

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

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 6557 OF 2002**

**IN THE MATTER OF:**

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

(Against Decree)

-And-

**IN THE MATTER OF:**

Nurul Islam

--- Plaintiff-Appellant-Petitioner.

-Versus-

Airport Manager, Cox's Bazar and another

--- Defendant-Respondent-Opposite Parties.

No one appears

--- For the Petitioner.

Mr. Md. Shamsul Islam with

Ms. Shayema Chowdhury, Advocates

--- For the Defendant-Respondent- O.P No. 1.

**Heard on: 06.01.2024, 17.01.2024,**  
**29.01.2024, 31.01.2024 and 07.02.2024.**

**Judgment on: 19.02.2024.**

At the instance of the present plaintiff-appellant-petitioner,  
Nurul Islam, 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. 1 to show cause as to why the  
judgment and decree dated 04.09.2002 passed by the learned  
Additional District Judge, Cox's Bazar in the Other Appeal No.  
09 of 1991 dismissing the appeal and thereby affirming the

judgment and decree dated 17.11.1990 passed by the then learned Subordinate Judge (now Joint District Judge), Cox's Bazar in the Other Suit No. 74 of 1987 dismissing the suit should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioner as the plaintiff filed the Other Suit No. 74 of 1987 in the court of the then learned Subordinate Judge (now Joint District Judge), Cox's Bazar against the defendant-opposite parties for declaration of title upon the suit land described in the plaint. The plaint contains that the suit land originally was a khas (খাস) land under the defendant as the government and one Tamijunnessa took the settlement of the suit land by the Settlement Case No. 42 of 1935-36 and got delivery of possession of the suit land. A separate jote (-জাত) was created in her name by jote (জোত) No. 236 pursuant to the Settlement Jomabandi (জমাবন্দি) Khatian No. No.  $\frac{1230}{54}$  which was prepared in favour of the said Tamijunnessa. The suit land was possessed by her by paying rent (খাজনা). During the Second World War, the suit land along with other adjacent lands were requisitioned by the Military Authority and the said Tamijunnessa left the suit

land and started to live in another place with her family members. Therefore, the said Military Authority derequisitioned the suit land along with the other land by filing Miscellaneous Case No. 01 of 1952 and the said Tamijunnessa got back the possession of the suit land and she has been possessing the same since then. However, the MRR Khatian No. 14 was prepared wrongly in the name of the defendant No. 1 being the Airport Manager, Cox's Bazar despite the title and possession remained under her and she requested the defendant No. 1 for correcting the record of right. The said Tamijannessa died leaving behind her leagal heirs Md. Serajul Islam and others who sold the land to the plaintiff by two registered deeds and handed over the possession, as such, the suit was filed upon the threat from the defendant.

The present opposite party No. 1 being the defendant No. 1 contested the suit by filing a written statement and denying the claim made by the plaintiff contending that there was no cause of action for filing the suit. The defendant further contended that R. S. Plot No. 265 comprises an area of 38.96 acres of the suit land and the suit land is a small fraction of above said 38.96 acres of land. However, The Government transferred 137.32 acres of land

including the suit land in favour of the Civil Aviation Authority by a Transfer Miscellaneous Case No. 05 of 1957-58 and the land was acquired by the British Government for the purpose of Cox's Bazar Airport in the year of 1942. The Cox's Bazar Airport started operation in the year of 1956 and the Civil Aviation Authority paid compensation money amounting to Tk. 1,56,394/- (One Lac Fifty Six Thousand Three Hundred and Ninety-Four) to the Government for the acquisition of land. The claim by the said Tamijunnessa as to derequisition of the land and the possession in her favour is absolutely wrong and she was not in possession, as such, the MRR and BS Khatians were correctly prepared and published in the name of the defendant No. 1.

Upon receiving the said case, the then learned Subordinate Judge (now Joint District Judge), Cox's Bazar considered evidence adduced and produced from the PWs and DWs and came to a conclusion to dismiss the suit by his judgment and decree dated 17.11.1990.

Being aggrieved the present petitioner as the appellant preferred the Title Appeal No. 09 of 1991 in the court of the learned District Judge, Cox's Bazar which was heard by the

learned Additional District Judge, Cox's Bazar who dismissed the appeal and affirming the judgment of the learned trial court by his judgment and decree dated 04.09.2002. Being aggrieved the present petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure challenging the legality of the impugned judgment and decree passed by the learned appellate court below and this Rule was issued thereupon.

This matter has been appearing in the daily cause list with the names of the learned Advocate for the petitioner but no one appears to support it in the hearing of this Rule. However, the present petitioner has taken a ground in the application that the learned courts below made a mistaken justice by dismissing the suit in giving much importance with respect to the preparation of the S. A. and B. S. Record of rights leaving *aside* the other materials, thus, committed an error of law resulting in an error in the decision occasioning failure of justice in as much as the record of rights, however, neither creates nor takes away right and title of anybody else, it is mere an evidence of possession only.

The Rule has been opposed by the present opposite party No. 1, the Airport Manager, Cox's Bazar.

Mr. Md. Shamsul Islam, the learned Advocate, appearing along with the learned Advocate Ms. Shayema Chowdhury on behalf of the opposite party No. 1, submits that this is a long pending Rule and the petitioner never took any step for hearing of the Rule, however, this Rule has been fixed for hearing at the instance of the present opposite party No. 1 because the present petitioner as the plaintiff-appellant was under an obligation to prove its own case by adducing and producing the evidence but both the courts below found that the plaintiff utterly failed to prove its own case, as such, both the courts below passed the judgments and decrees against the present petitioner, as such, the learned courts below committed no error of law and there is no case of non-considering evidence, therefore, the Rule is liable to be discharged.

The learned Advocate also submits that the suit land was acquired by the then British Government in favour of the present opposite party No. 1 being the Airport Manager, Cox's Bazar as the Civil Aviation and both the courts below also found that the record of right in the MRR (RS) was prepared and published in

favour of the opposite party No. 1 and the present petitioner never challenged the record of right. The opposite party No. 1 also obtained a record of right in the BS Khatian on the basis of the possession by the opposite party No. 1 upon the suit land measuring 38.96 acres along with the other adjacent land measuring 137.32 in the year 1957-58 by filing the Transfer Miscellaneous Case No. 05 of 1957-58 in favour of the Civil Aviation Authority. He also submits that acquisition by the then British Government in favour of the Civil Aviation Authority could prove its case by providing evidence in support of its case, as such, both the courts below concurrently found the title and possession of the opposite party No. 1 and also found that the plaintiff could not prove its own case by adducing sufficient documentary evidence and depositions, as such, the learned courts below committed no error of law and facts, therefore, the Rule is liable to be discharged.

Considering the above submissions made by the learned Advocate appearing for the opposite party No. 1 and also considering the revisional application filed by the present plaintiff-petitioner 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 needed materials and documents available in the lower court records, it appears to this court that the present petitioner as the plaintiff filed the title suit claiming only title upon the suit land measuring 38.96 acres and the total land measuring 137.32 acres pursuant to the Transfer Miscellaneous Case No. 05 of 1957-58 filed by the then British Government acquired the area in favour of the Cox's Bazar Airport being the Civil Aviation Authority. The petitioner further claims that she got settlement by the Settlement Case No. 42 of 1935-36 and got delivery of possession of the suit land of the jote No. 236 in respect of the suit land. It further appears that the present petitioner claimed that her name was mutated by Jomabondi No.  $\frac{1230}{54}$  under the Jote No. 236. It further appears that during the Second World War, the suit land along with the other land was acquired by the Military Authority and the present petitioner left the suit land and started to live in another place. However, the plaintiff also claimed that the suit land was derequisitioned by the Miscellaneous Case No. 01 of 1952. It also appears that the present opposite party No. 1 contended that the suit land along with the other lands was requisitioned by the



then-British Government for Military Authority. Accordingly, MRR Khatian was published in the name of the Government i.e. defendant No. 1 and there was no threat from the opposite party to vacate the suit land, as such, there is no cause of action for filing the present suit. It also appears that the present plaintiff-petitioner never challenged the record of the right of MRR Khatian and BS Khatian. The present petitioner died leaving behind her legal heirs Md. Sirajul Islam and others who transferred the suit land by 2 sale deeds on 07.10.1987, as such, the suit was filed by the present petitioner on the basis of the above 2 sale deeds.

I have carefully examined the evidence adduced and produced by the parties, in particular, the documents of the present petitioner available in both the lower courts records to prove its own case. The plaintiff-petitioner produced 5 exhibits in support of the case and also 5 PWs. PW-1 claimed that the petitioner filed an objection against the record of right but PW could not produce any documents as to the possession and title in favour of the plaintiff. PW also could not substantiate the claim of the plaintiff as to the claim of MRR and BS Khatian but could not produce any document to support the objection, as such, the

learned trial court dismissed the suit of the plaintiff-petitioner. The learned appellate court below also concurrently found that the plaintiff could not produce any documentary evidence or oral submissions by way of depositions made contrary and inconsistent statements as to the title and possession by the plaintiff-petitioner, as such, both the courts below found the case against the present petitioner. On the other hand, the witnesses on behalf of the present defendant-opposite party could produce the documents of acquisition by the Government in favour of the Civil Aviation Authority, Cox's Bazar along with the order of acquisition during the Second World War in favour of the Civil Aviation Authority where the present Cox's Bazar Airport is situated. Both the learned courts below concurrently found and passed the judgments and decrees in favour of the defendant-opposite party by lawfully and affirming the judgment of the learned trial court.

Now, I am going to examine the judgment and decree passed by the learned courts below.

The learned trial court dismissed the suit on the grounds and basis of the following findings:

...“এই সাক্ষীর বর্তমান বয়স ৭০ বৎসর। সুতরাং ১৯৩৫ ইং স-ন তাহার বয়স ছিল ১৫ বৎসর। অদ্য হই-ত ৫৫ বৎসর বয়-স নালিশী জমি-ত তমিজু-ন্সার দখল সম্প-র্ক এই সাক্ষীর কোন সুস্পষ্ট ধারণা থাকি-ব ইহাও বিশ্বাস করা যায় না। এই সাক্ষী তাহার জেরায় আ-রা ব-লন যে, তমিজু-ন্সার ওয়ারিশরা কোন মা-সর কোন তারিখ নালিশী জমির দখ-ল যান তাহা তিনি বলি-ত পারি-বন না। বাদীপ-ক্ষর ৫ নং সাক্ষী মোঃ মুহিবুল্লাহ তাহার জেরায় ব-লন যে, Exts- 4 এবং 5 দলিলগুলির পণ মূল্য গ্রহিতা কাহাকে দেয় তাহা তিনি বলিতে পারি-বন না। দলিলগুলির কোন দাতা পণ মূল্য গ্রহণ করেন তাহা তিনি সঠিকভাবে বলি-ত পারি-বন না। বাদী-দর কথিত তমিজু-ন্সার কিংবা তাহার ওয়ারিশগণ নালিশী জমি দখল করিয়া-ছেন কিংবা বাদীগণ নালিশী জমি দখল ক-রন তৎপ্রমা-ণ বিগত ১৯৩৫ ইং সন হই-ত অদ্যাবধি অর্থাৎ গত ৫৫ বৎস-রর ম-ধ্য তাহারা নালিশী জমির কোন খাজনা দিয়া-ছেন তাহা দেখাইবার জন্য বাদীপক্ষ কোন খাজনার দাখিলা অত্র মোকদ্দমায় দাখিল করিতে পারেন নাই। অত্র মোকদ্দমায় নালিশী জমি তমিজু-ন্সার কিংবা তাহার ওয়ারিশগণ অর্থাৎ বাদীর কথিত বায়ারা দখল করি-তন কিংবা বাদীর বায়ারা নালিশী জমির দখল Exts- 4 এবং 5 মূ-ল বাদী-ক সমজাইয়া দিয়াছেন তাহা প্রমাণের জন্য সবচাইতে উপযুক্ত সাক্ষী ছিলেন বাদীর কথিত বায়া তমিজু-ন্সার ওয়ারিশগণ। কিন্তু তাহা-দর কাউ-ক বাদী এই মোকদ্দমায় সাক্ষী হিসাবে আনেন নাই। উপরোক্ত আলোচনা হই-ত আদাল-তর সিদ্ধান্ত এই যে, বাদী নালিশী জমি-ত তাহার স্বত্ব-স্বার্থ ও দখল প্রমাণ করি-ত ব্যর্থ হইয়াট-ছেন।”...

The learned appellate court below concurrently found that the plaintiff could not prove its case which she was under an obligation, therefore, the learned appellate court below came to a conclusion to dismiss the appeal preferred by the present

petitioner and came to a conclusion on the basis of the following findings:

...“স্বীকৃত মতে নালিশী সম্পত্তির এম.আর.আর. ও বি.এস. খতিয়ান ১ নং বিবাদী-রসপন-ডন্ট এর না-ম লিপিবদ্ধ হইয়া-ছে। ১৯৩৫-৩৬ সালে তমিজুন্নেসা বন্দোবস্ত কেইসে নালিশী সম্পত্তির দখল এবং পরবর্তী-ত ১৯৫২ সা-ল পুনরায় দখল গ্রহণ পূর্বক ভোগ দখ-ল থাকাবস্থায় মারা গে-ল তাহার ওয়ারিশগণ ভোগ-দখল করিয়া থাকি-ল নালিশী সম্পত্তির এম.আর.আর. ও বি.এস. খতিয়ান তমিজু-ন্নেসার ওয়ারিশগণ এর না-ম লিপিবদ্ধ হইত। আপীলকারী নিম্নাদাল-ত ব-ন্দাবস্ত মামলার কোন কাগজ দাখিল ক-রন নাই। ১৯৫২ সালে উক্ত সম্পত্তি সামরিক কর্তৃপক্ষ Derequisition করিয়া-ছেন তৎ সমর্থ-ন আপীলকারী কোন কাগজ দাখিল ক-রন নাই। আপীল মামলায় আপীলকারী একটি ০৩/০১/২০০১ ইং তারি-খর ট্রেস ম্যা-পর সত্যায়িত প্রতিলিপি এবং এস. কেইস নং- ৪২ এর আ-দ-শর জা-বদা কপি দাখিল করিয়া-ছেন। আপীলকারী প-ক্ষর দাখিলী ট্রেস ম্যা-পর সত্যায়িত প্রতিলিপি ও ৪২ নং এস. কেই-সর আ-দশর জা-বদা কপি হই-ত তমিজু-ন্নেসার নামীয় ব-ন্দাবস্ত প্রমাণিত হয় না।”...

In view of the above discussions and examinations of the record of the documents adduced and produced before the learned courts below, the learned courts below committed no error of law by finding and passing the concurrent judgments and decrees in the title suit which was initiated in the year of 1987. I am, therefore, not inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below

and I consider that 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 04.09.2002 passed by the then learned Additional District Judge, Cox's Bazar in the Other Appeal No. 09 of 1991 disallowing the appeal thereby affirming the judgment and decree dated 17.11.1990 passed by the then learned Subordinate Judge (now Joint District Judge), Cox's Bazar is hereby upheld and confirmed.

The interim order passed by this court at the time of issuance of the Rule directing the parties to maintain *status quo* in respect of the possession and position in the suit property for a period of 3 (three) months and subsequently the same was extended from time to time and lastly the same was extended till disposal of the Rule are 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 immediately.