

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No.1093 of 2018

Suraiya Begum and others .....petitioners

-Versus-

Sk. Md. Sahin and others

.....opposite parties

Mr.Md. Ekramul Islam, Advocate

..... for the petitioner

Mr. Tapon Kumar Bepary with

Mr. Bulbul Das, Advocates

..... for the opposite parties

Judgment on 16.07.2024

This rule at the instance of the defendants was issued calling upon the opposite parties to show cause as to why the judgment and decree of the District Judge, Pirojpur passed on 15.03.2018 in Title Appeal No. 37 of 2017 dismissing the appeal affirming the judgment and decree of the Assistant Judge, Nesarabad, Pirojpur passed on 13.06.2017 in Title Suit No. 16 of 2015 decreeing the suit for permanent injunction should not be set aside and/or such other or further order or orders passed to this court may seem fit and proper.

Facts relevant for disposal of the rule, in brief, are that opposite parties herein as plaintiffs instituted the aforesaid suit alleging, *inter alia*, that SA khatian 1/33 in respect of 14.73 acres of land was prepared in the name of Saleha Khatun and others. During possession and enjoyment of her share measuring .83 acres she died leaving behind 2 sons Mostafa Kamal alias Kamal Pasha,

Ismot Pasha and daughter Parul Begum. The above heirs got possession of .25 acres from SA plot 664, .27 acres from SA plot 669, .04 acres from SA plot 690, .03 acres from SA plot 691 and .24 acres from SA plot 692. Accordingly BS khatian 987 plots 2074, 2066, 2060, 2059 and 2061 in respect of .83 acres has been prepared in their names. Kamal Pasha and Ismot Pasha sold out .20 acres from SA plot 664 to Jahangir Kabir through a registered *kabala* dated 02.02.1998. They further sold land to others and remained in possession of .27 acres of plot 2066. Kamal Pasha sold out his share of .108 acres to defendants 1 and 2 through *kabala* dated 21.03.2011 and handedover possession thereof. The land of plot 669 of SA khatian 1/33 is homestead. The other land of that khatian are nal, bhiti and garden. The deed writer erroneously included plot 666 of SA khatian 1/33 and described it as homestead. Modasser Ali the recorded owner died leaving behind his 2 sons Abdul Hossain and Siddiqur Rahman and 3 daughters Hazera Begum, Shahina Begum and Rabia Khatun. Abdul Hossain died leaving his son Md. Shahin and defendant 1 as heirs. Plaintiff 2 Manirul Islam is the son of Siddiqur Rahman. The plaintiffs filed miscellaneous case got an order therein on 25.12.2014 and opened new khatian 1706. He remained in possession over the land by paying rent to the government. Defendants 1-5 are the heirs of Abdul Hakim, the recorded owner

of the land described in schedule 'Ka' to the plaintiff. Their land was recorded in DP No. 14 and they with their predecessor transferred their share to others as per the mutual possession they hold over the land. The defendants out of greed tried to enter into the land of the plaintiffs on 13.02.2015 and threatened them for dispossession and hence the suit for permanent injunction.

Defendants 1-5 contested the suit by filing written statement. In the written statement they denied the statements made in the plaint. They admitted preparation of SA khatian 1/33 in the name of Saleha Khatun and others and the remaining land of SA plots 691 and 669 of SA khatian 1/33. They further claimed that total 17.03 acres of land was recorded in the aforesaid two SA khatians. But the quantum was reduced to 15.62 acres. The aforesaid land would be divided equally among the 5 persons named in the khatian. The name of Abdul Hakim was correctly recorded in SA khatian 1/33. He died leaving behind his only son Akbar Ali in whose name in BS khatian 14 has been prepared. He died leaving behind defendants 1-5 as heirs and they are in possession over 1.82 acres through cultivation. In Miscellaneous Petition No. 313 of 2013 the possession of the defendants in the suit land has been proved. Parul, Kamal and Ismat Pasha, the heirs of recorded tenants sold out their share to one Salek on 19.01.2006 and 12.11.2006 respectively. In view of the aforesaid

position, the plaintiffs did not acquire any title and possession in the suit land through the deed. The suit, therefore, would be dismissed.

On pleadings the trial Court framed 3 issues. Among them the vital issue was whether the plaintiff have *prima facie* title and exclusive possession over the suit land. In the trial the plaintiffs examined 3 witnesses and their documents were exhibits-1-17. On the other hand the defendants examined 2 and their documents were exhibits-‘Ka’-‘Uma’. However the Assistant Judge decreed the suit finding plaintiffs’ *prima facie* title and exclusive possession over the suit land. The defendants then preferred appeal before the District Judge, Pirojpur who upon hearing dismissed the appeal and affirmed the judgment passed by the trial Court which prompted the defendants to approach this Court with this revision and the rule was issued.

Mr. Md. Ekramul Islam, learned Advocate for the petitioners taking me through the judgments passed by the Courts below and other materials on record submits that to get a decree of permanent injunction the suit land is to be specified and well demarcated. Admittedly plot 2066 contains .27 acres of land but in the khatian there is more land. The total land of the plots of that khatian is 3.75 acres out of which the defendants purchased .43 acres and as such without any specification and demarcation of land

the suit for permanent injunction cannot be decreed. The plaintiff although claimed .1080 acres of land from the aforesaid plot but it was not specified by metes and bounds, therefore, they are not entitled to get a decree as prayed for. The plaintiffs did not examine the vendor of their deed to prove the deed and possession over the suit land. The parties to the suit are admittedly co-sharers in the suit land and as such the suit for permanent injunction without partition is not maintainable. He then submits that the Courts below did not discuss oral evidence adduced by the parties and, therefore, the judgments passed by the Courts below cannot be sustained in law. The plaintiff purchased .1080 acres the suit land through exhibit-4 which consists of 5 plots but nothing has been stated specially about his purchased share. Since the plaintiffs have failed to prove *prima facie* title and exclusive possession over the suit land, the judgments passed by the Courts below would be set aside and the rule be made absolute.

Mr. Tapan Kumar Bepary, learned Advocate for the opposite parties on the other hand opposes the rule and submits that the plaintiffs purchased the suit land from the recorded tenants Kamal Pasha and others through exhibit-4. Since they have purchased the suit land by a registered deed it proves that they have *prima facie* title over the suit land. After purchase the the plaintiffs mutated their names through mutation case exhibit-2

and have been possessing the same by paying rent to the concerned authority. The witnesses of the plaintiffs led corroborative evidence and proved possession in the suit land. Both the Courts below found plaintiffs' *prima facie* title and exclusive possession over the suit land and decreed the suit for permanent injunction. In the judgments, there is no misreading and non consideration of the evidence on record, and as such the rule would be discharged.

I have considered the submissions of the learned Advocates for both the sides, gone through the judgments passed by the Courts below and other materials on record.

This is a suit for permanent injunction for restraining the defendants from interfering with the peaceful possession of the plaintiffs over the suit land measuring .1080 acres described in the schedule to the plaint. In a suit for permanent injunction the prime consideration is the possession over the suit land. The question of title can be seen there incidentally. The plaintiffs produced a series of documents in support of their title over the suit land. They produced and exhibited certified copy of SA khatian 133 exhibit-1, certified copy of BS khatians 1703 and 987 exhibit-2 series, certified copy of the registered sale deed dated 02.02.1998; exhibit-3 original registered sale deed dated 21.03.2011 (the disputed deed) exhibit-4; certified copy of the registered sale

deeds dated 09.01.2011, 19.08.1997, 17.10.2011, 17.06.2002, 12.11.2003, 29.06.2003, 22.12.2010, 12.04.2019, 10.01.1999 and 05.07.2010 exhibits-5-14 respectively; they also proved and exhibited certified copy of a criminal case and plot index.

On perusal of the exhibited khatians filed by the plaintiffs and their registered sale deeds through which the plaintiffs claimed title over the suit land, I find that the plaintiffs have been able to prove their title in the suit land. The plaintiffs' witnesses PWs 1-3 led corroborative evidence in support of their possession over the suit land. Although they were cross-examined by the defendants at length but nothing came out adverse. Moreover, the mutation in the name of the plaintiffs exhibit-2 proves their possession in the suit land. In the plaint the plaintiffs described the land as SA plot 669 corresponding to BS plot 2066 of newly created BS khatian 1703 measuring an area of .1080 acres. The land is well bounded in the schedule naming those persons surrounding it. Furthermore, in exhibit-4, the original purchase deed of the plaintiffs, there is a sketch map showing plaintiffs' land. The submission of the learned Advocate for the petitioners that the plaintiffs purchased a part of the suit land out of .3575 acres of plot 2066 and his land is not specified bears no substance considering the plaint, oral evidence of the parties and purchase deed exhibit-4. Although by the deed the plaintiffs purchased a

part of the land of the plot but it has been specified and well demarcated as found above. Since the plaintiffs filed the suit for permanent injunction because of the threat of the defendants and the land has been specified and possession is proved in evidence, the instant suit for permanent injunction is well maintainable. The submission of the learned Advocate for the petitioners that the suit in the present form is not maintainable without partition also bears no substance. Although the oral evidence of the parties were not discussed by the Courts below but the petitioners failed to point out the evidence of witnesses for which the decision passed by the Courts below could have been otherwise. No such ground has been taken in the revisional application. I find no such misreading or non reading of evidence and any point for which the judgments may be interfered with by me.

In view of the discussion made hereinabove, I find no merit in this rule. Accordingly, the rule is discharged. No order as to costs. The judgment and decree passed by the Courts below is hereby affirmed.

Communicate the judgment and send down the lower Court records.



*Rajib*