

Present:

**Mr. Justice Muhammad Abdul Hafiz**

**Civil Revision No. 6797 of 2001**

Dr. Md. Mobarak Ali and another  
Plaintiffs-Appellants-Petitioners  
Versus

Kala Mia and others  
Defendants-Respondents-Opposite Parties

Mr. Mrinal Kanti Biswas, Advocate  
for the plaintiffs-appellants-petitioners

Mr. Rafi Ahmed, Advocate  
for the defendants-respondents-opposite parties

**Judgment : on 16.06.2022.**

This Rule was issued calling upon the opposite party Nos.1-11 to show cause as to why the impugned judgment and decree dated 20.09.2001 passed by the learned Subordinate Judge now Joint District Judge and Artha Rin Adalat, Comilla in Title Appeal No.249 of 2000 dismissing the appeal and thereby affirming the judgment and decree dated 31.08.2000 passed by the learned Senior Assistant Judge, Chowddagram, Comilla, in Title Suit No.15 of 1999 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.

The petitioners as plaintiffs instituted Title Suit No.15 of 1999 in the Court of learned Senior Assistant Judge, Chouddagram, Comilla against the defendants-opposite parties for declaration of title.

The Case of the plaintiffs, in short, is as follows:-

- a) The total land of suit plot 299/3 is 98 decimal and total land of non-suit plot No.300 is 22 decimal.
- b) Amboren Nessa and her son Mona Mia were Rayots of Moha Raja of Tippera through registered Kabuliyat dated 15.01.1948 of 22 decimal land of plot No.300 along with other lands. Plaintiff No.2 purchased 11 decimal land from plot No.300 from Amboren Nessa and her son Mona Mia through registered sale deed dated 13.05.1963 and she has been possessing the land.
- c) Hazi Somed Ali was Rayot of rest 11 decimal of land of plot No.300. He possessed the same more than 12 years and sold it to plaintiff No. 1 through registered sale deed dated 01.05.1967. Thus the plaintiff's were as husband and wife, owners of total 22 decimal land of plot No.300.
- d) Somed Ali, Amboren Nessa, Mona Mia, Moyur Jan Bibi were Rayots of Moha Raja of Tippera in respect of 98 decimal land of plot No.299/3. They time to time transferred the land through different sale deeds as 24 decimal land to Tofazzal Ahmed Kabiraj, 59 decimal land to the plaintiffs, 10

decimal land to Lal Mia, predecessor of the defendants and rest 5 decimal land was included in the road passing in the North of the Plot. Lal Mia purchased 10 decimal land from Moyur Jan Bibi through registered sale deed dated 01.06.1959.

- e) All the purchasers have been possessing their land with demarcation and boundary.
- f) Lal Mia did not purchase or possess any land from plot No.300. Lal Mia and his sons threatened the plaintiffs to dispossess them from the plot No.300. The plaintiffs instituted Title Suit No.9 of 1991 in the Court of Assistant Judge, Chouddagram, Comilla against Lal Mia and his sons for permanent injunction. The defendants were contesting the suit by filing written statement.
- g) That in the mean time the defendants encroached the suit plot and erected kancha house, Tong ghar and dispossessed the plaintiffs from some part. In this stage local Matbors settled the matter amicably outside the Court and it was decided that the plaintiffs shall get right, title and possession of 10 decimal land from plot No.299/3 against 10 decimal land out of 22 decimal land from plot

No.300 and defendant Lal Mia will get right, title and possession of 10 decimal land from plot No.300 against 10 decimal land from plot No.299/3.

- h) That a written solenama was executed and filed in the Court in Title Suit No.9 of 1991 and the suit was decreed on the basis of that Solenama on 23.02.1992. As per decree possession of land of both plots were handed over. Thereafter, Lal Mia transferred 10 decimal land of plot No.300.
- i) The plaintiffs have been possession 10 decimal suit land from plot No.299/3. The plaintiffs made a compact plot of 69 decimal along with this 10 decimal land and they purchased 59 decimal land. Lal Mia died leaving behind one wife, two sons and six daughters. Recently sons of Lal Mia expressed in the locality that their father did not give any land to the plaintiffs from the suit plot and also expressed that Lal Mia sold some property from his purchased land to defendant Nos.10 and 11. If so, such deed will be treated as illegal, collusive, void, without consideration, forged, fraudulent and ineffective.

j) That knowing the fact the plaintiffs examined the Solenama and found that the plaintiffs gave their 10 decimal land from plot No.300 but the then defendant Lal Mia did not give his 10 decimal land from plot no.299/3. Instead of that Lal Mia gave 10 decimal land from his possession. Plot number was not mentioned. The plaintiffs did not know about the mistake of the Solenama and the successors of Lal Mia did not express the same also. Lal Mia did not purchase any land from plot No.300. So, he has no capacity or authority to transfer any land from plot No.300. Lal Mia and his sons handed over possession of 10 decimal land from plot No.299/3 on the basis of the Solenama and till then the plaintiffs have been possession the land and are still possession. Cloud has been casted upon the right, title and interest of the plaintiffs due to mistake of the Solenama. Hence, the suit.

The defendant No.4 contested the suit and denied all materials allegations by filing written statements. The case of the defendant No.4, in short, is that the suit is false, without cause of action, malafide, barred by limitation, barred by principles of estoppels, waiver and acquiescence and not maintainable in its

present form and manner. Somed Ali, Amboren Nessa, Mona Mia and Mayuren Nesa were Rayots of Moha Raja of Tippera. Mayuren Nessa sold 15 decimal land to defendant No.4 on 21.08.1963 through registered sale deed No.4297. Lal Mia purchased 10 decimal lands. Lal Mia died leaving behind his successor, defendant Nos.1-9. On compromise partition defendant Nos.1 and 2 got 10 decimal lands. They sold the land to defendant No.4 on 28.01.1999. Thus the defendant No.4 was owner of 25 decimal lands. The defendant No.4 erected kancha house on his purchased 15 decimal land as there is a market named “Akata Bazar” and let out the kancha house. Subsequently she purchased 10 decimal lands. She started construction of a building and completed still lintel. As Akata Bazar was established and value of the land increased the plaintiffs with a malafide intention claimed the land. The plaintiffs have no right, title and interest over the suit land. So, the suit is liable to be dismissed.

The Trial Court dismissed the suit by his judgment and decree dated 26.09.2001 and that the plaintiffs as appellant preferred Title Appeal No.249 of 2000 before the Court of District Judge, Comilla which was heard by the learned Subordinate Judge now Joint District Judge, Comilla who vide his judgment and decree dated 26.09.2001 dismissed the appeal and thus the plaintiff-appellant as petitioner moved this application under

section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

Heard the learned Advocates for both the parties and perused the record.

The petitioners as plaintiffs instituted the instant suit against the defendants-opposite parties for declaration of title which was dismissed. Then the plaintiffs preferred appeal which was also dismissed. Both the Courts below find that the plaintiffs failed to prove their case. There is no misreading or non-consideration of evidence by both the Courts below. The plaintiffs-petitioners could not point out any misreading and non-consideration of evidence on record. This Court cannot interfere with the concurrent findings of facts.

I find no substance in the Rule, rather I find substance in the submissions of the learned Advocate for the defendants-opposite parties.

**Accordingly, the Rule is discharged without any order as to costs.**

The impugned judgment and decree dated 20.09.2001 passed by the learned Subordinate Judge now Joint District Judge and Artha Rin Adalat, Comilla in Title Appeal No.249 of 2000 dismissing the appeal and affirming the judgment and decree dated 31.08.2000 passed by the learned Senior Assistant Judge,

Chowddagram, Comilla in Title Suit No.15 of 1999 dismissing the suit is hereby upheld.

Send down the lower Courts records with a copy of the Judgment to the concerned Court below at once.