র দলিলটি অরেজিস্ট্রকৃত যাহা যে কোন সময় অতি সহজে তৈরি করা হয়। তাছাড়া বিবাদীগনের বক্তব্য মতে, ১০,০০০/- টাকা পন মূল্যের মধ্যে ৯,৫০০/- টাকা নগদ পরিশোধ হলো অথচ শুধু মাত্র ৫০০/- টাকার অভাব হেতু সাব কবালার দলিল না হয়ে দীর্ঘ এক বৎসর মেয়াদী অরেজিস্ট্রিকৃত বায়না পত্র দলিল জানার ঘটনা যেমনি অবাস্তব তেমনি অযৌক্তিক ও অবিশ্বাস্য। দ্বিতীয়তঃ ১ নং বিবাদী স্বয়ং ও তার পক্ষের জন্য স্বাক্ষী আনোয়ার হোসেন উভয় জেরাতে স্বীকার করেন। যে, বিরোধীয়*

বায়না পত্র দলিল লেখা পড়ি ও সম্পাদন হয়েছে বিবাদীগণের বাড়ীতে বসে। অথচ বিষ্ময়ের ব্যাপার এই যে, সংশ্লিষ্ট দলিল লেখক বিবাদী পক্ষের ৩ নং স্বাক্ষীগণের এহেন বক্তব্য পরস্পরবিরোধীও অসমঞ্জস্যপূর্ণ। তৃতীয়তঃ বিরোধীয় অরেজিষ্ট্রকৃত বায়না পত্র দলিলের টিপ স্বাক্ষর পাশাপাশি রেখে যাচাই দৃষ্টে উহাদের মধ্যে আদৌ কোন মিল খুঁজে পাওয়া যাচ্ছে না। চতুর্থতঃ ১ নং বিবাদী আঃ রাজ্জাক মুন্সী জেরাতে স্বীকারে প্রকাশ করেন যে, বাদী সর্ব প্রথম নালিশী জমি বেঁচা কেনার কথা তাদের নিকট বলেছেন ১৩৮৯ সনের ১৮ ইং আশ্বিন। অথচ বিরোধীয় বায়না পত্র দলিলের তারিখ ও দেখা যাচ্ছে ১৩৮৯ সনের ১৮ ইং আশ্বিন। তাহলে দেখা যায়, বিবাদীগণের স্বীকারোক্তি মতে, নালিশী জমির বেঁচাকেনার কথা, শুন্য নির্ধারন, দলিল লেখা পড়িত ও সম্পাদন কোন তারিখ অথচ উক্ত দলিলের ষ্টাম্প খরিদ দেখা যাচ্ছে উক্ত তারিখের পূর্বের। নালিশী জমি বেচা কেনার কথা বার্তার বহু পূর্বে ষ্টাম্প খরিদের কোন যৌক্তিকতা নেই। ইহা ছাড়া অন্য বিবাদী জেরাতে আরো প্রকাশ করেছেন যে, নালিশী জমির দলিল হবার ২/১ মাস পূর্ব থেকে নালিশী জমি খরিদের টাকা তারা তাদের ঘরে সংগ্রহ করে রেখে দিয়েছিল। আশ্চর্যের ব্যাপার এই যে, নালিশী ভূমি বেঁচা কেনার কথাবার্তা সর্ব প্রথম হয়েছে ১৩৮৯সনের ১৮ ইং আশ্বিন অথচ তার ২/১ মাস পূর্বে নালিশী জমি খরিদের পনমূল্য সংগ্রহ করে ঘরে জমা রাখার বক্তব্য অবাস্তব ও অবিশ্বাস্য।

It further transpires that the lower appellate court also *vividly* discussed the facts and circumstances, evidence both oral and documentary affirmed the judgment and decree passed by the trial court. It is now well settled proposition of law is that while considering any *exparte* decree the court of law has to see the main allegation against the same. Regarding

service of summons by hanging needs special care and special endorsement as much as if the same is being vigorously challenged it is the duty to examine the process server to ascertain such service. In the present case in hand though the learned counsel for the petitioner's demand that apart from service by hanging there was also service by a postal but it has been proved beyond all reasonable doubt that the plaintiffs were not residing in the place or address shown by the plaintiffs of that suit for a longtime.

It is now well settled proposition of law is that by exercising the power conferred under section 115 of the Code of Civil Procedure, 1908 this court cannot go into the factual aspects even if in a case of reversal of judgment and decree. On perusal of the revisional application and the grounds taken thereon, I do not find any materials point of law or gross misreading of evidence raised by the petitioner in the case in hand.

To believe or disbelieve a witness as well as documentary evidence is within the jurisdiction of the Court's below and this Court sitting in a revision cannot interfere in such jurisdiction unless there is non-consideration of material evidence affecting the ultimate decision of the Court's below. On perusal of the application, it appears that the petitioner would not show any non consideration of material evidence by the Court's below. The finding arrived at and the decisions as made by the courts below do not call for any interference by this court under section 115 of the Code of Civil Procedure, 1908. The findings of the courts below having been based on proper appreciation of evidence on record do not call for any interference.

Considering the facts and circumstances, I am of the view that the courts below committed no error in passing the impugned judgment and decree which requires no interference by this court. Accordingly, the instant rule is discharged without any order as to cost. The impugned judgment and decree passed by the courts below is hereby affirmed.

Send down the L.C. Records to the concerned court below with a copy of the instant judgment at once.

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(Mamnoon Rahman,J:)

Emdad.B.O.