

Bench:

Mr. Justice Bishmadev Chakraborty

Civil Revision No. 1667 of 2016

Samroz Khan and anotherpetitioners

-Versus-

Md. Tara Miah and others

..... opposite parties

Mr. A B M Rafiqul Haque Talukder,

Advocatefor the petitioners

Mr. Abdullah Al Mamun, Advocate

.....for opposite parties 1(a)-1(f)

Judgment on 28.07.2024

The trial Court decreed the suit for permanent injunction and it was affirmed by the appellate Court against which the defendant approached this Court and obtained this rule.

Opposite party1 as plaintiff instituted Other Class Suit No. 49 of 2004 in the Court of Senior Assistant Judge, Netrokona against the petitioners and others stating that Gurudayal Namu Das was the recorded owner of land appertaining to CS *khatian* 14. His nephew Kailash Chandra Namu Das during his possession and enjoyment transferred the total land of plot 20 measuring an area of 1.29 acres to Shree Lakshmi Narayan Goswami by a registered *kabala* dated 16.02.1945. Accordingly SA *khatian* was prepared in her name correctly. She died leaving behind her only son Udbhab Prasad Goswami. During his possession and enjoyment Udbhab sold it to Khudbanu Nessa through a *kabala* dated 02.08.1978 and handed over

possession thereof. After purchase, Khudbanu mutated her name and paid rent to the concerned and subsequently sold out .90 acres to the plaintiff through a kabala dated 23.6.1993. After purchase the plaintiff mutated his name and paid rent to the government. It was further stated that, in the meantime if the defendants manage to obtain any decree for the suit land by practicing fraud upon the court without impleading the plaintiff, it would not be binding upon him. The defendants threatened the plaintiff on 04.04.2004 of dispossession but he somehow resisted them. Although they left the place at that time but threatened him that they would come again and dispossess him from the suit land. Hence the suit for permanent injunction in respect of suit land.

Defendants 1-5 and 14 contested the suit by filing written statement. In the written statements they denied the statements made in the plaint and further contented that Udbhab, son of Lakshmi Narayan Goswami during his possession and enjoyment gave *pattan* of the land to Samir Uddin Khan, Jamir Uddin Khan and Atar Ali Khan, the pre-decessors of the defendants on taking salami. The defendants' pre-decessors paid rent to the superior landlord and during their possession and enjoyment SA *khatian* was prepared in their names. After the death of above three, they took settlement from Udbhab. Their heirs instituted Partition Suit No. 21 of 1999 which was still then pending. Udbhab Goswami never sold out the suit land

to Khudbanu and the deed in her name was not acted upon. The plaintiff created those documents only to grab the suit land. The defendants have possession in the suit land. Moreover .43 acres of land along others was being possessed by defendants 1 and 15 and for creating disturbance in possessing the suit land they instituted Other Class Suit No. 90 of 1994 and obtained a decree. Moreover, one Priti Rani Saha instituted a suit in which she lost. She went up to the High Court division in a civil revision challenging the judgment and decree passed in the aforesaid suit. The plaintiff is aware of the aforesaid fact but instituted the suit on false statement. Actually he has no title and possession over the suit land and as such the suit would be dismissed.

On pleadings the trial Court framed four issues. Among them the vital issue was whether the plaintiff has *prima facie* title and exclusive possession over the suit land. In the trial the plaintiff examined 8(eight) witnesses and their documents were exhibits 1-7. On the other hand the defendants examined 6(six) witnesses and produced the certified copies of SA *khatian* 20 only. However, the Assistant Judge decreed the suit finding plaintiff's *prima facie* title and exclusive possession over the suit land against which the contesting defendants preferred appeal before the District Judge, Netrokona bearing Other Class Appeal No. 50 of 2010 which was dismissed. Being aggrieved two defendants approached this Court with a revision upon which this rule has been issued with an interim

order of *status quo* in respect of position and possession in the suit land.

Mr. A B M Rafiqul Haque Talukder, learned Advocate for the petitioners taking me through the judgments passed by the Courts below submits that both the courts misdirected and misconstrued in their approach of the matter and thereby committed error of law in decreeing the suit which has resulted an erroneous decision occasioning failure of justice. He refers to the evidence of DWs 2-5 and submits that the witnesses unequivocally supported the defendants' possession in the suit land. This is a suit for permanent injunction and the prime consideration is the possession of the party over the suit land. Since the possession is in favour of the defendants both the Courts bellow committed error of law in decreeing the suit which is required to be interfered with by this Court in revision. The rule, therefore, would be made absolute.

Mr. Abdullah Al Mamun, learned Advocate for opposite parties 1(a)-1(f) on the other hand supports the judgments passed by the Courts below and submits that this is a suit for permanent injunction and the Courts below found *prima facie* title and exclusive possession of the plaintiff over the suit land and consequently decreed the suit. The concurrent finding of facts arrived at by the Courts below should not be interfered with by this Court in revision unless the petitioners can show that there is gross misreading and non-

consideration of the evidence and others materials on records for which the decision passed by the Courts below could have been otherwise. The petitioners failed to show any misreading and non-consideration of evidence by the Courts below. The oral evidence of the plaintiff is corroborative as to his possession in the suit land. Apart from it, the plaintiff produced a series of documents and proved his title and possession in the suit land. The Courts below left no stone unturned in deciding the issues in favour of the plaintiff. The rule, therefore, having no merit would be discharged.

I have considered the submissions of both the sides and gone through the materials on record. The suit is for permanent injunction. In such a suit the prime consideration is the possession in the suit land. The question of title can be seen there incidentally. The trial Court correctly framed the issue whether the plaintiff's has *prima facie* title and exclusive possession over the suit land which is the deciding point in this suit.

The plaintiff claimed that Gurudayal was the CS recorded tenant of the suit land. CS *khatian* 14 was prepared in his name. After his death his nephew Kailash Chandra Namo Das having been his heir transferred 1.29 acres to Lakshmi Narayan Goswami through registered kabala dated 16.02.1945. Her son namely Udbhab Prasad Goswami in whose name SA *khatian* was prepared, transferred land to Khudbanu through a *kabala* dated 02.08.1978. Khudbanu mutated her

name and paid rent to the government and remained in possession of the suit land. She subsequently sold out .90 acres out of 1.23 acres to plaintiff by a registered kabala on 23.06.1993 and handed over possession thereof. After purchase plaintiff mutated his name and remained in possession over the same on payment of rent to the concerned. The plaintiff alleges that on 04.04.2004 the defendant threatened him of dispossession and then he instituted the suit for permanent injunction.

The plaintiff produced related *khatians* and the original documents which were marked as exhibits. He produced the mutation *khatian* in the name of Khudbanu and DCR's in her name exhibit-5 series; he produced the original deed in his name exhibit-3 dated 23.06.1993. He further proved mutation *khatian* and DCRs exhibit-6 series in his name. The aforesaid documents, *i.e.*, the original CS *khatian* and the *kabala* deeds of subsequent purchasers prove plaintiff's title over the suit land. Plaintiff's witnesses PWs 1-8 proved his possession in the suit land. The witnesses of the plaintiff are found neutral and reliable to find possession in his favour. Apart from the oral evidence, the DCR's and rent receipts in the name of plaintiff and his predecessors are documentary evidence of possession. The suit land is found specified, well demarcated and suitable for granting permanent injunction to the plaintiff. Defendants did not produce a single scrap of paper in support of their title and possession in the suit

land. The oral evidence of the defendants' is found not corroborative to find their possession in the suit land. I find no error of law in the judgments passed by the Courts below for which those can be interfered with by me in revision. I find no misreading and non-consideration of the evidence and no such ground has been taken in the revisional application.

Therefore, I find no merit in this rule. Accordingly, the rule is discharged. No order as to costs. The judgment and decree of the Courts below is affirmed. The order of *status quo* stands vacated.

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