

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.3732 of 2009

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Sultan Mia alias Sultanuddin

... Petitioner

-Versus –

Rakibuddin Ahmed and others

... Opposite Parties

Mr. Arobinda Kumar Roy, Advocate

.... For the petitioner

Mr. M.A. Quddus Sheikh, Advocate

...For the Opposite Parties

Heard and Judgment on 10.12.2023

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioner, under section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite parties No.1-8 to show cause as to why the judgment and decree dated 22.03.2009 passed by the learned Additional District Judge, 5th Court, Dhaka in Title Appeal No.25 of 2005, dismissing the Appeal and thereby affirming the judgment and decree dated 02.11.2004 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No.247 of 1999

decreeing 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 necessary for disposal of the Rule, in short, are that the land described in the schedule of the plaint appertaining to C.S. khatian No.225 belong to Karom Uddin, Keram Uddin and Komor Uddin and C.S. record was correctly prepared in their names. Kamor Uddin got his saham from plot No.2706, 2708 and from other plots amicably. Komor Uddin transferred 4.68 acres of land to his heirs 2 sons Nehaj Uddin and Idris and 3 daughters by a deed of Heba-bil-ewaj No.2455 dated 12.08.1937. Idris Ali transferred 35 decimals of land to Ohim Uddin by a deed of kabala dated 08.04.1963. Ohim Uddin gifted said 35 decimals of land to the plaintiff No.1/2 and predecessor of defendant No.3-8 namely Nooruddin by a registered Heba-bil-ewaj deed dated 23.02.1985 and handed over possession. Idris Ali sold $33\frac{1}{4}$ decimals of land to others. The plaintiffs had been in possession over the said 35 decimals of land by cultivating jute etc. The defendant No.1 in the last part of 1992 forcefully dispossessed the plaintiffs from 20 decimals of land out of 35 decimals of land and erected a semi-pacca home thereon. The plaintiffs are in possession of 15 decimals of land of southern side. The plaintiffs at the time of dispossession tried to resist but the defendant forcefully dispossessed them. The defendants have no right, title and interest in the suit land. During R.S. operation disputed plot No.2706 has been recorded as R.S. khatian No.527 and plot No.6577 in the name of the plaintiffs but 6 annas of plaintiffs and 10 annas of land of Idris Ali have been wrongly recorded. Out of the disputed land the

plaintiffs have been dispossessed from 20 decimals of land and as such they prayed for recovery of khas possession of said 20 decimals of land and also prayed for correction of R.S. record.

On the other hand, the defendant Nos. 1 and 2 resisted the suit by filling written statements denying the material allegations made in the plaint and contention of the defendant Nos.1 and 2 inter alia that the suit is not maintainable in its present form, suit is barred by limitation. Further, case of the defendants is that the suit land was originally belonged to Rajab Ali and after his death his 3 sons succeeded him and C.S. record was prepared in the name those 3 sons. Keram Uddin gifted his share to his son Amin by a Heba Deed dated 12.08.1937. Amin died leaving behind 2 sons and 3 daughters out of which son Idris Ali gifted his share in favour of his wife on 03.01.1961. Golapjan Bibi died leaving 2 sons defendant Nos.1 and 2 and they have been possessing the said land by paying rent. The plaintiffs claiming the suit property by creating some forged documents. Idris Ali has not sold any land to anybody. The defendant No.1 got $9\frac{1}{4}$ decimals of land from his aunt (Fufu) by a deed dated 01.09.1982. Said aunt of the defendant No.1 gifted 40 decimals of land to Khokon and others by a deed dated 11.11.1985 and Khokon Miah sold the said land to the defendant No.1 by a deed dated 27.03.2000. The defendants No.1 and 2 have been in possession of the suit land by virtue of inheritance, purchase and gift and as the plaintiffs have no right, title and possession in the suit land as such the suit is liable to be dismissed.

After hearing both the parties and considering the materials on record, the learned Joint District Judge, 2nd Court, Dhaka passed his judgment and decree dated 02.11.2004 in Title Suit No.247 of 1999 decreeing the suit on the finding that the plaintiffs have been able to prove their case.

Being aggrieved by and dissatisfied with the judgment and decree dated 02.11.2004 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No.227 of 1999 the defendant-petitioner filed Title Appeal No.25 of 2005 in the Court of learned District Judge, Dhaka. Thereafter, the said Title Appeal was transferred to the learned Additional District Judge, 5th Court, Dhaka for disposal. After hearing both the parties and upon perusing the evidence on record, the learned Additional District Judge, 5th Court, Dhaka dismissed the Title Appeal No.25 of 2005 and thereby affirming the judgment and decree dated 02.11.2004 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No.247 of 1999 decreeing the suit by his judgment and decreed dated 22.03.2009 (decree signed on 29.03.2009).

Being aggrieved by and dissatisfied with the judgment and decreed dated 22.03.2009 (decree signed on 29.03.2009) passed by the learned Additional District Judge, 5th Court, Dhaka in Title Appeal No.25 of 2005, the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. M. A. Quddus Shaikh, the learned Advocate appearing on behalf of the opposite parties by filing an application for send back to the remand submits that the opposite parties have been in possession of the suit land

and the deed No.4522 dated 21.05.1965 executed by Ohimuddin transferring .35 decimals of land in favour of Idris Ali and Deed No.7526 of 1993 and 17249 of 2004 have been discovered after the appeal has been disposed of and continuation of possession of the land of the opposite parties support the existence of the said deed and they are quite confident that they will be able to prove the same and had the said deed been placed in the trial Court or in the Appellate Court then result would have been otherwise and therefore, considering the above attending facts and circumstances the suit may be sent back on remand with a direction to the learned Additional District Judge, 5th Court Dhaka to dispose of the appeal being Title Appeal No.25 of 2005 within a specified time by taking the said Deed No.4522 dated 21.05.1965 and Deed No.2844, 7526, 17249 and judgment of the Appellate Division in Civil Petition for Leave to Appeal No.2602 as additional evidence and giving the opportunity to the parties to amend their respective pleadings otherwise the petitioner and opposite parties shall have to suffer serious irreparable loss and injury. Accordingly, he prays for sending this case to the Appellate Court below for re-hearing and submitting the additional evidences.

Mr. Arobinda Kumar Roy, the learned Advocate appearing on behalf of the petitioner agreed with the submissions of the learned Advocate for the opposite parties and prays for send back this case to the Appellate Court below for further hearing to give change for submitting the additional evidences.

I have heard the submissions of the learned Advocates for the parties, perused the revisional application, the impugned judgment and

decree of the Courts' below, the papers and documents as available on the record.

In the light of the above discussion, it appears that both the parties prays for sending back this case to the Appellate Court below to give opportunity for submitting the additional evidence and amending their respective pleadings and further hearing.

Considering the above facts and circumstances and materials on record, I think that it will be best serve for ends of justice, if I send back this case to the Appellate Court for submitting the additional evidence and amending their respective pleadings and further hearing.

In the Result, the Rule is disposed of.

The judgment and decree dated 22.03.2009 (decree signed on 29.03.2009) passed by the learned Additional District Judge, 5th Court, Dhaka in Title Appeal No.25 of 2005 dismissing the appeal and thereby affirming the judgment and decree dated 02.11.2004 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No.247 of 1999 decreeing the suit is hereby set-aside.

The learned Additional District Judge, 5th Court, Dhaka is hereby directed to give opportunity both the parties for submitting the additional evidence and amending their respective pleadings and upon hearing the parties to dispose the Title Appeal No.25 of 2005 arising out Title Suit No.247 of 1999 within 01(one) year from the date of receipt of this judgment and order and both the parties of this suit are hereby directed to maintain status-quo till disposal of this Suit.

Let a copy of this judgment and order along with LCR be communicated to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer