

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No.3478 of 2017

Md. Rafiqul Islampetitioner

-Versus-

Shree Rajendra Nath Borman and another
.....opposite parties

Mr. Niaz Murshed with Mr. Syed Nafiul
Islam, Advocates

..... for the petitioner

Mr. Md. Asaduzzaman Ansari with Ms.
Papia Sultana, Advocates

..... for opposite party 1

Judgment on 03.07.2024

This Rule at the instance of defendant 1 was issued calling upon the plaintiff to show cause as to why the judgment and decree of the Joint District Judge, Court No.1, Kurigram passed on 22.08.2017 in Other Class Appeal No.191 of 2016 dismissing the appeal affirming the judgment and decree of the Senior Assistant Judge, Rajarhat, Kurigram passed on 18.08.2016 in Other Class Suit No.19 of 2015 decreeing the suit should not be set aside and/or such other or further order or orders passed to this Court seem fit and proper.

The plaint case, in brief, is that land measuring 2.08 acres of SA *Khatian* 216 including .42 acres of suit land of plot 91 originally belonged to Tarani Kanta Sarker, Debendra Nath Sarker, Haridas Sarker and Surendra Nath Sarker in equal shares. On mutual partition Tarani Kanta got total .52 acres including .42

acres of suit land. He sold out .105 acres therefrom to his wife Swarnamoyee through a registered *kabala* dated 07.08.1964. Tarani died issueless and consequently Swarnamoyee became owner and possessor of remaining .3151 acres. During her possession and enjoyment over .42 acres she transferred .25 acres to plaintiff Rajendra Nath Barman through a *kabala* dated 23.01.1978. She further sold .105 acres on 25.03.1984 to him. Subsequently she gifted .065 acres to Rajendra on 29.02.1992 through another deed. Through purchase and gift Rajendra became owner in possession of total .42 acres of the plot. He mutated his name and accordingly RS *khatian* has been correctly prepared in his name. He sold out therefrom .10 acres to defendant 1 Rafiqul Islam through a *kabala* dated 03.01.2000. He further sold out .11 acres to defendant 2 through *kabala* dated 30.06.2012 but the latter transferred it to the former through another *kabala* dated 08.04.2014. The plaintiff thus has been owning and possessing .32 acres of suit land. The defendant threatened him for dispossession on 15.01.2015 and hence the suit praying for permanent injunction.

Defendant 1 contested the suit by filing written statement. In the written statement he denied the facts of the plaint. He admitted the fact that the property was recorded in the names of Tarani, Debendra, Haridas and Gajendra in equal shares. Gajendra

died leaving behind his son Surendra and SA record was correctly prepared in his name. Out of .42 acres of the suit property Tarani Kanta possessed .105 acres while Debendra and Surendra used to possess .105 acres each. Tarani Kanta used to possess .105 acres of suit land along with other lands measuring total .88 acres and transferred it to Swarnamoyee on 25.04.1984. Swarnamoyee gifted .66 acres with .105 acres to Rajendra on 25.03.1984. Rajendra sold out .10 acres to defendant 1 Rafiqul Islam. Debendra died leaving his heirs Surendra, Rabindra, Jitendra, Amulya and Badal who inherited his share of .21 acres. Surendra and others transferred their share to defendant 1 through a *kabala* dated 18.08.2013. He also took oral settlement from Karendra measuring .105 acres. He has been possessing the whole property of the suit plot and as such the suit would be dismissed.

On pleadings the trial Court framed 3 (three) issues. In the trial the plaintiff examined 2 witnesses and his documents were produced as exhibits 1-5. On the contrary, defendant 1 examined 3 witnesses and his documents were exhibit-‘Ka’-‘Gha’. However, the Assistant Judge decreed the suit finding plaintiff’s *prima facie* title and exclusive possession over the suit land. Being aggrieved by defendant 1 preferred appeal before the District Judge, Kurigram. The Joint District Judge, Court No.1, Kurigram heard the appeal on transfer and dismissed it affirming the judgment and

decree passed by the trial Court which prompted defendant 1 to approach this Court with this revision and the Rule was issued with an *ad interim* order to maintain *status quo* in respect of the possession of the suit land.

Mr. Niaz Murshed, learned Advocate for the petitioner takes me through the judgments passed by the Courts below and other materials on record and submits that admittedly the plaintiff is in joint possession in the suit plot with the defendant. The suit land has not yet been partitioned by metes and bounds and as such the suit for permanent injunction without prayer for partition is not maintainable. He then refers to exhibit-‘Gha’ and submits that the aforesaid deed in favour of the petitioner contains SA and BS plots and since the BS plot has been prepared in the name of petitioner’s vendor, therefore, the petitioner has *prima face* title in the suit land. The preparation of the recent record of right in the name of the defendant also indicate his possession over the suit land. Both the Courts below failed to consider the aforesaid position of fact and law and committed error of law which occasioned failure of justice and as such the judgments passed by the Courts below may be interfered with by this Court in revision.

Mr. Md. Asaduzzaman Ansari, learned Advocate for opposite party 1 on the other hand opposes the Rule. He supports the judgments passed by the Courts below and submits that both

the Courts concurrently found that the plaintiff has *prima facie* title and exclusive possession in the suit land. The land is also found well demarcated and as such the Courts below correctly decreed the suit for permanent injunction. There is nothing before this Court to be interfered with the aforesaid findings and decision passed by the Courts below. This Rule, therefore, having no merit would be discharged.

I have considered the submissions of both the sides and gone through the materials on record. It is admitted fact that the land measuring to 2.08 acres including the suit land was recorded in the name of Tarani and his three brothers in equal shares and each of them got .52 acres of the *khatian*. The plaintiff claimed that through mutual partition Tarani got .42 acres of suit land of plot 91. He got it by way of purchase and gift from Tarani's wife Swarnamoyee. He mutated his name and remained in possession by paying rent to the concerned authority. During his possession and enjoyment he transferred .10 acres to defendant 1 through a *kabala* dated 03.01.2000. Although he further transferred .11 acres to defendant 2 but he purchased it again from her in 2014. So he remained owner in possession over .32 acres from the southern part of the aforesaid plot. In the plaint he asserted the fact that the defendant threatened him for dispossession on 15.01.2015 and then he instituted the suit for permanent injunction. It is found that

after acquiring title in the suit land by way of purchase and gift, RS *Khatian* 409 has been prepared in his name and he paid rent to the concerned authority through exhibits-2 and 3 series. In a suit for permanent injunction the prime consideration is the exclusive possession of the claimant over the suit land. The question of title in such a suit can be looked into incidentally. Here, by producing the documents exhibits 1-5 the plaintiffs proved his *prima facie* title over the suit land. The *dakhilas*, DCR and *khariji khatian* exhibits-2 and 3 series and the evidence of plaintiff's witnesses proves his exclusive and lawful possession over the suit land. The argument made by Mr. Niaz Murshed that the plaintiff is in *ejmali* possession with the defendant in the suit plot bears no substance because in the plaint the plaintiff demarcated the land by metes and bounds by giving specific boundary disclosing that out of .42 acres of land of that plot he used to possess .32 from the southern part and remaining .10 acres is being possessed by defendant from north. Since the land is well bounded in the plaint which is corroborated by evidence of PWs1 and 2, I find no wrong in granting injunction against the defendant. The other submission made by Mr. Murshed relying on exhibit-'Gha' dated 19.08.2013, the purchase deed of the defendant from the BS recorded tenant, also bears no substance because the land he purchased was transferred to the plaintiff by its original owner previously. In the

recital of the deed that SA and BS *khatians* have been mentioned. It proves that intentionally the RS record prepared in the name of the plaintiff has been withheld therein. The trial Court on correct assessment of fact and law decreed the suit for permanent injunction which has been affirmed in appeal. I find no error of law in the aforesaid judgments to interfere with.

Therefore, this Rule bears no merit and it is discharged. No order as to costs. The order of *status quo* stands vacated.

Communicate the judgment and send down the lower Courts' record.