

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Emdadul Huq

Civil Revision No. 1680 of 2000.

In the matter of:

Lutfurnnaha Bibi

.....Petitioner.

Versus.

Mrs. Taran Bibi being dead his heirs Kasiruddin
and others.

.....Opposite parties.

Mr. Md. Abdul Haque Advocate,

..... For the petitioner.

Mr.Md. Mozhar Hossain , Advocate.

..... For the opposite party Nos 1(a)-(e).

Mr.Md. Enamul Hoque, Advocate.

.... For the opposite party Nos.32(a)-(O).

Heard on: 17.6.14, 01.7.14,02.7.14, 8.7.14, 9.7.14 and
10.7.2014.

Judgment on: 15.07.2014.

The Rule issued in this Civil Revision is about sustainability of the judgment and decree dated 17.11.1999 by which the learned Subordinate Judge, 2nd Court, Naogaon allowed Title Appeal No. 10 of 1991 and thereby decreed Title Suit No.1042 of 1984 of the Court of Assistant Judge, Manda, Naogaon on reversing the judgment of dismissal dated 20.11.1990 passed in that suit.

Plaintiff's Case.

Deceased Taran Bibi (opposite party No. 1), as the plaintiff, filed the above noted suit for a declaration of her title to 4.57 acres of land as described in the Kha schedule to the plaint. She claimed that she acquired the suit land by auction purchase in Certificate

Case No.9465 of 1963-64 and the consequent Sale Case No.91 of 1965-66, wherein a Certificate of sale dated 14.03.1966 was issued and possession of the land was delivered to her on 18.4.1966.

Plaintiff claimed that the suit jote of C.S. khatian No.10/1 measuring 6.85 acres as described in ka schedule belonged to three C.S. recorded tenants being Samir Molla and his two brothers Money Molla and Ali Molla. This brother Ali Mollah died leaving one son, one wife and 3 daughters. Subsequently the other brother Money Molla died leaving wife Saimon Bewa and the only surviving brother Samir Molla.

Thus Samir Molla became the owner of his own one-third share of C.S. Khatian No.10/1 and also the share inherited from his deceased brother Money Molla out of that khatian. Subsequently Samir Molla transferred his entire share of the C.S. Khatian No.10/1 i.e. kha schedule land being the suit land to his wife Chini Bibi.

Accordingly S.A record was prepared in the name of Chini Bibi Later on, the aforesaid Certificate Case was initiated against Chini Bibi and the plaintiff auction purchased the entire suit land and got delivery of possession. Thus plaintiff has been in possession and title. But the R.S. record has been prepared wrongly in the name of Chini Bibi and some of the heirs of Samir Molla and of his brother Ali Molla being the defendants Nos.1-5. Hence the suit.

Case Defendant Nos.2 to 5:

These defendants in their joint written statement admit that the original C.S. Khatian was prepared in the name of the three brothers Ali Molla, Samir Molla and Money Molla. They also admit the genealogy and the order of death of the two brothers Ali Molla and Money Molla as stated by plaintiff.

However the defendants claim that the said three brothers had a sister named Saimon whose name was not included in C.S.

khatian. But she inherited her due share with her 3 (three) brothers and also the share of deceased brother Money Molla along with the surviving brother Samir Molla and the wife of the deceased brother Money Molla named Saimon Bewa. Thus the sister acquired 57 cents in the suit C.S khatian and another 16 cents in the non-suit C.S khatian 169 i.e. a total of 73 cents.

Defendants admit that Chini Bibi was the wife of C.S tenant Samir Molla, but they have denied the allegations of the plaintiff with regard to preparation of the S.A. Khatian in the name of Chini Bibi alone and the initiation of the Certificate Case against Chini Bibi.

The defendants contend that the plaintiff created some forged and false document of auction purchase and started claiming the suit land. So there was a criminal case relating to the suit land. In that case plaintiff's husband admitted the existence of Saimon as sister of the three brothers-cum-C.S tenants.

The defendants further claim that said sister Saimon sold her 73 decimals including the 57 decimals out of the suit land to Arab Molla by kabala dated 23.1.1956. This Arab Ali Molla, being the predecessor of the defendants. Nos. 2 to 5, by amicable portion with other co-sharers, used to possess his share of 73 cents in one suit plot being S.A plot No. 633. After the death of Arab Ali the defendant possess the said 73 cents.

Deliberation in Revision:

At the hearing, Mr. Md. Abdul Hoque, the learned Advocate for the petitioner, submits that the petitioner is the defendant No.11 of the original suit and respondent No.23 of the appeal, but she could not contest the original suit or the appeal.

Mr. Haque, the learned Advocate next submits that the petitioner is a purchaser of part of the suit land by kabala dated

27.9.1977 executed by Most. Sahajahan Bibi being the daughter of the S.A recorded tenant Chini Bibi and by another kabala dated 27.9.77 executed by Sadar Uddin, being husband of the said Sahajahan Bibi.

Mr. Haque, the learned Advocate next submits that the said two vendors of the petitioner had acquired 3.53 acres of land out of the suit land, by a deed of gift dated 20-06-1973 executed by Chini Bibi wife of the admitted C.S. tenant Samir Molla.

Mr. Haque, the learned Advocate lastly submits that the interest of the petitioner could not be presented before the courts below and they should be given an opportunity by sending the suit back on remand to the trial court.

Mr. Md. Enamul Haque, the learned Advocate for the added opposite parties No.19-22,25,26,29,30 and 32, submits that these opposite parties have acquired their interest in the suit land by 3 kabalas dated 25.6.2007. These kabalas were executed by the heirs of Sahajahan Bibi being the daughter the S.A recorded tenant Chini Bibi, and also by the other heirs of Samir Molla the admitted C.S tenant, but they could not present their case in the original suit or the Appeal.

Mr. Md. Mozahar Hossain, the learned Advocate for the opposite party Nos. 1(a) to 1(e) being the heirs of the deceased plaintiff Taharan Bibi, submits that he has no objection if the suit is sent back on remand for proper adjudication of the parties.

Finding and decisions in revision:

It appears that the deceased plaintiff Taran Bibi claimed her interest in the suit land on the basis of auction purchase in a Certificate case instituted against Chini Bibi being the alleged sole S.A. recorded tenant.

The plaintiff has filed a few documents namely, the Certificate of sale (Exhibit-2) showing confirmation of sale in favour of the auction purchaser (plaintiff) in Certificate Case No. 9465 of 1963-64, and the report of the Process Server Exhibit-1(kha) showing delivery of possession to the auction purchaser. The plaintiff has also filed a certified copy of kabala Exhibit-3 showing transfer of the 4.46 acres of land out of the suit jote by Samir Molla to Chini Bibi.

It is further revealed that the contesting defendants Nos. 2 to 5 denied the preparation of S.A record in the name of Chini Bibi. But neither the plaintiff nor the said defendants filed any copy of the S.A record to support their respective claim.

Plaintiff has not also filed the R.S. khatian to support the alleged cause of action. The defendants also did not file the R.S record.

It is further revealed that the contesting defendants filed in the trial court an information slip, Exhibit-Uma, wherein it is stated that there was no Sale Case in the Register under the number 91 of 1965-66 as stated in the plaint.

So it is evident that one of the vital issues in this case is whether the interest of S.A. recorded tenant(s) extinguished as a result of the Certificate case. But the appellate court has not addressed this aspect, rather arrived at its own findings and decision on the basis of insufficient evidence.

For proper adjudication of the dispute between the parties, the genuinences of the Certificate case and the alleged auction sale in favour of Taran Bibi needs to be first ascertained along with other issues.

It further appears that the petitioner (defendant No.11) claims through Chini Bibi and opposite party Nos. 19-22, 25, 26, 29

,30, 31, and 32 claim through Chini Bibi and one of the C.S. tenant Samir Molla. So the fate of their claim also depend on the fate of the said auction sale.

In view of the above findings I hold that the suit should be sent back on remand for proper adjudication.

In the result, the Rule is made absolute. The Judgment and order dated 17.11.1999(degree signed on 22.11.1999) passed by the learned Subordinate Judge, 2nd Court Naogaon in Title Appeal No.10 of 1991 and also the Judgment and decree dated 20-11-1990 passed by the learned Assistant Judge, Manda in Title Suit No. 1042 of 1984 are set aside.

The said Suit is sent back on remand.

The trial court shall allow defendant No.11 and this defendant being opposite party Nos. 19-22, 25, 26, and 30-32 of this Revision to file written statement and shall allow the plaintiffs and all the defendants to adduce evidence and thus dispose of the suit expeditiously in accordance with law.

The documents filed by the parties in this Revision as annexure may be given take back to the respective parties if attested photo copies are filed, except the impugned Judgment and decree of the appellate court.

No order as to costs.

Send down the LCR with a copy of the judgment and order to the courts below.

B.H.