

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

Present:

Mr. Justice Md. Badruzzaman.

CIVIL REVISION No. 1619 OF 2006.

Halima Jahan and others.

...Petitioners.

-Versus-

Md. Salim Bhuiyan being dead his heirs.

Most. Kawsar Begum and others

....Opposite parties.

Mr. Pankaj Kumar Kundu, Advocate

... For the petitioners

Mr. Faysal Hasan Arif with

Mr. Mohammad Noor Hossain, Advocates

... For opposite party Nos. 1-2

Heard on: 30.11.2023, 14.12.2023.

Judgment on: 19.02.2024.

This Rule was issued calling upon opposite party Nos. 1-2 to show cause as to why judgment and decree dated 30.01.2006 passed by learned Additional District Judge, 3rd Court, Cumilla in Title Appeal No. 95 of 2000 dismissing the appeal by affirming the judgment and decree dated 03.01.2000 passed by 2nd Court of Sub-ordinate Judge, Cumilla in Title Suit No. 30 of 1993 should not be set aside.

At the time of issuance of Rule this Court vide order dated 15.05.2006 directed the parties to maintain *status quo* in respect of possession and position of the suit land till disposal of the Rule.

Facts relevant, for the purpose of disposal of this Rule, are that the petitioners as plaintiffs instituted Title Suit No. 30 of 1993 in 2nd Court of Joint District Judge, Cumilla for a decree of declaration of title to .48 acre land and recovery of khas possession of .0075 acre land. Defendant opposite party Nos. 1-2 contested the suit by filing written

statement. Both parties adduced evidence to prove their respective case and the trial Court, vide judgment and decree dated 03.01.2000, dismissed the suit.

While dismissing the suit, the trial Court made some adverse remarks against the title of the defendants. Challenging said adverse remarks of the trial Court defendant Nos. 1-2 filed Title Appeal No.95 of 2000 before the learned District Judge, Cumilla which was transferred to learned Additional District Judge, 3rd Court, Cumilla for disposal who, upon hearing the parties, allowed the appeal and set aside adverse findings of the trial Court vide impugned judgment and decree dated 30.01.2006.

In course of hearing, the plaintiff-petitioners filed an application under section 151 of the Code of Civil Procedure praying for sending the appeal back on remand to the Court of appeal stating that after filing of Title Appeal No. 95 of 2000 the plaintiff-petitioners preferred Cross-objection on 21.08.2000 before the learned District Judge, Cumilla but due to *bona fide* mistake on the part of the learned District Judge as well as the conducting Lawyer of the appellate Court said cross objection was not registered and admitted for hearing but the learned District Judge vide order dated 21.08.2000 kept the cross-objection on record and thereafter, transferred the appeal being Title Appeal No. 95 of 2000 to 3rd Court of Additional District Judge, Cumilla for disposal who, without disposing of the Cross-objection, disposed of the appeal by the impugned judgment and decree and as such, if the cross-objection is not heard and disposed of on merit the plaintiff-petitioners will be highly prejudiced.

Contesting opposite party Nos. 1-2 have entered appearance by filing Voklatnama and also filed counter-affidavit to contest the Rule

but they did not file counter-affidavit to oppose the application for remand.

Mr. Pankaj Kumar Kundu, learned Senior Advocate appearing for the petitioners submits that due to *bona fide* mistake and inadvertence on the part of the learned District Judge as well as the conducting Lawyer of the plaintiffs, the cross objection was not registered and admitted for hearing and was not disposed of while disposing of the appeal on merit and accordingly, the plaintiff-petitioners have been highly prejudiced and if the appeal is not sent back on remand for fresh hearing along with the cross-objection, the plaintiffs-petitioners shall be highly prejudiced and shall suffer irreparable loss and injury.

Mr. Faysal Hasan Arif, learned Advocate appearing for opposite party Nos.1-2 though opposes the Rule but frankly concedes that the Cross-objection should have been admitted and disposed of along with the appeal and as such, an appropriate order may be passed by this Court.

I have heard the learned Advocates, perused the revisional application as well as the Lower Courts Record. It appears from the LCR that the plaintiff-petitioners on 21.08.2000 filed Cross-objection against the judgment and decree of the trial Court. From the memorandum of the Cross-objection it appears that the same was filed with reference to Title Appeal No. 95 of 2000 but the Cross-objection was not registered as a Cross-objection in the concerned Suit Registrar of the learned District Judge. Moreover, without passing any order upon admission hearing, the learned District Judge vide order dated 21.08.2000 kept the same on record. The learned District Judge should have fixed a date for admission hearing of the Cross-objection. It also appears that the concerned Lawyer of the plaintiff-petitioners did not take notice of the

Cross-objection to 3rd Court of Additional District Judge at the time of hearing of the appeal. While passing the impugned judgment, the Court of appeal also did not take notice about the pendency of the Cross-objection and disposed of the appeal without passing any order in regards Cross-objection.

In the fitness of things justice would be best served if the appeal being Title Appeal No. 95 of 2000 is sent back to learned District Judge for fresh hearing along with the Cross-objection filed by the plaintiff-petitioners.

Accordingly, the application for remand is allowed. The impugned judgment and decree dated 30.01.2006 passed by learned Additional District Judge, 3rd Court, Cumilla in Title Appeal no. 95 of 2000 is set aside. Title Appeal No. 95 of 2000 along with the Cross-objection be sent back to learned District Judge, Cumilla for disposal and the learned District Judge, Cumilla is directed to dispose of the appeal along with the Cross-objection in accordance with law.

The order of *status-quo* granted at the time of issuance of Rule be continued till disposal of Title Appeal No. 95 of 2000.

In view of the above, the Rule is disposed of.

Send down the L.C.R along with a copy of this judgment to learned District Judge, Cumilla at once.

(Justice Md. Badruzzaman)