Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 713 of 2021

Md. Shahidul Islam

..... Petitioner

-Versus-

Md. Abu Taher

..... Opposite-Party

Mr. Ashfaqur Rahman, Advocate with
Mr. Santosh Kumar Sarker, Advocate
… For the Petitioner

No one appears
… For the Opposite Parties

Judgment on 07.12.2025

In this revision Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 08.11.2020 passed by the learned Joint District Judge, 2nd Court, Rangpur in Other Appeal No. 70 of 2019 dismissing the appeal and thereby affirming the judgment and decree dated 13.05.2019 passed by the Senior Assistant Judge, Sadar, Rangpur in Other Suit No. 277 of 2013 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the petitioners, as plaintiff, filed Other Suit No. 277 of 2013 in the Court of Senior Assistant Judge, Sadar, Rangpur for recovery of khas possession of

0.02 acre of land from the defendant demolishing illegal structure erected thereon.

The suit jote measuring 0.89 acre of land originally belonged to Bashiruddin, his name duly recorded in the last S.A. khatian. Bashiruddin died leaving behind wife Sahejannessa, five sons Farizuddin, Shamsul Hoque, Abu Taher, Abdul Bari the defendant in suit Md. Shahidul Islam, the plaintiff in suit and three daughters Mehera Khatun, Abeda Khatun and Rasheda Khatun.

Bashiruddin had other properties which were under amicable possession of the co-sharers. The daughters of Bashuiruddin relinquished their share in favour of their brothers in the suit jote. Sahezannessa by a registered deed of Heba-bil-Ewaj No. 13022 dated 11.07.1987 gifted her share to the plaintiffs. Five sons equally partitioned the rest land of the suit khatian and accordingly, each son got 0.1550 acre of land. The defendant by a registered sale deed No. 5477 dated 20.04.1991 sold 0.03 acre of land to one Mahmuda Khatun and thereafter by a registered sale deed dated 01.03.1998 bearing No. 2581 sold 0.0925 acre of land to Mosammat Sahera Khatun. The defendant further along with his other brothers and some of their heirs by a registered deed of exchange dated

25.09.1980 bearing No. 26632 transferred 0.17 acre of land to plaintiff and by virtue of the said deed the defendant transferred 0.0425 acre of land to the plaintiff.

As per amicable family partition three sisters got 0.27 acre of land out of 0.38 acre of Plot No. 2795 appertaining to C.S. khatian No. 1100 corresponding S.A. khatian No. 1005 and in the said khatian Abdul Bari got the rest 0.11 acre which he sold to one Matiar Rahman by a registered deed dated 04.09.1980. So far as the land measuring 1.35 acres of Plot No. 2718 appertaining to C.S. khatian No. 431/7 corresponding S.A khatian No. 441 is concerned the original owner Bashiruddin during his lifetime by a registered deed of sale dated 14.08.1972 bearing No. 28853 transferred 0.48 acre land and while in possession of the rest 0.87 acre died leaving behind wife Sahezannessa who got 0.1087 acre, five sons got 0.1175 acre each and three daughters got 0.0575 acre each. Three brothers namely Fariz, Shamsul alias Shamsher and Abdul Bari by a registered deed of sale dated 08.03.1979 bearing No. 8066 sold 0.51 acre to the defendant. By virtue of the said deed, the defendant actually got 0.0325 acre of land since the aforesaid three brothers sold excess to their admitted share. The defendant sold 0.72 acre of land, in excess to his admitted

share to one Abdul Khaleque Siddique by a registered Sale deed dated 12.07.1980 bearing No. 22025.

The defendant transferred his entire share in all ejmal khatians and being titless in the paternal properties in the aforementioned manner shifted to Hazarihat with his family and started living there permanently. After a long time he decided to live with close proximity of his paternal property. For the purpose of erecting house and requested the plaintiff to allow him to erect two chala ghar adjacent to plaintiff's house and accordingly, the plaintiff accorded permission to defendant to erect chala ghar on 0.02 acre of land which is a part of the plaintiff's residential house, temporarily. After two years the plaintiff when in his need of the said land requested the defendant to vacate and surrender the land, the defendant refused. Lastly, on 15.11.2013, the plaintiff finally demanded vacant possession of the land but the defendant denied to do so, and hence, the plaintiff filed the present suit for recovery of khas possession of 0.02 acre of land demolishing the structure erected thereon.

The defendant filed written statement but did not file any documents in support of his written statement. The learned trial Court by an Order dated 13.05.2019 rejected the written statement as the same was

not accompanied with documents, and the learned trial court on the same date took up the suit for ex parte disposal. Plaintiff as PW1 deposed in support of his case and submitted documents in support of his case which was marked as exhibit Nos. 1, 2 and 3, but the learned trial court by a judgment and decree dated 13.05.2019 (decree signed on 19.05.2019) dismissed the suit ex parte treating the suit filed under Section 9 of the Specific Relief Act with an observation that removal of structure was not permissible under Section 9 of the Specific Relief Act, inasmuch as, the plaintiff was not dispossessed by the defendant.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the petitioner filed Title Appeal No. 70 of 2019 before the District Judge, Rangpur which was subsequently transferred to the court of Joint District Judge, 2nd Court, Rangpur for hearing and disposal, who after hearing by its impugned judgment and decree dated 08.11.2020 dismissed the appeal and thereby affirmed the judgment and decree of the trial court. At this juncture, the petitioners moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Ashfaqur Rahman with Mr. Santosh Kumar Sarker, learned Advocate appearing for the petitioner submit that the petitioner filed the suit for a decree of recovery of possession and nowhere in the plaint, the plaintiff stated and taken recourse to Section 9 of the Specific Relief Act, paying half the advalorem court fees, but the trial court on its own motion came to a conclusion that the suit has been filed by the plaintiff is under Section 9 of the Specific Relief Act, which does not permit the plaintiff to seek recovery of possession by removal of structure raised by the defendant on the suit property.

He submits that, the trial court cannot treat the suit under Section 9 of the Specific Relief Act on its own motion. He candidly argued that the trial court if finds that without declaration of title the prayer as made is not maintainable, the plaintiff would have got an opportunity to amend the plaint before the appellate court.

He argued that against the judgment and decree of the trial court in a suit under Section 9 of the Specific Relief Act, revision shall lie not appeal. In the instant case the plaintiff preferred appeal and the appeal was also dismissed not on the ground of non-maintainability, but

dismissed by the appellate court concurring with the findings of the trial court that the suit is under Section 9 of the Specific Relief Act.

However, he submits that, to avoid complication and confusion and to get the suit disposed of properly by the trial court, the petitioner filed an application praying for amendment of the plaint by way of incorporation of a prayer in respect of title of the plaintiff in the suit property which was allowed by this Court on 11.11.2025. Therefore, he prays for sending the suit on remand to the trial court for fresh trial by setting aside the judgment and decree of both the courts below.

None appears for the opposite parties to oppose the rule.

Heard the learned Advocates for the petitioner, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statement, evidence both oral and documentary and impugned judgment and order of both the courts below.

From perusal of record in particular plaint in suit, it appears that the suit was filed by the plaintiff for a decree of recovery of possession and the plaint did not mention under which provision of law it was filed. The plaintiff, for the prayer made in the plaint paid advalorem court fees on the basis of valuation of the suit. The defendant though appeared and

filed written statement ultimately the written statement was struck off by the trial court on the ground that the defendant did not file any document in support of his written statement. The defendant did not agitate the order before any higher court, meaning thereby, he conceded correctness of the order. The defendant refrained from contesting the suit, however, the trial court took the matter for hearing ex parte. The plaintiff deposed himself and submitted some documents in support of his claim. The trial court by its judgment and decree dated 13.05.2019 dismissed the suit ex parte holding that this is a suit under Section 9 of the Specific Relief Act, it does not permit removal of structure by the defendant on the suit land. In appeal, the appellate court also concurred with the findings and observations of the trial court and finally concluded that the suit is not maintainable under Section 9 of the Specific Relief Act. It is true that judgment and decree passed by the trial court in a suit for recovery of possession under Section 9 of the Specific Relief Act is not appealable, but revisable before this Court. In the instant case while the plaintiff preferred appeal before the appellate court, learned District Judge did not address that point, rather dealt with the appeal on merit and finally decided that under provision of Section 9 of the Specific Relief Act,

removal of structure by the defendant on the property not allowed and on that ground the appeal was dismissed affirming the judgment and decree of the trial court.

The petitioner feeling necessary to get the plaint amended only by incorporation of a prayer for declaration of title, filed an application and got the plaint amended, added the said prayer for declaration of title. From plain reading of the plaint, it appears that the statements made by the plaintiff indicates that the suit was not filed under Section 9 of the Specific Relief Act, but it was filed under Sections 42 and 8 of the Specific Relief Act, but the learned Advocate for the plaintiff failed to make prayer to the effect that the plaintiff has title in the suit property. Because of incorporation of such prayer, I think that a fresh trial of the suit is necessary affording an opportunity to the plaintiff to prove his case by adducing sufficient evidence to secure ends of justice. Therefore, I think that the purpose of the plaintiff will serve and justice will be met, if the suit is sent back on remand to the trial court for fresh trial affording opportunity to the parties to adduce evidence and to pass a judgment a fresh by the trial court.

In view of the above, I find merit in the rule as well as in the submissions of the leaned Advocate for the petitioner.

In the result, the Rule is made absolute, however, without any order as to costs.

Judgment and decree of both the courts below are hereby set aside. The suit is sent back on remand to the trial court for fresh trial affording opportunity to the parties to adduce evidence to prove their case within shortest possible time preferably within 06 (six) months from the date of receipt of this judgment and order positively.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.

Md. Akteruzzaman Khan (B.O)

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Mr. Justice Mahmudul Hoque

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