

2 SCOB [2015] HCD 44**HIGH COURT DIVISION****(Civil Revisional Jurisdiction)**

CIVIL REVISION NO. 3384 OF 2001

Dulal Krishna Basu

... Petitioner

-Versus-

Fakir Ziauddin and others

... Opposite Parties

Mr. M. A. Azim Khair, with
Mr. Md. Iqbal Hossain, and
Ms. Farhana Ershad Chowdhury, Advocates.
... For the PetitionerMr. Abdul Hye, Advocate
.... For Opposite Parties nos. 1 and 2

Heard On: 30.07.2015 and 06.08.2015

Judgment dated: 11.08.2015

Code of Civil Procedure, 1908**Order 7, Rule 3:**

Requirement of law is that the property should be identified by boundaries or numbers. When the plots are identified by numbers, boundaries are not necessary. The identifiable plot numbers having been given with total quantum of land against each plot in the schedule of plaint, there is no difficulty in identifying land of the plots. ... (Para 12)

JUDGMENT**Borhanuddin, J:**

1. This rule has been issued calling upon opposite party nos. 1 and 2 to show cause as to why Judgment and decree dated 14.05.2001 passed by the learned Subordinate Judge, 1st Court, Bagerhat, in Title Appeal No. 75 of 1988 reversing judgment and decree dated 27.12.1987 passed by the learned Assistant Judge, Fakirhat, Bagerhat, in Title Suit No. 424 of 1983 dismissing the suit, should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

2. Facts relevant for disposal of the rule are that petitioner herein as plaintiff instituted Title Suit No.71 of 1983, renumbered as Title Suit no.424 of 1983, in the Court of 2nd Munsif, Bagerhat, for declaration and permanent injunction contending interalia that plaintiff is owner of the suit land by inheritance; During possession, plaintiff mutated his name vide Miscellaneous Case No.29/73-74 and paid rents and taxes to the Government exchequer; Plaintiff's father is missing for the last 27/28 years when plaintiff was a child; After attaining majority, plaintiff went to Dhaka for livelihood; Plaintiff's mother Shibani Basu was suffering from insanity; Taking advantage of the situation, defendant nos. 1 and 2 created two registered deed of sale both dated 23.09.1995 which were never acted upon and not binding upon the plaintiff; After creating said deeds, defendants forcibly ousted wife of the plaintiff from suit premises; Having informed, plaintiff came from Dhaka and recovered possession of the suit land with help of local police; Since then plaintiff has been possession the suit land by erecting houses and planting trees thereon; Defendant No.1 through insane Shibani Basu filed miscellaneous case no.16 of 1981 in the Office of Circle Officer(Rev) to record his name; However, the case was ultimately withdrawn by defendant no.1; Thereafter, defendant nos. 1 and 2 filed Miscellaneous Case No. 24 of 1982 under Section 150 of the State Acquisition and Tenancy Act to mutate their name in place of the plaintiff; Plaintiff prayed time for filing written objection but circle officer (Rev) illegally recorded name of Golapi Sundari by cancelling earlier order passed in miscellaneous case no.29/73-74; Defendant nos. 1 and 2 threatened to dispossess the plaintiff from suit land on 1st Magh, 1349 B. S. corresponding to 15.01.1983. Hence, the suit.

3. Defendant Nos. 1 and 2 contested the suit by filing a joint written statement denying material allegations made in the plaint and contending interalia that Golapi Dasi acquired title in suit land as stridhan property; After expiry of Golapi Dasi, her daughter Shibani Basu inherited the same as per Dayabagha School of law; During possession, Shibani Basu proposed to sell the land and defendant

nos. 1 and 2 agreed to purchase the same and paid consideration money by installments; Shibani Basu executed and registered two kabalas both dated 23.09.1995; Since then defendants are in possession of the land; Shibani Basu was not suffering from insanity rather she was all along a normal and intelligent lady; Suit is liable to be dismissed.

4. After hearing the parties and assessing evidence on record, learned Assistant Judge decreed the suit on contest against defendant nos. 1 and 2 and *ex parte* against the rest by his judgment and decree dated 27.12.1987.

5. Being aggrieved, defendants as appellants filed Civil Appeal No. 75 of 1988 in the Court of learned District Judge, Bagerhat. On transfer the appeal was heard and disposed of by the learned Subordinate Judge, 1st Court, Bagerhat, who after hearing the parties and reassessing evidence on record allowed the appeal *vide* judgment and decree dated 14.05.2001 by setting aside judgment and decree passed by the learned Assistant Judge.

6. Having aggrieved by and dissatisfied with the judgment and decree, plaintiff-respondent as petitioner preferred this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present rule alongwith an order of *status-quo*.

7. Mr. M. A. Azim Khair, learned advocate appearing for the petitioner submits that the court below committed an error of law resulting in an error in the decision occasioning failure of justice in disbelieving advocate commissioner's report and his testimony as PW 2 without assigning any reason. He also submits that learned Subordinate Judge arrived at a finding relating to possession of defendants in the suit land quoting cross examination of PW 5 that he stated there are houses in the suit land belonged to defendants but from testimony of the PW.5 it is evident that learned Subordinate Judge misread the evidence of PW.5 as such, impugned judgment and decree is liable to be set aside. He further submits that plaintiff described schedule of the land in accordance with provisions of order 7 rule 3 of the Code of Civil Procedure and as such, trial court rightly decreed the suit. In support of his submissions, learned advocate referred to the case of Naresh Chandra Das and others-Vs- Nirmal Chandra Das and others, reported in AIR 1989 ORISSA 248.

8. On the other hand Mr. Abdul Hye Sarker, learned advocate appearing for the opposite party nos.1 and 2 submits that appellate court below after reassessing evidence on record rightly and legally arrived at a finding that plaintiff- petitioner failed to prove his possession in the suit land. He also submits that suit schedule land as described in the plaint is not in accordance with provisions of order 7 rule 3 of the Code of Civil Procedure as such, suit for permanent injunction on an unspecified and undemarcated land is not maintainable. He further submits that since disputed question of title involve in the suit, plaintiff must establish his title by filing a regular suit for title. In support of his submissions, learned advocate referred to the case of Barada Sundari Paul and others-Vs- The Assistant Custodian, Enemy Property (Land and Buildings), Comilla and others, reported in 15 BLD(AD)95; the case of Mati Lal Karmakar and another-Vs- Kalandar Talukder and another, reported in 20 BLD186 and the case of Rafizuddin Ahmed-Vs- Mongla Barman and others, reported in 43 DLR (AD)215.

9. Heard the learned advocates. Perused revisional application, judgment of the courts below alongwith lower courts record and decisions cited by the learned advocates.

10. On perusal of the record, it appears that plaintiff stated in his plaint that his mother was suffering from insanity and he was at Dhaka for business purpose and taking advantage of the situation, defendants created two kabalas by misleading his insane mother Shibani Basu which were never acted upon and as such those kabalas are not binding upon him. It is also stated in the plaint that he recovered possession of the suit land with the help of local police. On perusal of advocate commissioner's report, it appears that advocate commissioner categorically stated that plaintiff has been residing in the houses situated in the suit land with his wife and three minor children. Advocate Commissioner inspected the suit land in presence of local elites and examined as PW 2. It is also

evident from written objection filed by defendant nos. 1 and 2 against local inspection report that defendants are residing in Khulna town, not in the suit land. In such circumstances, I am of the opinion that learned Subordinate Judge committed illegality in disbelieving Advocate Commissioner's report terming the same *exparte* and not based on fact without assigning any reason in arriving at such a finding. On perusal of the testimony of PW.5, I find substance in the submission of learned advocate for the petitioner that finding of the appellate court below relating to possession based on misreading and non consideration of the evidence on record.

11. Now remains the point whether injunction can be granted on the schedule described in the plaint. It appears from the schedule that the plaintiff mentioned plot numbers and total quantum of land against those plots which tallies with khatian no.1359 marked as exhibit in the suit. Order 7 Rule 3 of the Code of Civil Procedure runs as follows:

"3. Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers".

12. From plain reading of order 7 rule 3 it appears that requirement of law is that the property should be identified by boundaries or numbers. When the plots are identified by numbers, boundaries are not necessary. The identifiable plot numbers having been given with total quantum of land against each plot in the schedule of plaint, there is no difficulty in identifying land of the plots. I find support of this view in the case of Naresh Chandra Das and others-Vs- Nirmal Chandra Das and others, reported in AIR 1989 ORISSA 248, wherein his lordship held:

"Order 7 rule 3 of the Code of Civil Procedure requires that where the property involved in the suit is immovable, the plaint shall contain a description of the property sufficient to identify it, and, in case of such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. As the requirement of the rule itself shows giving boundary of the land is not essential if the survey number or plot number which makes the plot identifiable is given and necessarily a suit cannot be dismissed merely because the boundary is not stated though the identifying plot number is given".

13. In view of the decision referred above, argument of the learned Advocate for the opposite parties that the trial court granted injunction on an unspecified and undemarcated land does not hold water.

14. Under the facts and circumstances of the case and for the reasons stated above, I am of the view that appellate court below committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned judgment and decree which is based on misreading and non consideration of the evidence on record.

15. Facts and circumstances of the cases cited by the learned advocate for opposite parties are quite distinguishable from the facts and circumstances of the case in hand.

16. In the result, Rule is made absolute without any order as to cost.

17. Judgment and decree dated 14.05.2001 passed by the learned Subordinate Judge, 1st Court, Bagerhat, in Title Appeal No. 75 of 1988, is set aside and the judgment and decree dated 27.12.1987 passed by the learned Assistant Judge, Fakirhat, Bagerhat, in Title Suit No. 424 of 1983, is restored.

18. Order of status-quo granted at the time of issuance of the rule is hereby vacated.

19. Send down lower courts record alongwith a copy of this judgment to the court concern at once.